

# **BOARD MEETING OF SEPTEMBER 9, 2010**

**C. Kent Conine, Chair**



Gloria Ray, Vice-Chair

Leslie Bingham Escareño, Member

Tom Gann, Member

Lowell Keig, Member

Juan Muñoz, Member

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

**A G E N D A**

**9:30 a.m.  
September 9, 2010**

Texas State Technical College  
Cultural Arts Center  
1902 North Loop 499  
Harlingen, TX 78550

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

Kent Conine, Chairman

Adoption of a Resolution Recognizing that 2010 is the 20th Anniversary of the HOME Investment Partnerships Program, Resolution #11-001

**PUBLIC COMMENT**

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by the department staff and motions made by the Board.

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

**Item 1: Approval of the following items presented in the Board materials:**

*Executive*

- a) Presentation, Discussion, and Possible Action regarding Board Minute Summaries for July 8 and July 29, 2010
- b) Presentation, Discussion, and Possible Action regarding the authorization of staff to undertake procurement activity for third parties to assist with various Department activities

Brooke Boston  
Board Secretary

Tim Irvine  
Chief of Staff/General  
Counsel

*Bond Finance*

- c) Presentation, Discussion, and Possible Action regarding Resolution No. 11-003 authorizing a Mortgage Credit Certificate Program (MCC) for first-time homebuyers (Program 78) along with related program documents to be administered by the Texas Department of Housing and Community Affairs
- d) Presentation, Discussion, and Possible Action regarding Resolution No. 11-004 authorizing the Department to enter into an agreement with Texas local housing finance agencies to provide down payment assistance under the First Time Homebuyer Program
- e) Presentation, Discussion, and Possible Action regarding Resolution No. 11-005 authorizing a range of mortgage interest rates under the First Time Homebuyer Program, authorizing acceptance of the Treasury's modifications to The New Issue Bond Program, and update on warehouse pipeline and mortgage rates for Program 77

Tim Nelson  
Dir. Bond Finance

*Multifamily Division Items - Housing Tax Credit Program*

- f) Presentation, Discussion, and Possible Action regarding Housing Tax Credit and Exchange Program Extensions

Robbye Meyer  
Dir. Multifamily

02120	Humble Memorial Gardens	Humble
05441	Cobblestone Manor	Fort Worth
09910	Lexington Square	Angleton

09916	Mid-Towne	Tomball
09917	Alta Vista	Burnet
09921	Oak Manor	San Antonio
09922	Parkview Terrace	Pharr
09929	Buena Vida Senior	Corpus Christi
09932	Constitution Court	Copperas Cove
09019/09703	Timber Villas, II	Marshall

**Tax Credit Assistance Program (TCAP)**

- g) Presentation, Discussion, and Possible Action regarding conditional award of TCAP Round 3 Application

Tom Gouris  
DED Housing Programs

10711	Sutton Homes	San Antonio
-------	--------------	-------------

**HOME**

- h) Presentation Discussion, and Possible Action regarding the 2009 Single Family Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance Programs Award Recommendations

Jeannie Arellano  
Dir. HOME

Owner-Occupied Housing Assistance 2009-0102	City of Primera	Primera
--	-----------------	---------

Homebuyer Assistance 2009-0103	City of Primera	Primera
-----------------------------------	-----------------	---------

**Housing Trust Fund**

- i) Presentation, Discussion, and Possible Action regarding the 2010-2011 Housing Trust Fund Affordable Housing Match Program NOFA Award Recommendations:

Dee Patience  
Mgr. HTF

2010-0030	Foundation Communities	Austin
2010-0031	National Farm Workers Service Center, Inc.	Austin
2010-0032	Green Doors	Austin
2010-0033	Habitat for Humanity of San Antonio, Inc.	San Antonio

**Neighborhood Stabilization**

- j) Presentation, Discussion and Possible ratification and adoption of awards and actions taken by the Director under Emergency Authority between July 30, 2010 and September 3, 2010

Tom Gouris  
DED Housing Programs

Housing and Community Services, Inc.	Bexar
Tarrant County Housing Partnership, Inc.	Tarrant
Fort Worth Affordability, Inc.	Tarrant
Tarrant County Housing Partnership, Inc.	Tarrant
Covenant Community Capital Corporation	Harris
FC Austin One Housing Corporation	Travis
Fort Worth Affordability, Inc.	Tarrant
Covenant Community Capital Corporation	Fort Bend
Fort Worth Affordability, Inc.	Tarrant

- k) Presentation and Discussion of status of Neighborhood Stabilization Program funds

**Compliance and Asset Management**

- l) Presentation, Discussion and Possible Action regarding resolution number 11-002 concerning the holding of real estate beyond three year limitation

Patricia Murphy  
Dir. Compliance and Asset  
Management

**Housing Resource Center**

- m) Presentation, Discussion and Possible Action regarding the 2011 Regional Allocation Formula Methodology (Draft for Public Comment)
- n) Presentation, Discussion and Possible Action regarding the 2011 Affordable Housing Needs Score (Draft for Public Comment)
- o) Presentation, Discussion and Possible Action regarding the 2011 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment)

Brooke Boston  
DED Community Based

Michael DeYoung  
Dir. CA**Community Affairs**

- p) Presentation, Discussion, and Possible authorization to release a Request for Applications for provision of Services for the Community Services Block Grant (CSBG), Weatherization Assistance Programs (WAP), and the Comprehensive Energy Assistance Program (CEAP) in Duval County
- q) Presentation, Discussion and Possible Action regarding award to support the Continuum of Care annual application

**ACTION ITEMS****Item 2: Appeals:**

- a) Presentation, Discussion, and Possible Action on Multifamily Program Appeals: Robbye Meyer  
Dir. Multifamily
- 10270                      Gateway to Eden                                      Eden
- Appeals Timely Filed
- b) Presentation, Discussion, and Possible Action on Tax Credit Assistance Program Appeals: Tom Gouris  
DED Housing Programs
- Appeals Filed Timely
- c) Presentation, Discussion, and Possible Action on Exchange Program Appeals: Tom Gouris  
DED Housing Programs
- Appeals Filed Timely
- d) Presentation, Discussion, and Possible Action on HOME Program Appeals: Tom Gouris  
DED Housing Programs
- Appeals Filed Timely
- e) Presentation, Discussion, and Possible Action on Underwriting Appeals: Brent Stewart  
Director, REA
- Appeals Filed Timely
- f) Presentation, Discussion, and Possible Action on Housing Trust Fund Program Appeals: Dee Patience  
Mgr. HTF
- Appeals Filed Timely

**Item 3: Rules:**

- a) Presentation, Discussion, and Possible Action regarding the adoption of final orders repealing the old HOME Program Rule and adopting the new HOME Program Rule at 10 TAC, Chapter 53, and for publication in the *Texas Register* Jeannie Arellano  
Dir. HOME
- b) Presentation, Discussion, and Possible Action regarding approval of the publication of the proposed repeal of 10 TAC Chapter 1, §§1.31 – 1.37, 2010 Real Estate Analysis Rules and Guidelines and a proposed new 10 TAC Chapter 1, §§1.31 – 1.37, 2011 Real Estate Analysis Rules and Guidelines for comment in the *Texas Register* Brent Stewart  
Dir. REA
- c) Presentation, Discussion and Possible Action regarding approval of the publication of proposed repeal of 10 TAC Chapter 49, concerning 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules, and a proposed new 10 TAC Chapter 49, concerning 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules for public comment in the *Texas Register* Robbye Meyer  
Dir. MF
- d) Presentation, Discussion and Possible Action regarding approval of the publication of the proposed repeal of 10 TAC Chapter 35, concerning 2009 Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 35, concerning 2011 Multifamily Housing Revenue Bond Rules for public comment in the *Texas Register*
- e) Presentation, Discussion and Possible Action regarding approval of the publication of a proposed new 10 TAC Chapter 1 §1.1 concerning Definitions for Housing Program Activities for public comment in the *Texas Register*

**Item 4: Multifamily Division Items - Housing Tax Credit Program:**

- a) Presentation and Discussion of the Status of Applications Awarded Housing Tax Credit Exchange Funds and Possible Action of Extension, Ratification and Award of Remaining Exchange Funds and Authorization for Executive Director approval going forward Robbye Meyer  
Dir. Multifamily

09310	Champions at Baywalk	Galveston
09312	Villas at El Dorado	Houston
09974	Courtwood Apartments	West
09955	Oakwood Apartments	Brownwood
09353	Hyatt Manor I & II	Gonzales
09992	Northgate & Rhomberg	Burnet
09995	Village Place	Lorena
09997	Autumn Villas	Lorena
09998	Prairie Village	Rogers
09999	Cherrywood Apartments	West
09901	Las Palmas Gardens	San Antonio
09903	West End Baptist Manor	San Antonio
09904	LULAC Hacienda	San Antonio
09909	Champion Homes at La Joya	La Joya
09951	Canyons Retirement Community	Amarillo
09957	Woodland Park	Decatur
09965	Peachtree Senior	Balch Springs

b) Presentation, Discussion, and Possible Action regarding of Housing Tax Credit Amendments

01042	Fountains at Tidwell	Houston
-------	----------------------	---------

c) Presentation, Discussion and Possible Action to Authorize the Executive Director to waive the threshold wiring requirements for previous years to the current Qualified Allocation Plan standard of RG-6 COAX or better and CAT3 phone cable or better on a case by case basis

d) Presentation, Discussion, and Possible Action regarding 9% awards under the 2010 Competitive Housing Tax Credit Application Round

10262	Las Brisas Manor	Del Rio
-------	------------------	---------

e) Presentation, Discussion, and Possible Action regarding the Waiting List for the 2010 Competitive Housing Tax Credit Application Round

f) Presentation, Discussion and Possible Action regarding the Issuance of Forward Commitments for Allocations from the 2011 State Housing Credit Ceiling for 2010 Applications

**Item 5: HOME**

Jeannie Arellano  
Dir. HOME

a) Presentation, Discussion and Possible Action regarding the 2010 HOME Multifamily Development Program Notice of Funding Availability

b) Presentation, Discussion, and Possible Action regarding the 2010 Rental Housing Development Award Recommendations

Persons with Disabilities Set-Aside

10126	Auburn Square	Vidor
10153	Britain Way	Irving

c) Presentation, Discussion and Possible Action regarding the 2010 HOME Single Family Development Program Notice of Funding Availability

d) Presentation, Discussion and Possible Action regarding the 2010 HOME Single Family Programs Notice of Funding Availability

**Item 6: Disaster Recovery**

Sara Newsom  
DED, Emergency  
Housing & Disaster

a) Presentation, Discussion, and Possible Action regarding Request for Amendments to CDBG Disaster Recovery housing contracts administered by TDHCA for CDBG Hurricane Rita Round II Funding

70060000002	City of Houston
-------------	-----------------

b) Presentation, Discussion, and Possible Action regarding Request for Amendments to CDBG Disaster Recovery housing contracts administered by TDHCA for CDBG Rita Round II Funding

70060000003	Harris County
-------------	---------------

- c) Presentation, Discussion, and Possible Action regarding Request for Amendments to CDBG Disaster Recovery housing contracts administered by TDHCA for CDBG Hurricane Ike/Dolly Round I Funding  
70090001 City of Houston
- d) Presentation, Discussion and Possible Action regarding Disaster Recovery Housing Program Guidelines with or without Additional Conditions from the Board

#### Item 7: ARRA Accountability and Oversight:

- a) Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

Brooke Boston  
DED Community Based  
Programs

#### REPORT ITEMS

1. TDHCA Outreach Activities, July 2010
2. First Time Homebuyer Program update on Program 70 and Program 74 pipeline and loan originations
3. Discussion of the proposed partial sale of mortgage certificates and partial tender of bonds from Residential Mortgage Revenue Bonds Series 2001ABC, 2002A, and Single Family Mortgage Revenue Bonds Series 2002ABCD
4. Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA, including update on Ike/Dolly Round II
5. Housing and Health Services Coordination Council 2010-2011 Biennial Plan

Kent Conine, Chairman

Tim Nelson

Tim Nelson

Sara Newsom

Brooke Boston

#### EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

Kent Conine, Chairman

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs*, et al filed in federal district court,
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Tex. Gov't. Code, Chapter 551
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person

#### OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session

Kent Conine, Chairman

#### ADJOURN

To access this agenda & details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Nidia Hiroms, 512-475-3934; TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Nidia Hiroms, 512-475-3934 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

**Texas Department of Housing and Community Affairs  
Resolution No. 11-001**

**WHEREAS**, 2010 is the 20th Anniversary of the HOME Investment Partnerships Program;

**WHEREAS**, the HOME Investment Partnerships Program was authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990 (P.L. 101-625);

**WHEREAS**, the Texas HOME Investment Partnerships Program (1) Expands the supply of decent and affordable housing in Texas; (2) Strengthens the abilities to design and implement strategies for achieving adequate supplies of decent, affordable housing; (3) Provides financial and technical assistance to eligible applicants to develop affordable low-income housing; and (4) Extends and strengthens partnerships among all levels of government and the private sector (both for-profit and non-profit organizations) in the production and operation of affordable housing;

**WHEREAS**, the Texas Department of Housing and Community Affairs and the State of Texas are committed to helping as many low to moderate income Texans as possible have opportunities to access affordable housing;

**WHEREAS**, the goal of the Texas Department of Housing and Community Affairs is to ensure that all Texans have access to safe and decent affordable housing;

**WHEREAS**, the Texas HOME Investment Partnerships Program is the largest federally-funded housing program administered by the Texas Department of Housing and Community Affairs;

**WHEREAS**, the Texas HOME Investment Partnerships Program provides grants and/or loans for (1) Home rehabilitation or reconstruction; (2) Rental subsidies; (3) Purchase of a home; (4) Rental housing development; (5) Single family development;

**THEREFORE BE IT RESOLVED**, that in the pursuit of the goal and responsibility of providing opportunities for access to affordable housing for all, the Governing Board of the Texas Department of Housing and Community Affairs, does hereby celebrate 2010 as the 20th Anniversary of the Texas HOME Investment Partnerships Program, and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of the 20th Anniversary of the Texas HOME Investment Partnerships Program.

Signed this Ninth Day of September 2010.



\_\_\_\_\_  
C. Kent Conine, Chair

\_\_\_\_\_  
Gloria Ray, Vice Chair

\_\_\_\_\_  
Leslie Bingham Escareño, Member

\_\_\_\_\_  
Dr. Juan Muñoz, Member

\_\_\_\_\_  
Lowell A. Keig, Member

\_\_\_\_\_  
Tom H. Gann, Member

\_\_\_\_\_  
Michael Gerber, Executive Director

**BOARD SECRETARY**  
**BOARD ACTION REQUEST**  
**SEPTEMBER 9, 2010**

**Recommended Action**

Approve Board Meeting Minute Summary for July 8 and July 29, 2010.

**WHEREAS**, the Board Meeting Minute Summaries for July 8 and July 29, 2010, are hereby approved, with the approval to make corrections as directed by the Board.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING

July 8, 2010; 9:00 a.m.

Capitol Extension Auditorium  
1100 Congress Avenue, Austin, TX

SUMMARY OF MINUTES

**CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM**

The Board Meeting of the Texas Department of Housing and Community Affairs of July 8, 2010 was called to order by Vice Chair, Gloria Ray, at 9:05 a.m. It was held at the Capitol Extension, 1100 Congress Avenue, Austin, Texas. Roll call certified a quorum was present.

**Members Present:**

Kent Conine, Chair (*arrived at 9:25 a.m.*)  
Gloria Ray, Vice Chair  
Leslie Bingham-Escareño, Member (*departed at 12:35 p.m.*)  
Tom H. Gann, Member  
Lowell Keig, Member

**Members Absent:**

Juan Muñoz, Member

**PUBLIC COMMENT**

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by the department staff and motions made by the Board.

The Honorable Representative Jose Menendez, provided testimony on behalf of the Bexar County delegation, in support of a forward commitment for the Terrace at Haven for Home, San Antonio, TX.

Bill Greehey provided testimony in support of a forward commitment for the Terrace at Haven for Home, San Antonio, TX.

Holly Deshields provided testimony on behalf of the Honorable Senator Mike Jackson, in support of Tarrington Court, Pasadena, TX.

Brad Tegeler provided testimony on behalf of the Honorable Representative Ken Legler, in support of Tarrington Court, Pasadena, TX.

Mark Hey, Chief of Staff for the Honorable Representative Jerry Madden, provided testimony on behalf of Representative Madden, in support of Evergreen at Richardson, TDHCA Number 10136.

Becky Scheffler, representing the Gleaming Springs Neighborhood Association in Schertz, TX, provided testimony in support of Ashton Senior Village.

Sue Winkles provided testimony in support of Ashton Senior Village.

Felicia Wright read a letter for the record on behalf of the Honorable Senator Van De Putte, in support of Woodlawn Ranch Apartments, #10150.

Chairman Conine arrived at 9:25 a.m.

Naomi Byrne, Executive Director, Housing Authority of Texarkana, TX, provided testimony in support of a forward commitment for Pecan Ridge, Texarkana, #10028.

Tony Phillip provided testimony in support of the Sunflower Estates, La Feria #10151.

Angelica P. Baldivia, La Feria City Commissioner, provided testimony in support of Sunflower Estates, La Feria #10151.

Lori Weaver, board member, La Feria Economic Development Corporation, and La Feria Mayor Pro Tem, provided testimony in support of the Sunflower Estates, La Feria #10151.

Joy Horak-Brown, Executive Director of New Hope Housing, Inc., Houston, provided testimony thanking the department for its support of Brays Crossing.

Maria Machado, Executive Director, Shared Housing Center, Dallas, provided testimony in support of Greenhaus at East Side #10093.

Curt Baker, board member, Shared Housing provided testimony in support of Greenhaus at East Side #10093.

Tim Hafer, board president and volunteer, Shared Housing Center, provided testimony in support of Greenhaus at East Side #10093.

Mark Mayfield, Texas Housing Foundation, provided testimony commending staff for their efforts and hard work.

## CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

### AGENDA ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

#### **Multifamily Division Items - Housing Tax Credit and Exchange Programs**

- a) Presentation, Discussion, and Possible Approval of Housing Tax Credit Extensions  
09914 StoneLeaf at Dalhart Dalhart

#### **Housing Trust Fund**

- b) Presentation, Discussion, and Possible Approval of the 2010-2011 Housing Trust Fund (HTF) Rural Housing Expansion Program NOFA Award Recommendations and Authorization to Release a Separate NOFA for USDA 502 Direct Loan Application Assistance:  
2010-0021 Community Development Corporation of Brownsville Brownsville  
2010-0023 Brazos Valley CDC, Inc. Bryan

#### **Disaster Recovery:**

- c) Presentation, Discussion, and Possible Approval of Request for Amendments to CDBG Disaster Recovery Housing Contracts administered by TDHCA for CDBG Hurricane Ike/Dolly Round I Funding  
70090010 Chambers County  
70090001 City of Houston

**Motion by Ms. Bingham-Escareño to approve consent agenda as presented; seconded by Ms. Ray; passed unanimously.**

## ACTION ITEMS

### AGENDA ITEM 2: ASSET MANAGEMENT AND COMPLIANCE:

- a) Presentation, Discussion, and possible approval of asset management fees for Exchange and Tax Credit Assistance  
Granger MacDonald provided testimony regarding fees.

**Motion by Ms. Bingham-Escareño to approve staff's recommendation with the addition of the \$7500 per project cap for TCAP projects that have a third party investor; seconded by Mr. Keig; passed unanimously.**

### AGENDA ITEM 3: FINANCIAL ADMINISTRATION

- a) Presentation, Discussion and Possible Approval of the fourth amendment to the FY 2010 Operating Budget and Housing Finance Budget along with authorization to submit the related Finding of Fact to the Governor's Office and the Legislative Budget Board

**Motion by Ms. Ray to staff's recommendation, as amended by Mr. Dally regarding six additional temporary full-time equivalents and directing staff to work with the Governor's office and LBB to ensure that the staff are properly classified, given state guidelines and requirements; seconded by Mr. Gann; passed unanimously.**

- b) Presentation, Discussion, and Possible Approval of the FY 2011 Draft Operating Budget  
c) Presentation, Discussion, and Possible Approval of the FY 2011 Draft Housing Finance Operating Budget along with authorization to submit the related Finding of Fact to the Governor's Office and the Legislative Budget Board

**Motion by Ms. Ray to approve the 2011 draft budget in Item 3(b) and the appropriate LAR finance operating budget in Item 3(c); seconded by Mr. Gann; passed unanimously.**

### AGENDA ITEM 4: TAX CREDIT ASSISTANCE PROGRAM

- a) Presentation, Discussion, and Possible Approval of a Round 4 application cycle for the Tax Credit Assistance Program (TCAP)

Eileen Manes, Betco Development, provided testimony in support of an amendment to the TCAP Policy regarding eligible applicants as it relates to the Grove at Brushy Creek, Bowie, TX.

**Motion by Ms. Ray to approve staff's recommendation, with the exception that the language be amended to include only developments with an approved TCAP Round 1, 2, or Round 3 award previously eligible developments with a TCAP environmental clearance as evidenced by an authority to use grant funds of those developments which have substantially completed construction and have not yet submitted Form 8609 to the Internal Revenue Service may apply for open cycle TCAP funds, and to include the clarification that developments that have submitted Form 8609 to the IRS may not apply for open cycle TCAP funds; seconded by Ms. Bingham-Escareño; passed unanimously.**

The Board took a brief recess.

**AGENDA ITEM 5: MULTIFAMILY DIVISION ITEMS - HOUSING TAX CREDIT PROGRAM:**

- a) Presentation, Discussion, and Possible Approval of Housing Tax Credit Amendments  
060170 Orchard Park at Willowbrook Houston

**Motion by Ms. Ray to approve staff recommendation to approve request; seconded by Mr. Gann; passed unanimously.**

- b) Presentation and Discussion of the Status of Applications Awarded Housing Tax Credit Exchange Funds and Possible Action for an Extension of Deadlines for the Housing Tax Credit Exchange Program

**Report item only. No action taken.**

- c) Presentation and Discussion of Challenges Made in Accordance with §50(17)(c) of the 2010 Qualified Allocation Plan and Rules (QAP) Concerning 2010 Housing Tax Credit (HTC) Applications

**Raquel Morales presented the staff's response to the two challenges that were listed as pending in the board materials, as follows:**

- |       |                     |         |
|-------|---------------------|---------|
| 10177 | Hometown at Garland | Garland |
| 10284 | Atmos Lofts         | Dallas  |

**Report item only. No action taken.**

**AGENDA ITEM 6: APPEALS:**

- a) Presentation, Discussion, and Possible Action for Tax Credit Program Appeals not timely filed:  
10173 Sphinx at Lawnview

Joseph Agumadu provided testimony in support of the appeal for Sphinx at Lawnview.

**Motion by Mr. Gann to deny appeal; seconded by Ms. Bingham-Escareño; passed unanimously.**

- b) Presentation, Discussion, and Possible Action on Multifamily Program Appeals:

- 10013 Artisan at Queen's Retreat

Mr. Gerber read for the record, a letter from the Honorable Senator Eddie Lucio, Jr. in support of the appeal request.

Eliseo Saucedo, Chairman, Mercedes Housing Authority, provided testimony in support of the appeal request.

Henry Peña provided testimony in support of the appeal request.

Ryan Wilson, Developer, provided testimony in support of the appeal request.

**Motion by Mr. Gann to deny appeal; seconded by Mr. Conine; passed unanimously.**

- 10039 Paris Retirement Village II

**Motion by Mr. Keig to deny appeal; seconded by Ms. Bingham-Escareño; passed unanimously.**

- 10051 Parkway Ranch Apartments

Cynthia Bast, Locke Lord and Liddell, provided testimony in support of the appeal request.

Barry Kahn provided testimony in support of the appeal request.

**Motion by Ms. Ray to grant appeal request; seconded by Mr. Keig; passed unanimously.**

10094 Providence Town Square  
Matt Fuqua, provided testimony in support of the appeal request.  
**Motion by Ms. Ray to deny appeal; seconded by Mr. Keig; passed unanimously.**

10134 Champion Homes at Copperridge  
Bill Fisher, Odyssey Residential Holdings, provided testimony in support of the appeal request.  
**Motion by Ms. Ray to deny appeal 1, concerning economic development area; seconded by Mr. Keig; passed unanimously.**  
**Motion by Mr. Keig to grant appeal 2, concerning quantifiable community participation, seconded by Ms. Bingham-Escareño; passed unanimously.**

10136 Evergreen at Richardson  
Tamea Dula, Coats Rose, provided testimony in support of appeal request.  
**Motion by Ms. Ray to grant appeal; seconded by Mr. Gann; passed unanimously.**

10150 Woodlawn Ranch Apartments  
Dr. Charlie Cotrell, President of St. Mary's University, provided testimony in support of appeal request.  
Eliza Hernandez, President of the University Park Neighborhood Association, provided testimony in support of the appeal request.  
Mike Hogan, Hogan Real Estate Services and Home Spring Realty Partners, provided testimony in support of appeal request.  
**Motion by Ms. Ray to grant appeal; seconded by Mr. Keig; passed unanimously.**

10153 Britain Way Apartments  
Cynthia Bast, Locke Lord and Liddell, provided testimony in support of the appeal request.  
**Motion by Ms. Ray to grant appeal; seconded by Mr. Keig; Ms. Bingham-Escareño absent; motion passed.**

10160 Creekside Place  
**Motion by Ms. Ray to deny appeal; seconded by Mr. Gann; Ms. Bingham-Escareño absent; motion passed.**

**The Board took a brief recess.**

10200 Hillside West Seniors  
Brandon Bolin provided testimony in support of the appeal request.  
Alan McDonald provided testimony in support of the appeal request.  
John Shackelford provided testimony in support of the appeal request.  
**Motion by Ms. Ray to grant appeal; seconded by Mr. Keig; passed unanimously.**

10202 Brae Estates  
Terri Anderson, Anderson Capital, representing Kim McCaslin Schlicker, provided testimony in support of appeal request.  
**Motion by Ms. Ray to deny appeal 1 concerning specific enterprise zone, federal, state funding area; seconded by Mr. Keig; passed unanimously.**  
**Motion by Mr. Keig to grant appeal 2 concerning the development location/neighborhood/school; seconded by Mr. Conine; Ms. Bingham-Escareño voted no; Ms. Bingham-Escareño absent; motion passed.**

10227 Tarrington Court  
Steve Ford provided testimony in support of the appeal request.  
Marie Flickinger provided testimony in support of the appeal request.  
**Motion by Mr. Keig to grant appeal; seconded by Mr. Gann; passed unanimously.**

10241 Timberland Trails  
**Motion by Ms. Ray to deny appeal request; seconded by Ms. Bingham-Escareño; Mr. Gann recused himself; motion passed.**

Ted Hamilton, President of Hamilton Properties Corporation, provided testimony in support of appeal request.

John Greenan, Executive Director, Central Dallas Community Development Corporation, provided testimony in support of the appeal request.

John Shackelford provided testimony in support of the appeal request.

**Motion by Mr. Gann to grant appeal concerning historic designation; seconded by Ms. Ray; Mr. Keig voted no; Ms. Bingham-Escareño absent; motion passed.**

**Motion by Mr. Keig to grant appeal concerning the development location/neighborhood; seconded by Ms. Ray; Ms. Bingham-Escareño absent; motion passed.**

c) Presentation, Discussion, and Possible Action for Underwriting Appeals:  
**None filed.**

d) Presentation, Discussion, and Possible Action for Housing Trust Fund Program Appeals:  
**None filed.**

#### REPORT ITEMS

1. Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA, including update on Ike/Dolly Round II
2. Exchange Extensions

#### EXECUTIVE SESSION

**No Executive Session was held.**

1. The Board may go into Executive Session Pursuant to Tex. Gov't. Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't. Code §2306.039(c) to meet with the internal auditor to discuss issues related to fraud, waste, or abuse;
3. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs*, et al filed in federal district court,
4. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Tex. Gov't. Code, Chapter 551
5. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person

#### ADJOURN

Since there was no other business to come before the Board, the meeting was adjourned at 1:50 p.m. on July 8, 2010.

---

Brooke Boston, Board Secretary

**NOTE:** To view the full Transcript for this meeting, please visit the TDHCA website at: [www.TDHCA.state.tx.us](http://www.TDHCA.state.tx.us).

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING

July 29, 2010; 9:30 a.m.

Capitol Extension Auditorium  
1100 Congress Avenue, Austin, TX

SUMMARY OF MINUTES

**CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM**

The Board Meeting of the Texas Department of Housing and Community Affairs of July 29, 2010 was called to order by Chair, Kent Conine, at 9:35 a.m. It was held at the Capitol Extension, 1100 Congress Avenue, Austin, Texas. Roll call certified a quorum was present.

**Members Present:**

Kent Conine, Chair  
Gloria Ray, Vice Chair  
Leslie Bingham-Escareño, Member  
Tom H. Gann, Member  
Lowell Keig, Member  
Juan Muñoz, Member

**PUBLIC COMMENT**

The Board will solicit Public Comment at the beginning of the meeting and will also provide for Public Comment on each agenda item after the presentation made by the department staff and motions made by the Board.

Frank Fernandez, Executive Director for Green Doors and Chair, Texas Supportive Housing Coalition, provided testimony concerning the QAP.

The Honorable Mayor Steve Brewer provided testimony in support of Sunflower Estates in La Feria.

Bogan Durr, provided testimony on behalf of The Honorable Senator Bob Deuell, in support of Sulphur Springs, Pioneer Crossing, #10033, and in support of Silver Spring at Forney, Project Number 10090.

Sunny Phillip, South Texas Collaborative Housing Development, provided testimony in support of Sunflower Estates in La Feria.

Jim Boynton, provided testimony on behalf of The Honorable Representative Mark Homer in support of Sulphur Springs, Pioneer Crossing, #10033.

The Honorable Chris Brown, city council member, city of Sulphur Springs, provided testimony in support of Sulphur Springs, Pioneer Crossing, #10033 and read a letter of support from The Honorable Mayor Gary Spraggins for the record.

The Honorable Mayor Hal Baldwin, provided testimony in support of the city Schertz Ashton Senior Village #10040.

Jay Chapa, Director of Housing and Economic Development for the city of Ft. Worth, provided testimony in support of Terrell Homes I #10117.

Andre McEwing, Executive Director, Southeast, Inc., provided testimony in support of Terrell Homes I #10117.

The Honorable Kathleen Hicks, city council member for the city of Ft. Worth, provided testimony in support of Terrell Homes I #10117.

The Honorable Ernestina Martinez, city council member, city of Del Rio, provided testimony in support of #10262, Las Brisas Manor.

The Honorable Mary Ann Zapeda, city council member, city of Del Rio, provided testimony in support of #10262, Las Brisas Manor.

Breck Kean, Chief Operating Officer, Paces Foundation, provided testimony in support of Las Brisas Manor in Del Rio, #10262.

David Potter, city of Austin, read a letter into the record from The Honorable Mayor Lee Leffingwell, in support of Shady Oaks, #10152.

Dale Dodson, provided testimony in support of Willow Meadow Place Apartments, Houston, TX #10250.

Bobby Bowling, provided testimony on how the regional allocation formula collapses across the state and in Region 13

Joe Agumadu, provided testimony in support of Sphinx at Lawnview, #10173.

Steve Fairfield, provided testimony in support of Orchard at Westchase project, #10096.

Steve Moore, developer, provided testimony in support of Premier Apartments, Houston.

**Presentation by Dr. James P. Gaines "Texas Economy & Real Estate Markets" following Agenda Item 3.**

The Board took a brief recess.

## CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion, or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

### AGENDA ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

#### **Executive**

- a) Presentation, Discussion, and Possible Approval of Board Minute Summary for June 28, 2010

#### **Audit**

- b) Report of the Audit Committee Meeting

#### **Financial Administration**

- c) Presentation of the Department's 3rd Quarter Investment Report
- d) Presentation, Discussion, and Possible Approval of the Legislative Appropriations Request

#### **Pulled for further discussion.**

**Motion by Ms. Ray to approve staff recommendation, with the flexibility to make technical and administrative changes; seconded by Mr. Keig; passed unanimously.**

#### **Multifamily Division Items - Housing Tax Credit Program**

- e) Presentation, Discussion, and Possible Approval of Housing Tax Credit Extensions
  - 060117 Mesquite Terrace Pharr
  - 07189 Sunlight Manor Beaumont
  - 08200 Ingram Square Apartments San Antonio
  - 09920 Anson Park Abilene

#### **Multifamily Division Items – Private Activity Bond Program**

- f) Presentation, Discussion, and Possible Issuance of Determination Notice for Housing Tax Credits Associated with Mortgage Revenue Bond Transactions with Other Issuers
  - Buckeye Trail
  - Housing Options, Inc.
  - Requested Amount \$1,224,504

#### **HOME**

- g) Presentation, Discussion, and Possible Approval of the 2009 Single Family Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance Programs Award Recommendations
  - Owner-Occupied Housing Assistance
    - 2009-0085 Willacy County Raymondville
  - Homebuyer Assistance
    - 2009-0088 Community Development Corporation of Brownsville Brownsville
    - 2009-0086 Midland Community Development Corporation Midland
    - 2009-0100 Starr County Rio Grande City
- h) Presentation, Discussion, and Possible Approval of HOME 2009 Single Family Housing Programs for Persons with Disabilities Award Recommendations
  - Tenant-Based Rental Assistance
    - 2009-0107 Community Partnership for the Homeless dba Green Doors Austin

#### **Housing Trust Fund**

- i) Presentation, Discussion, and Possible Approval of the 2010-2011 Housing Trust Fund Affordable Housing Match Program NOFA Award Recommendations:
  - 2010-0024 Family Gateway, Inc. Dallas
  - 2010-0027 Foundation Communities Austin
- j) Presentation, Discussion, and Possible Approval of the Funding Reservation System Access Process for Housing Trust Fund

- k) Presentation, Discussion, and Possible Approval of Authorization for the Executive Director to Negotiate and Execute an Agreement for the Technical Assistance Provider for the Rural Housing Expansion Program

**Office of Colonia Initiatives**

- l) Presentation, Discussion, and Possible Approval of an Amendment to the 2010-2011 Housing Trust Fund Plan
- m) Presentation, Discussion, and Possible Approval of the 2010/2011 Texas Bootstrap Self-Help Technical Assistance Grants

**Neighborhood Stabilization**

- n) Presentation and Discussion of status of Neighborhood Stabilization Program funds
- o) Presentation, Discussion, and Possible Approval of Neighborhood Stabilization Program Awards
 

2010-02	Housing Authority of the City of Brownsville	Cameron
2010-12	Harris County Housing Authority	Harris
2010-13	Austin Habitat for Humanity, Inc.	Travis
- p) Presentation, Discussion, and Possible Approval of TDRA Neighborhood Stabilization Program Contract Amendments
 

77099999122	Texoma Housing Finance Corporation	Grayson
77099999181	Texoma Housing Finance Corporation	Fannin
77099999120	City of Bryan	Brazos
77099999143	Enterprise Community Partners, Inc.	Hood
77099999173	Enterprise Community Partners, Inc.	Ellis
77099999184	Enterprise Community Partners, Inc.	Johnson
77099999185	Enterprise Community Partners, Inc.	Parker
77099999186	Enterprise Community Partners, Inc.	Wise
77099999188	Enterprise Community Partners, Inc.	Hunt
77099999189	Enterprise Community Partners, Inc.	Kaufman
77099999190	Enterprise Community Partners, Inc.	Navarro
77099999191	Enterprise Community Partners, Inc.	Rockwall
- q) Presentation, Discussion, and Possible Approval of authorization of emergency action by the Executive Director, as necessary for adherence to deadlines established by law under the Neighborhood Stabilization Program

**Community Affairs**

- r) Presentation, Discussion, and Possible Approval of a notice of proposed amendments to 10 TAC Chapter 5, Subchapters A, E, and I, related to Community Affairs Programs for publication in the *Texas Register* for public comment
- s) Presentation, Discussion, and Possible Approval of the LIHEAP Plan Supplement regarding a plan to implement procedures to prevent, detect and correct waste, fraud and abuse in activities funded under the Low-Income Home Energy Assistance Program

**Motion by Mr. Gann to approve Consent Agenda, with the exception of Item 1d); seconded by Ms. Ray; passed unanimously.**

**ACTION ITEMS**

**AGENDA ITEM 2: LEGAL:**

- a) Presentation, Discussion, and Possible Approval of FY 2011 and 2012 contract awards for Bond / Securities Disclosure Counsel(s)

**Motion by Ms. Bingham-Escareño to approve staff recommendation; seconded by Dr. Muñoz; passed unanimously.**

**AGENDA ITEM 3: APPEALS:**

- a) Presentation, Discussion, and Possible Action on Multifamily Program Appeals:

**None Filed.**

Bill Fisher, provided testimony in support of his projects in Brownsville and Dallas.

- b) Presentation, Discussion, and Possible Action for Tax Credit Assistance Program Appeals:



**None Filed.**

c) Presentation, Discussion, and Possible Action for Exchange Program Appeals:

**None Filed.**

d) Presentation, Discussion, and Possible Action for HOME Program Appeals:

**None Filed.**

e) Presentation, Discussion, and Possible Action for Underwriting Appeals:

**None Filed.**

f) Presentation, Discussion, and Possible Action for Housing Trust Fund Program Appeals:

**None Filed.**

## EXECUTIVE SESSION

At 12:25 p.m. Mr. Conine convened the Executive Session.

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al* filed in federal district court,
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Tex. Gov't. Code, Chapter 551
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person

## OPEN SESSION

At 1:20 p.m. Mr. Conine reconvened the Open Session and announced that no action had been taken during the Executive Session and certified that the posted agenda had been followed.

### AGENDA ITEM 4: MULTIFAMILY DIVISION ITEMS - HOUSING TAX CREDIT PROGRAM:

- a) Presentation, Discussion, and Possible Approval of Housing Tax Credit Amendments

07306                      Zion Village                                      Houston

John Shackelford provided testimony.

Thomas Jones, development owner of Zion Village, provided testimony.

**Motion by Ms. Ray to approve amendment request; seconded by Dr. Muñoz; passed unanimously.**

060414                      Gardens of Tomball                                      Tomball

Toni Jackson provided testimony.

Ken Fambro provided testimony.

**Motion by Ms. Ray to approve amendment request; seconded by Ms. Bingham-Escareño; passed unanimously.**

- b) Presentation and Discussion of the Status of Applications Awarded Housing Tax Credit Exchange Funds  
**No action taken.**

- c) Presentation, Discussion, and Possible Approval of the Final Commitments from the 2010 State Housing Credit Ceiling for the Allocation of Competitive Housing Tax Credits and the Waiting List for the 2010 Housing Tax Credit Application Round

10007	Mexia Gardens	Mexia
10009	Creekside Village	Rowlett
10014	Artisan at Port Isabel	Port Isabel
10018	Granbury Seniors	Granbury
10020	La Posada del Rey Apts	San Antonio

10022	Presidio Dolores Apts	San Elizario
10023	Burkburnett Pioneer Crossing for Seniors	Burkburnett
10024	Canutillo Palms	El Paso
10026	Silverleaf at Chandler II	Chandler
10027	The Huntington at Greenville	Allen
10028	Pecan Ridge	Texarkana
10031	The Crossing	Beaumont
10033	Sulphur Springs Pioneer Crossing for Seniors	Sulphur Springs
10035	Zion Gardens	Houston
10039	Paris Retirement Village II	Paris
10040	Ashton Senior Village	Schertz
10044	Wynnewood Seniors Housing	Dallas
10045	North Court Villas	Frisco
10050	West Park Senior Housing	Corsicana
10051	Parkway Ranch II	Houston
10058	Guild Park Apts	San Antonio
10059	Westway Place	Corsicana
10061	Magnolia Trails	Magnolia
10062	Willow Bay Apts	Fort Worth
10064	Cypress Gardens	Houston
10075	Vermillion Park	Mesquite
10076	Darson Marie Terrace	San Antonio
10077	Fairways at Sammons Park	Temple
10079	Steeple Chase Farms	Sherman
10080	Rolling Meadows	Kemah
10084	Perry Street Apts	Houston
10089	Silver Spring at Chapel Hill	Fort Worth
10090	Silver Spring at Forney	Forney
10092	Silver Spring Grand Heritage	Lavon
10093	Greenhaus at East Side Apts	Dallas
10094	Providence Town Square	Deer Park
10096	The Orchard at Westchase	Houston
10101	Lafayette Park Apts	Houston
10103	Gateway Plaza Apts	Midland
10107	Tenth Street Apts	Borger
10108	Griffith Road Apts	Abilene
10112	Country Village Apts	Mathis
10113	Promenade at Mercer Crossing	Farmers Branch
10114	The Terrace at Haven for Hope	San Antonio
10115	Tuscany Place	Kingwood
10117	Terrell Homes I	Fort Worth
10118	San Juan Square III	San Antonio
10119	Race Street Lofts	Fort Worth
10120	Montabella Senior	San Antonio
10121	Mesquite Place	Pearsall
10122	La Terraza at Lomas del Sur	Laredo
10124	Golden Bamboo Village III	Houston
10125	Costa Tarragona II	Corpus Christi
10126	Auburn Square	Vidor
10128	Ventana Pointe	Houston
10130	Meadow Vista	Weatherford
10131	Guadalupe Crossing	Comfort
10132	Seaside Manor	Ingleside
10134	Champion Homes at Copperridge	Dallas
10135	Champion Homes at Canyon Creek	Brownsville
10136	Evergreen at Richardson	Richardson
10137	Evergreen at Wylie	Wylie
10142	Mason Senior Apartment Homes	Houston
10143	Oak Creek Townhomes	Marble Falls
10150	Woodlawn Ranch Apts	San Antonio
10151	Sunflower Estates	La Feria
10152	Shady Oaks	Austin
10153	Britain Way	Irving
10158	Sedona Ranch	Fort Worth
10160	Creeside Place	New Braunfels
10162	Promontory Pointe	Austin

10169	La Risa	San Antonio
10171	HomeTowne at Garland	Garland
10176	Canyon Square Village	El Paso
10178	Cypress Creek at Fayridge	Houston
10183	Cypress Creek at Four Seasons Farm	Kyle
10184	Cypress Creek at Veterans Memorial	Houston
10186	Mariposa at Calder Drive	Dickinson
10198	Pinnacle at North Chase	Tyler
10200	Hillside West Seniors	Dallas
10202	Brae Estates	Fort Worth
10211	Riverplace Apts	Hooks
10212	Longbridge Apts	Groesbeck
10213	Heritage Square Apts	Wallis
10220	Casa Ricardo	Kingsville
10221	Residences at Rowlett Creek	Garland
10222	Citrus Gardens	Brownsville
10223	Sunset Terrace Senior Village	Pharr
10225	North MacGregor Arms	Houston
10226	Red Oak Apts	Red Oak
10227	Tarrington Court Apts	Houston
10228	Wintersprings Apts	Humble
10229	Hannover Estates	Spring
10232	Evergreen Residences-3800 Willow	Dallas
10233	Kleberg Commons	Dallas
10235	Villas of Giddings	Giddings
10236	Viking Road Apts	Amarillo
10238	Prince Hall Plaza	Navasota
10239	Prince Hall Gardens	Fort Worth
10241	Timberland Trails Apts	Lufkin
10246	Green Briar Village Phase II	Wichita Falls
10250	Willow Meadow Place Apts	Houston
10253	Brookwood Apts	West Columbia
10257	The Colony at Lake Granbury	Granbury
10262	Las Brisas Manor	Del Rio
10266	Travis Street Plaza Apts	Houston
10270	Gateway to Eden	Eden
10271	Hudson Manor	Hudson
10274	Grand Manor Apts	Tyler
10279	Hudson Green	Hudson
10283	Lufkin Pioneer Crossing	Lufkin
10284	Atmos Lofts	Dallas
10290	Magnolia Place Apts	Houston

Noor Jooma, provided testimony in support of 10033, Sulphur Springs.

Brian Roop, Bank of America Community Development Corporation, provided testimony in support of 10044 Wynnewood Seniors Housing.

Barry Palmer, Coats Rose, provided testimony in support of 10044 Parks at Wynnewood.

Dru Childre, provided testimony in support of 10045 North Court Villas.

Cherno Njie provided testimony in support of 10045 North Court Villas.

Boamah Boachie provided testimony in support of 10045 North Court Villas.

Maria Machado provided testimony in support of 10093, Greenhaus at East Side.

Justin MacDonald provided testimony in support of 10132 Seaside Manor in Ingleside.

Walter Moreau, provided testimony in support of 10152 Shady Oaks Apartments.

Manish Verma, provided testimony in support of 10158 Sedona Ranch.

Brandon Bolin provided testimony in support of 10200 Hillside West project.

Bert McGill provided testimony in support of 10290, Magnolia Place Senior Apartments.

Terri Anderson, Anderson Capital, provided general testimony.

Barry Palmer, Coats Rose, provided testimony in support of 10136 Evergreen at Richardson.

**The Board took a brief recess.**

**Motion to table Agenda Item 4c) by Ms. Bingham-Escareño; seconded by Ms. Ray; passed unanimously.**

At the discretion of the Chair, Agenda Item 6 was taken out of order.

**AGENDA ITEM 6: ARRA ACCOUNTABILITY AND OVERSIGHT:**

- a) Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)  
**No action taken.**

**Motion to return to Agenda Item 4c) by Ms. Bingham-Escareño; seconded by Ms. Ray; passed unanimously.  
Motion by Ms. Ray to approve staff recommendation as presented; seconded by Mr. Keig; motion by Mr. Conine to amend motion by directing staff to not remove anyone off the waiting list until after underwriting has been completed; Ms. Ray accepted the amendment; passed unanimously.**

**Mr. Gerber announced that the next Board Meeting will be held on September 8-9 in the Lower Rio Grande Valley area, location to be determined.**

**AGENDA ITEM 5: HOME**

- a) Presentation, Discussion, and Possible Approval of the 2010 Rental Housing Development Award Recommendations

**General Set-Aside**

10039	Paris Retirement Village II	Paris
10220	Casa Ricardo	Kingsville
10223	Sunset Terrance Senior Village	Pharr
10033	Sulphur Springs Pioneer Crossing for Seniors	Sulphur Springs
10283	Lufkin Pioneer Crossing	Lufkin
10262	Las Brisas Manor	Del Rio
10257	The Colony at Lake Granbury	Granbury
10151	Sunflower Estates	LaFeria
10279	Hudson Green	Hudson
10271	Hudson Manor	Hudson
10112	Country Village Apartments	Mathis
10226	Red Oak Apartments	Red Oak
10121	Mesquite Place	Pearsall
10130	Meadow Vista	Weatherford
10132	Seaside Manor	Ingleside
10213	Heritage Square Apartments	Wallis
10212	Longbridge Apartments	Groesbeck
10023	Burkburnett Pioneer Crossing for Seniors	Burkburnett
10237	Prince Hall Manor	Crockett
10238	Prince Hall Plaza	Navasota
10270	Gateway to Eden	Eden
10026	Silverleaf at Chandler II	Chandler
10211	Riverplace Apartments	Hooks
10143	Oak Creek Townhomes	Marble Falls
10235	Villas of Giddings	Giddings
10253	Brookwood Apartments	West Columbia

**CHDO Set-Aside**

10137	Evergreen at Wylie	Wylie
10046	Ashton Senior Village	Schertz
10136	Evergreen at Richardson	Richardson
10059	Westway Place	Corsicana
10050	West Park Senior Housing	Corsicana
10241	Timberland Trails Apartments	Lufkin

**Persons with Disabilities Set-Aside**

10125	Costa Tarragona II	Corpus Christi
10093	Greenhaus at East Side Apartments	Dallas
10126	Auburn Square	Vidor
10153	Britain Way	Irving

**Motion by Dr. Muñoz to approve staff recommendation; seconded by Mr. Gann; passed unanimously.**

**REPORT ITEMS**

1. TDHCA Outreach Activities, June 2010
2. Report on release of Land Use Restriction Agreement for Savannah House Apartments
3. Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA, including update on Ike/Dolly Round II

**ADJOURN**

Since there was no other business to come before the Board, the meeting was adjourned at 3:20 p.m. on July 29, 2010.

---

**Brooke Boston, Board Secretary**

For a full transcript of this meeting, please visit the TDHCA website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

**Executive Division**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended action**

Authorize staff to initiate procurement activity to obtain one or more qualified third parties to assist with various Department activities and enable the Department to meet the challenges of current programs without increasing its FTE beyond its cap except as authorized under Article IX of the General Appropriations Act.

**WHEREAS**, the Texas Department of Housing and Community Affairs (the “Department”) has encountered exceptional challenges in the rapid and successful implementation of a number of new and newly expanded programs, including those under the Housing and Economic Recovery Act of 2008 and the American Recovery and Reinvestment Act, and

**WHEREAS**, these new responsibilities include, but are not limited to, asset management for development funded with the tax credit assistance program (“TCAP”) and the tax credit exchange program (“TCEP”), substantially increased real estate analysis necessitated by TCAP and TCEP, and increased financial services support for the activity under TCAP and TCEP; and

**WHEREAS**, this Board has previously made findings of fact and authorized staff to seek approval to increase staff and increase authority to utilize appropriated receipts; and

**WHEREAS**, absent approval to increase its FTEs beyond the cap established in the General Appropriations Act (“cap FTEs”), except as authorized by Article IX, the Department will need to identify and implement alternative solutions; and

**WHEREAS**, one possible avenue to pursue would be the outsourcing of functions, either new functions or functions currently performed by cap FTEs, and

**WHEREAS**, it is acknowledged that this solution will still require increased authority to utilize appropriated receipts;

Now, therefore, it is hereby

**RESOLVED**, that the Executive Director and his designees and each of them be and they hereby are authorized and empowered to take such action as they or any of them may deem necessary or appropriate to procure one or more qualified third parties to perform for the Department either new responsibilities or to perform existing responsibilities which would enable the Department to reassign appropriated FTE positions to newly created or expanded areas of activity.

## **Background**

The levels of new and/or expanded activity under HERA and ARRA, especially those under TCAP and TCEP, have been and will continue to be both significant and pressing. Over the past 18 months the number of development transactions underwritten by Real Estate Analysis has essentially doubled. Asset management will have to be addressed. Even though the initial effort to procure a turnkey provider did not produce a proposal that staff viewed as desirable when compared with an internal asset management function, the cap FTE issues rules out that option. Accordingly, staff is working to develop a new procurement effort that would break asset management into more specialized subgroups, such as construction inspections; financial monitoring; rent, utility, and income analysis; and resolution of developments that encounter problems.

Although we continue in the belief that an internally staffed asset management function could carry out these responsibilities with greater efficiency and lower cost, the requirement of not increasing the number of FTEs in state government is understood, and we are looking to put in place the best possible alternative. Although it may ultimately entail a need for increased fees to cover the costs of outsourcing, for the present we believe that the use of collected fee balances should be applied to this activity, especially in light of the fact that it was primarily the surge in tax credit activity in years 2007, 2008, and 2009 that led to the buildup these fee balances.

As we proceed with the development of requests for proposal or other procurements and evaluate responses we will be better able to project when any use of existing fee balances would need to be curtailed and, therefore, new asset management fees would need to be implemented. However, for the sake of broad illustration, if we project 15,000 “doors” requiring asset management under TCAP and TCEP, we believe that current and projected compliance fee balances at current fee levels would be sufficient to cover the costs fully allocated costs of Compliance and Asset Oversight and third party fees through FY 2012.

**BOND FINANCE DIVISION**

**BOARD ACTION REQUEST**

**September 9, 2010**

**Requested Action**

Approve Resolution No. 11-003 authorizing a Mortgage Credit Certificate Program (MCC) for first-time homebuyers (Program 78) along with related program documents to be administered by the Texas Department of Housing and Community Affairs.

**Background**

TDHCA's most recent MCC program was released on January 20, 2010. Under this program, 54% of funds available have been originated or are in the pipeline. To ensure a continuous flow of available MCC funds, Staff is requesting approval of this resolution which will allow us to continue issuing new MCCs under Program 78 and to obtain approval of the MCC program along with related program documents to be administered by TDHCA.

\$120.5 million of volume cap for this MCC program has been previously approved by the TDHCA Board and applications have been submitted to the Texas Bond Review Board from existing carry-forward single family private activity bond authority. Today, Staff is also seeking approval to submit an application to the Texas Bond Review Board for \$59.5 million of transferred 2008 HERA Cap. Staff currently estimates that the \$180 million in required cap will be funded in part from HERA carry-forward from 2008 (approx. \$90 million - \$30 million in TDHCA HERA and \$60 million in HERA Cap transferred from other Texas issuers) and in part from 2009 carry-forward (approx. \$90 million). With a 30% MCC credit rate, TDHCA will be able to provide MCC certificates for \$150 million in eligible mortgage loans.

A mortgage credit certificate is an instrument designed to assist persons of low to moderate income to better afford individual ownership. The procedures for issuing MCCs were established by the United States Congress as an alternative to the issuance of single family mortgage revenue bonds. As distinguished from a bond program, in an MCC program no bonds are issued, no mortgage money is actually used, many of the costs associated with a bond program are not incurred, and lenders are required to pay only nominal up-front fees.

Mortgage Credit Certificates help make ownership of a new or existing home more affordable by entitling the homeowner to a personal tax credit of up to \$2,000 against their federal tax liability for a portion of the interest paid on their home mortgage. For example, a homeowner that purchased a home for \$130,000 at 5% for 30 years would have a monthly principal and interest payment of \$698. With an MCC, homeowners can submit a revised W-4 Withholding Form to his or her employer to reduce the federal withholding tax by \$160 per month, which increases the borrower's disposable income by reducing their federal income tax obligation. This same homeowner can also deduct the yearly mortgage interest paid of approximately \$4,519 (\$6,456 less \$1,937) as an itemized deduction on their annual federal income tax return. Simply put, an MCC is a dollar for dollar reduction of income taxes owed.

In order to be eligible for an MCC, borrowers must comply with the same first-time homebuyer requirements stipulated by the Internal Revenue Code for mortgage revenue bonds. For example, MCC recipients must occupy the residence as their primary residence, comply with income limits and comply with home purchase price limits. MCCs cannot be used when mortgages are funded with tax-exempt bond proceeds.



Under Federal guidelines, the Department, as an issuer of mortgage revenue bonds can trade \$1 of bond authority for \$0.25 of MCC authority. Today, staff is recommending using another \$180 million of bond authority for \$45 million in MCC authority.

**MCC Program 78 Example**

H.R. 3221 Volume Cap and 2009 Carry-Forward Volume Cap Allocated for MCCs	\$180 million
IRS MCC Conversion Factor	\$0.25
MCC Issuance Authority	\$45 million
Average 2009 Mortgage Credit Certificate Program Mortgage Amount	\$130,000
Market Mortgage Interest Rate	5.00%
First Year Mortgage Interest	\$6,456
MCC Certificate Credit Rate	30%
Tax Credit Amount	\$1,937
Maximum Tax Credit Allowed	\$2,000
Schedule A Mortgage Interest Deduction	\$4,519

Lenders participating in TDHCA's previous Mortgage Credit Certificate Programs have expressed continued interest in mortgage credit certificates.

**Resolution No. 11-003**

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR ALLOCATION WITH THE TEXAS BOND REVIEW BOARD WITH RESPECT TO 2008 HOUSING ACT VOLUME CAP; AUTHORIZING IMPLEMENTATION OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS 2010B MORTGAGE CREDIT CERTIFICATE PROGRAM; APPROVING THE FORM AND SUBSTANCE OF THE MCC PROGRAM PARTICIPATION AGREEMENT, THE PROGRAM MANUAL AND THE PROGRAM SUMMARY; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE 2010B MORTGAGE CREDIT CERTIFICATE PROGRAM; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended from time to time (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low and very low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to make, acquire and finance, and to enter into advance commitments to make, acquire and finance, mortgage loans and participating interests therein, secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose, among others, of obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans or participating interests, and to mortgage, pledge or grant security interests in such mortgages or participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the "Code"), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences shall be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

WHEREAS, the private activity bond "State ceiling" (as defined in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended; and

WHEREAS, the Housing Assistance Tax Act of 2008, Division C of Pub. L. No. 110-289 (the "2008 Housing Act") authorized a temporary increase in the annual private activity bond volume cap for 2008 ("2008 Housing Act Volume Cap") under Section 146 of the Code, for "qualified housing issues," as defined in the 2008 Housing Act; and

WHEREAS, by resolution adopted on June 28, 2010, the Governing Board authorized receipt of 2008 Housing Act Volume Cap from one or more eligible issuers in the State in an amount not to exceed \$100,000,000 (the "Assigned Housing Act Volume Cap"); and

WHEREAS, the Governing Board desires to authorize the filing with the Texas Bond Review Board of an application for reservation of Assigned Housing Act Volume Cap in the amount of \$59,500,000 for qualified mortgage bonds (the "Assigned Housing Act Volume Cap Reservation"); and

WHEREAS, the Department desires to convert an amount not to exceed \$180,000,000 of the amount of the State ceiling reserved for qualified mortgage bonds to mortgage credit certificates ("MCCs"), to be used for the Department's 2010B Mortgage Credit Certificate Program (the "2010B MCC Program"); and

WHEREAS, the Governing Board desires to authorize the execution and delivery of the MCC Program Participation Agreement (the "Participation Agreement") in substantially the form attached hereto; and

WHEREAS, the Governing Board desires to approve the Program Manual (the "Program Manual") in substantially the form attached hereto, setting forth the terms and conditions upon which MCCs will be issued by the Department; and

WHEREAS, the Governing Board desires to approve the Program Summary (the "Program Summary") in substantially the form attached hereto setting forth the terms of the 2010B MCC Program; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed \$100,000 of Department funds to pay the costs of implementing the 2010B MCC Program; and

WHEREAS, the Governing Board desires to approve the forms of the Participation Agreement, the Program Manual and the Program Summary, in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to implement the 2010B MCC Program in accordance with such documents by authorizing the 2010B MCC Program, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the 2010B MCC Program; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE I  
APPLICATION FOR RESERVATION;  
USE OF PRIVATE ACTIVITY BOND VOLUME CAP

Section 1.1--Application for Reservation. The Governing Board hereby authorizes Vinson & Elkins L.L.P., as Bond Counsel to the Department, to file on its behalf with the Bond Review Board an Application for Reservation with respect to qualified mortgage bonds in the amount of \$59,500,000, together with any other documents and opinions required by the Bond Review Board as a condition to the granting of the Assigned Housing Act Volume Cap Reservation.

Section 1.2--Authorization of Certain Actions. The Governing Board authorizes the Executive Director or the Acting Executive Director, the staff of the Department as designated by the Executive Director or the Acting Executive Director, as appropriate, and Bond Counsel to take such actions on its behalf as may be necessary to carry out the purposes of this Resolution.

Section 1.3--MCC Authority. The Department shall take such steps as are necessary to convert \$180,000,000 of its authority to issue qualified mortgage bonds to authority to issue MCCs in order to implement the 2010B MCC Program.

ARTICLE II  
APPROVAL OF MCC DOCUMENTS

Section 2.1--2010B MCC Program. The 2010B MCC Program is hereby authorized.

Section 2.2--Approval, Execution and Delivery of the Participation Agreement. The form and substance of the Participation Agreement are hereby approved, and the authorized representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Participation Agreement, and to deliver the Participation Agreement to the other parties thereto.

Section 2.3--Approval of Program Manual and Program Summary. The form and substance of the Program Manual and Program Summary are hereby authorized and approved.

Section 2.4--Execution and Delivery of Other Documents. The authorized representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests, public notices and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Participation Agreement, the Program Manual and the Program Summary.

Section 2.5--Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the authorized representatives of the Department named in this Resolution are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such authorized representative, and in the opinion of Vinson & Elkins L.L.P., Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the authorized representatives of the Department named in this Resolution.

Section 2.6--Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Participation Agreement
- Exhibit B - Program Manual
- Exhibit C - Program Summary

Section 2.7--Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing and delivering the documents and instruments referred to in this Article II: the Chairman of the Governing Board; the Vice Chairman of the Governing Board; the Secretary to the Governing Board; the Executive Director or the Acting Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department and the Director of Texas Homeownership of the Department.

Section 2.8--Department Contribution. The Department authorizes the contribution of Department funds in an amount not to exceed \$100,000 to pay certain costs of implementing the 2010B MCC Program.

### ARTICLE III GENERAL PROVISIONS

Section 3.1--Purposes of Resolution. The Governing Board of the Department has expressly determined and hereby confirms that the implementation of the 2010B MCC Program contemplated by this Resolution accomplishes a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 3.2--Notice of Meeting. Written notice of the date, hour and place of the meeting of the Governing Board at which this Resolution was considered and of the subject of this Resolution was furnished to the Secretary of State and posted on the Internet for at least seven (7) days preceding the convening of such meeting; that during regular office hours a computer terminal located in a place convenient to the public in the office of the Secretary of State was provided such that the general public could view such posting; that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof was discussed, considered

and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended; and that written notice of the date, hour and place of the meeting of the Governing Board and of the subject of this Resolution was published in the Texas Register at least seven (7) days preceding the convening of such meeting, as required by the Administrative Procedure and Texas Register Act, Chapters 2001 and 2002, Texas Government Code, as amended. Additionally, all of the materials made available to the Governing Board relevant to the subject of this Resolution were posted on the Department's website not later than the third day before the date of the meeting of the Governing Board at which this Resolution was considered, and any documents made available to the Governing Board by the Department on the day of the meeting were also made available in hard-copy format to the members of the public in attendance at the meeting, as required by Section 2306.032, Texas Government Code, as amended.

Section 3.3--Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 9th day of September, 2010.

---

Chairman, Governing Board

ATTEST:

---

Secretary to the Governing Board

(SEAL)

**BOND FINANCE DIVISION**

**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve Resolution No. 11-004 authorizing the Department to enter into an agreement with Texas local housing finance agencies to provide down payment assistance under the First Time Homebuyer Program.

**Background**

The Department is proposing to enter into an agreement with Texas local housing finance agencies (Texas HFCs) to offer community-tailored mortgage financing in 2010 and 2011. TDHCA secured the capacity to issue \$500 million in mortgage revenue bonds through the U.S. Treasury's New Issue Bond Program (NIBP). Local Texas HFCs can reserve some portion of these funds specifically for their individual communities by providing down payment assistance that can be used in conjunction with NIBP financing. This is a unique one time agreement that will provide for set-asides of bond allocations for participating Texas HFCs, plus it will assist TDHCA in utilizing its NIBP bond proceeds.

TDHCA will allow Texas HFCs to reserve bond funds solely and specifically for their communities in exchange for the Texas HFC providing down payment assistance equal to three percent of the amount of funds reserved. In exchange for the funds advanced, the Texas HFC will be entitled to an on-going DPA fee passed through by TDHCA to the Texas HFC. The mortgages originated with Texas HFC assistance will be separately purchased and pooled by Bank of America and warehoused by First Southwest Company until such time as they are converted to long term bonds backed by the mortgage pools originated under the program. Please see the attached term sheet for additional details on the proposed program.

# Texas HFC Down Payment Assistance Program

---

## HFC DOWN PAYMENT ASSISTANCE PROGRAM

**Program Summary:** The Texas Department of Housing and Community Affairs (“TDHCA”) will agree to partner with Texas housing finance corporations (“Texas HFC’s”) to offer community-tailored mortgage financing. TDHCA has the capacity to issue \$500 million in mortgage revenue bonds through the U.S. Treasury’s New Issue Bond Program (“NIBP”). Texas HFC’s can reserve some portion of these funds specifically for use in their communities by providing down payment assistance to be used in conjunction with the NIBP financing. TDHCA’s funds will be used to make the first lien mortgage loan and the Texas HFC’s fund will finance second lien down payment assistance loans. This is a unique partnership opportunity that will provide allocations for participating Texas HFC’s, in addition to allowing TDHCA to further utilize Texas’ valuable NIBP bond allocation. The NIBP is scheduled to expire on December 31, but an extension of the program is expected. TDHCA will set aside funds on a first-come, first-served basis for participating Texas HFC’s until the expiration of the NIBP program.

TDHCA will permit Texas HFC’s to reserve bond funds solely and specifically for their jurisdictions in exchange for the Texas HFC’s providing down payment and closing cost assistance equal to three percent (3%) of the maximum amount of funds to be made available to the Texas HFC (e.g. \$30,000 in dpa funds means that \$1,000,000 in allocation can be used by the Texas HFC). In exchange for the investment of dpa funds the Texas HFC will be entitled to an on-going fee of up to forty-five basis points (45 bp’s) that will be paid to the Texas HFC for as long as payments are made on the related first lien mortgage loan to the Trust Estate. The mortgage loans originated with the Texas HFC down payment assistance will be separately purchased and pooled by Bank of America (“BofA”) and warehoused by First Southwest Company until such time as they are sold to the Trustee to secure the bonds sold pursuant to the NIBP related bond indenture.

**Bond Issuer:** Texas Department of Housing and Community Affairs.

**Texas HFCs:** Any local Texas Housing Finance Corporation or the Texas State Affordable Housing Corporation.

**Program Start Date:** September 2010, subject to extension of the NIBP bond program by Treasury.

**Program End Date:** October 2011, or such shorter date dictated by the NIBP program end date.

### Down Payment



# Texas HFC Down Payment Assistance Program

---

**Assistance:** 3% of the original principal amount of the first lien mortgage loan. Each down payment assistance investment made by a Texas HFC will be secured by a 2<sup>nd</sup> lien note made for the benefit of TDHCA which will be structured as a 30-year due-on-sale or refinance. For every \$1 million in mortgage funds the Texas HFC wishes to make available for its jurisdiction, the Texas HFC must deposit \$30,000 in down payment assistance funds with the escrow agent for TDHCA.

## **Min/Max.**

**Reservation Amts:** \$5 million minimum and \$20 million maximum per Texas HFC. \$100 million total reservation set-aside for all Texas HFC's.

**Bond Underwriter:** As a TDHCA underwriter, First Southwest Company will be guaranteed a spot on the underwriting team for the related NIBP program, with a participation percentage that is reflective of the amount of bonds related to mortgage loans originated through this Texas HFC lending initiative.

## **Unused Reservation**

**Amount Policy:** In October of 2011, or earlier if the NIBP program is not extended sufficiently, any unused loan reservations will be terminated and the related down payment assistance funds previously deposited will be returned to the Texas HFC according to instructions provided by the Texas HFC. No interest will be paid on down payment assistance funds deposited by the Texas HFC.

## **Earnings on**

**DPA Investment:** For each first lien loan for which the Texas HFC provides DPA funds, the Texas HFC's will earn up to 45 basis points of the interest earned on the outstanding balance of the related first-lien mortgage loan. Interest earnings would decline as the principal balance of the first-lien mortgage loan is paid down. Payments to the Texas HFC would terminate if either the 2<sup>nd</sup> lien note is paid-in-full or at any time that the Trustee is not receiving payments on the related first-lien mortgage loan.

**Mortgage Rate:** TDHCA plans to set a new mortgage rate each month for a portion of its total NIBP Program (each reset will be specified as a "Commitment Lot"). The rate for a new Commitment Lot will be reset as funds from the current Commitment Lot are committed to home buyers. There will not be a set rate for the entire origination program period for Texas HFC loans, and it is likely that the rate could change every 30 days. There will be a separate Commitment Lot issued for each Texas HFC that participates in the program.

## **Income and Purchase**

## Texas HFC Down Payment Assistance Program

---

**Price Limits:** Lenders will be subject to TDHCA's requirements. Borrowers will be subject to all of the requirements of TDHCA's Program 77 guidelines, including Income Limits and Purchase Price Limits mandated by the IRS.

**Documentation:** Lenders will be subject to TDHCA's requirements. Borrowers will be subject to all of the requirements of TDHCA's Program 77 guidelines, including Income Limits and Purchase Price Limits mandated by the IRS. Each Texas HFC will enter into a separate agreement with TDHCA regarding the terms of the down payment assistance partnership program.

**Resolution No. 11-004**

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF TEXAS HOUSING FINANCE CORPORATION AGREEMENTS WITH LOCAL HOUSING FINANCE CORPORATIONS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Department has implemented its Texas First-Time Homebuyer Program to facilitate the origination of single-family mortgage loans for eligible first-time homebuyers; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of separate Texas Housing Finance Corporation agreements in substantially the form attached hereto (the "Texas HFC Agreement") with one or more Texas local housing finance corporations (the "HFCs") whereby the Department will reserve up to \$100,000,000 of funds available under the First-Time Homebuyer Program to HFCs specifically for use in their communities in exchange for down payment assistance funds provided by the HFCs in the amount of 3% of the principal amount of funds reserved; and

WHEREAS, the Governing Board desires to approve taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

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

ARTICLE I

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1--Approval, Execution and Delivery of Texas HFC Agreement. The form and substance of the Texas HFC Agreement are hereby authorized and approved and the authorized representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Texas HFC Agreement and to deliver the Texas HFC Agreement to the HFCs.

Section 1.2--Execution and Delivery of Other Documents. The authorized representatives of the Department named in this Resolution are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, including, without limitation, an escrow agreement, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.3--Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the authorized representatives of the Department named in this Resolution each are hereby authorized to make or approve such revisions in the form of the Texas HFC Agreement attached hereto, in the judgment of such authorized representative, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of the Texas HFC Agreement by the authorized representatives of the Department named in this Resolution.

Section 1.4--Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article I: Chairman or Vice Chairman of the Governing Board, Executive Director or Acting Executive Director of the Department, Chief of Agency Administration of the Department, Director of Bond Finance of the Department, Director of Texas Homeownership of the Department and the Secretary to the Governing Board.

Section 1.5--Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Texas HFC Agreement are hereby ratified and confirmed.

## ARTICLE II GENERAL PROVISIONS

Section 2.1--Notice of Meeting. Written notice of the date, hour and place of the meeting of the Board at which this Resolution was considered and of the subject of this Resolution was furnished to the Secretary of State and posted on the Internet for at least seven (7) days preceding the convening of such meeting; that during regular office hours a computer terminal located in a place convenient to the public in the office of the Secretary of State was provided such that the general public could view such posting; that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof was discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended; and that written notice of the date, hour and place of the meeting of the Board and of the subject of this Resolution was published in the Texas Register at least seven (7) days preceding the convening of such meeting, as required by the Administrative Procedure and Texas Register Act, Chapters 2001 and 2002, Texas Government Code, as amended. Additionally, all of the materials made available to the Board relevant to the subject of this Resolution were posted on the Department's website not later than the third day before the date of the meeting of the Board at which this Resolution was considered, and any documents made available to the Board by the Department on the day of the meeting were also made available in hard-copy format to the members of the public in attendance at the meeting, as required by Section 2306.032, Texas Government Code, as amended.

Section 2.2--Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

*[Execution page follows]*

PASSED AND APPROVED this 9th day of September, 2010.

---

Chairman, Governing Board

ATTEST:

---

Secretary to the Governing Board

(SEAL)

**BOND FINANCE DIVISION**

**BOARD ACTION ITEM  
September 9, 2010**

**Action Item**

Approve Resolution No. 11-005 authorizing a range of mortgage interest rates under the First Time Homebuyer Program and authorization to accept modifications to the Treasury's New Issue Bond Program.

**Background**

On March 11, 2010, the Board passed Resolution 10-019 approving the Warehousing Agreement, Servicing Agreement, Compliance Agreement and Program Guidelines for Program 77 and authorized the Department to set interest rates on mortgage loans originated under the program to be no less than 4.99% and no greater than 6.25%. On June 28, 2010, the Board passed resolution 10-026 approving the reduction of the lower band of the interest rate range from 4.99% to 4.50% for our unassisted program enabling our rate to be more competitive and allowing the Department to effectively serve low-income borrowers.

However, mortgage interest rates have continued to decline thereby making the Department's authorized interest rate range less attractive. As a result, Resolution 11-005 is seeking authorization to reduce the lower band of the interest rate range from 4.50% to 4.00% for our unassisted program enabling our rate to be more competitive and allowing the Department to effectively serve low income borrowers.

Bonds will be issued later this year in order to purchase all mortgage backed securities held with the Warehouse Provider.

To date, four commitment lots have been released. The following table provides an update as of **September 2, 2010**.

		<u>Commitment Lot #</u>			
	<u>Total</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>Release Date:</u>		<u>5/18/2010</u>	<u>6/30/2010</u>	<u>8/2/2010</u>	<u>9/1/2010</u>
<b>Unassisted Mortgage Mortgage Loans</b>					
<b>Mortgage Rate:</b>		<b>4.99%</b>	<b>4.75%</b>	<b>4.65%</b>	<b>4.60%</b>
<b>Pooled:</b>					
<b>Purchased:</b>	<b>350,214</b>	<b>199,352</b>	<b>150,862</b>		
<b>Registered:</b>	<b>1,257,751</b>	<b>357,783</b>	<b>145,208</b>	<b>754,760</b>	
<b>Subtotal:</b>	<b>1,607,965</b>	<b>557,135</b>	<b>296,070</b>	<b>754,760</b>	
<b>Assisted Mortgage Mortgage Loans</b>					
<b>Mortgage Rate:</b>		<b>5.74%</b>	<b>5.50%</b>	<b>5.40%</b>	<b>5.35%</b>
<b>Pooled:</b>		<b>2,710,023</b>			
<b>Purchased:</b>	<b>7,538,181</b>	<b>4,828,158</b>	<b>2,800,519</b>		
<b>Registered:</b>	<b>40,386,227</b>	<b>4,898,883</b>	<b>10,613,507</b>	<b>23,216,164</b>	<b>1,657,673</b>
<b>Subtotal:</b>	<b>50,724,927</b>	<b>12,437,064</b>	<b>13,414,026</b>	<b>23,216,164</b>	<b>1,657,673</b>
<b>Total:</b>	<b>52,332,892</b>	<b>12,994,199</b>	<b>13,710,096</b>	<b>23,970,924</b>	<b>1,657,673</b>
<b>Down Payment Assistance:</b>	<b>2,284,244</b>	<b>514,616</b>	<b>751,188</b>	<b>980,497</b>	<b>37,943</b>

As part of the Obama Administration's comprehensive plan to stabilize the U.S housing market, on October 19, 2009 the Homeowner Affordability and Stability Plan was announced for state and local housing finance agencies (HFAs) that will help support low mortgage rates and expand resources for low and middle income borrowers to purchase or rent homes that are affordable over the long term. As part of this initiative, the New Issue Bond Program (NIBP) was created to support new lending by HFAs with the issuance of bonds at below market rates.

At the November 9, 2009 Board Meeting, Resolution 10-006 was approved to issue \$300 million in principal amount of new money taxable residential mortgage revenue bonds to be placed with Fannie Mae and Freddie Mac under the New Issue Bond Program. The Bonds were settled on December 23, 2009 with a temporary taxable variable rate note that was intended to reset up to three times in 2010 at which time that bond or a portion of the bond was to be re-issued as tax exempt bonds. At the time of re-issuance TDHCA is required to sell to the private market an amount of shorter-term bonds in a ratio equal to 40% of aggregate bond proceeds, with the other 60% of bonds represented by the bonds purchased through the New Issue Bond Program.

State Housing Finance Agency's across the country have experienced continued difficulty in originating mortgages. To address those concerns, on September 1, 2010, the Treasury announced the following modifications to the New Issue Bond Program to bolster the Administration's effort to support the housing market.

- *Extension of Escrow Draw Period* – The deadline to draw funds from escrow before unused funds are subject to mandatory redemption will be extended from December 31, 2010 to December 31, 2011.
- *Interest Rate Reset* – For those HFAs who locked in a permanent interest rate in December 2009, the locked rate will become a maximum rate for all releases occurring in 2010. The actual rate for future issuance in 2010 will be the lower of that locked rate and the lowest rate reported between notification of a release and the date eight days before the release is to occur. A maximum rate for 2011 draws will be set in December 2010, with the actual rate determined by the same process described above.

On November 30, 2009, TDHCA locked in a rate for the NIBP bonds of 3.81% which was comprised from the 10 year treasury rate of 3.21% plus a program spread of .60%. On September 1, 2010 the 10 year treasury rate was 2.58% which would produce a NIBP bond rate of 3.18% saving the Department over 60 basis points and allowing the Department to pass the savings on to borrowers.

- *Increase in Number of Draws* – the total number of times each HFA is permitted to draw funds from escrow is to increase from three (3) to six (6), however, no more than one draw is permitted in any 30-day period for each Indenture.
- *Participation Fee* – All HFSs with Single Family Program Bonds outstanding in an amount in excess of \$25,000,000 which elect to make the modifications described above are required to agree to pay to Treasury a Participation Fee. The Participation Fee will be an amount equal to 1/12 of 1 basis point (1/12 of 0.01%) per month applied to the combined outstanding proceeds. The fee will commence on September 1, 2010, will be based upon the outstanding principal balance on September 1, 2010

and on the first day of each month thereafter and will be payable in arrears in January of each year, commencing January 2011.

TDHCA currently has \$300,000,000 in NIBP bonds outstanding, so the fee would be approximately \$2,500 monthly.

Resolution 11-005 is requesting authorization to accept these terms.





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 1, 2010

Dear HFA Initiative Participant,

Over the past several months, we have received feedback from the HFA community regarding the continuing difficulty of originating mortgages. Addressing those concerns is central to maintaining the effectiveness of the New Issue Bond Program (NIBP) and to bolstering the Administration's efforts to support the housing market.

To that end, we are announcing the following changes to the NIBP which are described in further detail in the attached term sheet:

1. **Extension of Escrow Draw Period** – The deadline to draw funds from escrow before unused funds are subject to mandatory redemption will be extended from December 31, 2010 to December 31, 2011.
2. **Interest Rate Reset** – For those HFAs who locked in a permanent interest rate in December 2009, the locked rate will become a maximum rate for all releases occurring in 2010. The actual rate for future issuance in 2010 will be the lower of that locked rate and the lowest rate reported between notification of a release and the date eight days before the release is to occur. A maximum rate for 2011 draws will be set in December of 2010, with the actual rate determined by the same process described above.
3. **Increase in Number of Draws** – The total number of times each HFA is permitted to draw funds from escrow is to increase from three (3) to six (6), however, no more than one draw is permitted in any 30-day period for each Indenture.

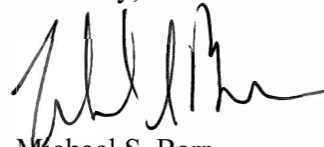
As consideration for the benefit of these changes, the Treasury expects that all HFAs participating in the Initiative will adhere to revised reporting requirements. These requirements are updated from the draft previously circulated and have been adjusted based on the comments received from the HFAs through their trade associations. Again, further detail on these requirements may be found in the attached documents.

Additionally, HFAs participating in the Single Family NIBP that wish to implement the three modifications listed above will be required to pay a participation fee of 1 basis point per year on their total outstanding Single Family Program Bond balance. This fee, which is further described in the term sheet, is legal consideration designed to offset the cost to the Government involved in making these changes. Multifamily and small-issue Single Family Program Bonds are not subject to the Participation Fee. HFAs will be expected to bear the costs of making required document amendments from their own resources.

HFAs will need to opt into these changes no later than Monday, September 13, 2010 by submitting the attached notification to State Street Global Advisors, Treasury's agent. This notification will evidence the HFA's intent to adhere to the revised reporting requirements and, for the applicable HFAs, their commitment to pay the participation fee. These commitments will obligate each HFA to amend its supplemental indenture as necessary prior to December 1, 2010 and to implement the program modifications described.

We believe these modifications will be beneficial and will further assist you in your mission to provide affordable and responsible financing to moderate-income homeowners as well as to support the development of affordable rental housing.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Barr", written in a cursive style.

Michael S. Barr  
Assistant Secretary  
Financial Institutions

**Resolution No. 11-005**

RESOLUTION APPROVING NEW INTEREST RATE RANGE FOR MORTGAGE LOANS ORIGINATED AND DELIVERED THROUGH WAREHOUSING AGREEMENT; APPROVING EXECUTION OF ELECTION LETTER ACCEPTING MODIFICATIONS TO NEW ISSUE BOND PROGRAM; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, on March 11, 2010, the Governing Board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") adopted Resolution No. 10-019 ("Resolution 10-019") authorizing the execution and delivery of a Warehousing Agreement (the "Warehousing Agreement") with First Southwest Company and PlainsCapital Bank, as warehouse providers, and The Bank of New York Mellon Trust Company, N.A., as custodian (the "Custodian"); and

WHEREAS, pursuant to Resolution 10-019, the Board approved an interest rate range of no less than 4.99% and no greater than 6.25% for mortgage loans that are pooled into mortgage-backed securities and that are purchased by the Custodian under the Warehousing Agreement; and

WHEREAS, pursuant to Resolution No. 10-026 adopted on June 28, 2010, the Board approved an interest rate range of no less than 4.50% and no greater than 6.25% for mortgage loans that are pooled into mortgage-backed securities and that are purchased by the Custodian under the Warehousing Agreement; and

WHEREAS, in order to more effectively compete with market rate mortgage products, the Board now desires to set a new interest rate range of no less than 4.00% and no greater than 6.25% to be effective from the date of adoption of this Resolution for loans purchased under the Warehousing Agreement and any other warehousing agreement or arrangement entered into by the Department; and

WHEREAS, the Board further desires to authorize execution of an election letter in substantially the form attached hereto (the "Election Letter") signifying the Department's acceptance of permitted modifications to the United States Department of the Treasury's New Issue Bond Program ("NIBP"); and

WHEREAS, the Board desires to approve the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

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

Section 1 - Approval of Revised Minimum Interest Rate. Effective upon adoption of this Resolution, the interest rate range for mortgage loans originated and delivered through the Warehousing Agreement or any other warehousing agreement or arrangement entered into by the Department shall be no less than 4.00% and no greater than 6.25%.

Section 2 - Approval, Execution and Delivery of Election Letter. The form and substance of the Election Letter are hereby approved and the Executive Director or Acting Executive Director of the Department, the Chief of Agency Administration of the Department and the Director of Bond Finance of the Department are each authorized to execute and deliver the Election Letter on behalf of the Department and to take such further actions on behalf of the Department as may be necessary to carry out the purposes of this Resolution and the modification of the terms of the Department's participation in NIBP.

Section 3 - Notice of Meeting. Written notice of the date, hour and place of the meeting of the Board at which this Resolution was considered and of the subject of this Resolution was furnished to the Secretary of

State and posted on the Internet for at least seven (7) days preceding the convening of such meeting; that during regular office hours a computer terminal located in a place convenient to the public in the office of the Secretary of State was provided such that the general public could view such posting; that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof was discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended; and that written notice of the date, hour and place of the meeting of the Board and of the subject of this Resolution was published in the Texas Register at least seven (7) days preceding the convening of such meeting, as required by the Administrative Procedure and Texas Register Act, Chapters 2001 and 2002, Texas Government Code, as amended. Additionally, all of the materials made available to the Board relevant to the subject of this Resolution were posted on the Department's website not later than the third day before the date of the meeting of the Board at which this Resolution was considered, and any documents made available to the Board by the Department on the day of the meeting were also made available in hard-copy format to the members of the public in attendance at the meeting, as required by Section 2306.032, Texas Government Code, as amended.

Section 4 - Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 9th day of September, 2010.

---

Chairman, Governing Board

ATTEST:

---

Secretary to the Governing Board

(SEAL)

[TDHCA LETTERHEAD]

**ELECTION LETTER  
FOR APPROVED MODIFICATIONS**

September \_\_, 2010

VIA E-MAIL ONLY

Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Attention: Fiscal Assistant Secretary  
Re: Housing Finance Agency Initiative

and

Attention: Assistant General Counsel  
(Banking and Finance)  
Re: Housing Finance Agency Initiative

E:mail: HFASInitiative@SSGA.com

Re: Election for Approved Modifications to Form Indenture Appendices  
under the New Issue Bond Program and the Temporary Credit and Liquidity Program

Treasury:

By this Election Letter, the undersigned housing finance agency known as Texas Department of Housing and Community Affairs (the "HFA") informs you that it hereby agrees to:

**Permitted Modifications/Reporting Requirements**

The permitted modifications to the form Appendix to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture provided for use in conjunction with single family escrow releases closed pursuant to the New Issue Bond Program announced by the United States Department of the Treasury on October 19, 2009 (the "New Issue Bond Program") and the related issues of bonds (the "Program Bonds"). Such permitted modifications (the "Permitted Modifications") include:

**(1) Extension of Escrow Draw Period**

The deadline to draw funds from escrow before unused funds are subject to mandatory redemption will be extended from December 31, 2010 to December 31, 2011.

**(2) Interest Rate Reset**

- (a) For those issuers that locked in a permanent interest rate in December 2009, the locked rate will become a maximum rate for all escrow releases occurring in 2010.
- (b) The actual rate for future issuance in 2010 will be the lower of the locked rate and the lowest rate reported between the close of business the day prior to notification of an escrow release and the date eight (8) days before the escrow release is to occur.
- (c) A maximum rate for all escrow releases occurring in 2011 will be set in December 2010, utilizing a parallel process to that described in (b) above.

**(3) Increase in Number of Escrow Releases**

The total number of times each issuer is permitted to draw funds from escrow is to increase from three (3) to six (6) per program (single family and multifamily) within the extended escrow draw period referenced in (1) above. No issuer may draw more than once (i) within any 30-day period for single family escrow releases or (ii) within any 30-day period for multifamily escrow releases.

**(4) Participation Fee**

All issuers with single family Program Bonds outstanding in an amount in excess of \$25,000,000 are required to pay to the U.S. Department of the Treasury (“Treasury”) a participation fee of 1 basis point per annum on the outstanding single family Program Bonds subject to the Permitted Modifications (the “Participation Fee”). Multifamily Program Bonds and single family small issue Program Bonds adopting the Permitted Modifications are not subject to a Participation Fee.

The forgoing is a summary of the Permitted Modifications; the HFA and its representatives have reviewed the provisions relating to the Permitted Modifications contained in the “Term Sheet for the New Issue Bond Program – Approved Modifications circulated by Treasury on September 1, 2010 (the “Term Sheet”), and found them to be acceptable.

It is understood that the HFA is required to (i) modify its Indenture(s) relating to the New Issue Bond Program to reflect the reporting requirements referenced in the Term Sheet (the “Reporting Requirements”), (ii) implement the Reporting Requirements amendments prior to December 1, 2010 and (iii) provide information per the Reporting Requirements for the period commencing

with the third quarter of 2010. The HFA and its representatives have reviewed the Term Sheet, including the provisions relating to the Reporting Requirements, and found it to be acceptable.

It is also understood by the HFA that both the Permitted Modifications summarized in this Election Letter and set forth in the Term Sheet, and the Reporting Requirements amendments referenced in the Term Sheet, shall be made solely at the expense of the HFA. In particular, the HFA hereby agrees to pay to the GSE Special Closing Counsel an additional, one-time fee of \$2,500 for implementing such modifications per HFA program (single family, multifamily, single family small issue and/or TCLP transaction) in addition to any other legal fees owed by the HFA in connection with an escrow release.

**Reporting Requirements Only**

The Reporting Requirements amendments to the form Appendix to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture provided for use in conjunction with single family Program Bonds closed pursuant to the New Issue Bond Program.

It is understood that the HFA is required to (i) modify its Indenture(s) relating to the New Issue Bond Program, to reflect the Reporting Requirements referenced in the Term Sheet, (ii) implement the Reporting Requirements amendments prior to December 1, 2010 and (iii) provide information per the Reporting Requirements for the period commencing with the third quarter of 2010. The HFA and its representatives have reviewed the provisions relating to the Reporting Requirements contained in the Term Sheet and found them to be acceptable.

It is also understood by the HFA that the Reporting Requirements amendments referenced in the Term Sheet shall be made solely at the expense of the HFA. In particular, the HFA hereby agrees to pay to the GSE Special Closing Counsel an additional, one-time fee of \$2,500 for implementing such modifications per HFA program (single family, multifamily, single family small issue and/or TCLP transaction) in addition to any other legal fees owed by the HFA in connection with an escrow release.

\* \* \* \* \*

This Election Letter must be received at the above-referenced e:mail address by 5:00 pm (Eastern time) on September 13, 2010 in order for the HFA to be authorized to amend the Indenture(s) to reflect the Permitted Modifications and Reporting Requirements under the New Issue Bond Program, and to amend the Indenture(s) and Reimbursement Agreement(s) under TCLP. The undersigned, an authorized representative of the HFA, hereby agrees that this Election Letter is legally binding upon the HFA.

Sincerely,

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

By: \_\_\_\_\_

Name:

Title:

cc: Fannie Mae  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016  
Attention: Carl W. Riedy, Jr.  
Vice President for Public Entities Channel  
Housing and Community Development

Freddie Mac  
8520 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Robert Tsien  
Senior Vice President, Mission and Oversight



**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Requested Action**

Approve the requests for extensions related to one (1) 2002 Housing Tax Credit, one (1) 2005 Housing Tax Credit, one (1) 2009 Housing Tax Credit/TCAP, two (2) 2009 USDA/Housing Tax Credit Exchange, and five (5) 2009 Housing Tax Credit Exchange allocations.

**WHEREAS**, the Board requires compliance with the deadlines it sets through its Qualified Allocation Plan (QAP) and authorizes the Executive Director to approve reasonable extensions of such deadlines when requested with good cause prior to the deadline, and

**WHEREAS**, the Board may consider and approve with good cause or deny extensions of deadlines requested after the deadline, and

**WHEREAS**, four applicants who have missed deadlines requested extensions after their respective deadline had passed but provided good cause for granting the extensions and paid the required \$2,500 extension request fees as applicable.

It is hereby:

RESOLVED, that the extensions presented in this meeting relating to Application No. 02120 (Humble Memorial Gardens), Application No. 05441 (Cobblestone Manor), Application No. 09019/19703 (Timber Village II), Application No. 09916 (Mid-Towne Apartments), Application No. 09917 (Alta Vista Apartments), Application No. 09910 (Lexington Square Apartments), Application No. 09921 (Oak Manor/Oak Village Apartments), Application No. 09922 (Parkview Terrace Apartments), Application No. 09929 (Buena Vida Senior Village), and Application No. 09932 (Constitution Court Apartments) are hereby approved in the form presented to this meeting.

**Background**

Pertinent facts about the request for extension are following:

**HTC No. 02120, Humble Memorial Gardens**  
**(Cost Certification Extension)**

Summary of Request: Pursuant to the 2002 Carryover Allocation "...All Project Owners that receive a 2002 Carryover Allocation must request issuance of the IRS Form 8609 through the filling of the Cost Certification Manual not later than November 26, 2004...". The owner of this development missed the November 26, 2004 deadline to submit cost certification documentation due to a change in the ownership, which required removal of the GP due to non-compliance issues. The new owner in this case submitted the full cost certification documentation approximately three years and seven months after the deadline on June 18, 2010. The documentation is currently under review by staff.

Should there be any credit that ultimately is unused but is not released by the applicant or cannot be identified as returned by the Department within 180 days of the end of the first year of the credit period, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's.

Owner:	Humble Memorial Gardens, Ltd.
General Partner:	Humble Leased Housing Associates I, LLC
Developer:	Boston Financial Investment Management
Principals/Interested Parties:	David Brierton, Jack Safar, Armand Brachman, Paul Sween, Jeffery Huggett, Mark Moorhouse, Chris Barnes, Housing Services Inc., MMA Special Limited Partner, Inc., and Polaris Holding I, LLC
City/County:	Humble/Harris
Set-Aside:	Non-Profit
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Elderly
Units:	71 HTC units
2005 Allocation:	\$366,177
Allocation per HTC Unit:	\$5,157
Extension Request Fee Paid:	\$2,500
Current Deadline:	November 26, 2004
New Deadline Requested:	June 18, 2008
<b>New Deadline Recommended:</b>	<b>June 18, 2008</b>
Previous Extensions:	N/A
<b>Staff Recommendation:</b>	<b>Approve the extension as requested.</b>



# DOMINIUM

August 31, 2009

Kent Bedell  
Housing Specialist  
**Texas Department of Housing and Community Affairs**  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

*VIA: E-mail & Fed-Ex*

Dear Mr. Bedell,

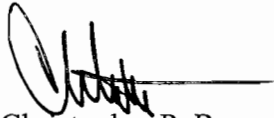
This letter is to serve as a formal request for extension of the deadline for submission of the cost certification documentation for Humble Memorial Gardens Apartments located at 9850 JM Hester Street, Humble, TX 77338. It is our understanding that the deadline to file the documentation was November 26<sup>th</sup>, 2004 and that the documentation was not received by the Texas Department of Housing and Community Affairs (TDHCA) until June 18<sup>th</sup>, 2008.

The reasons for this delay in getting the information to TDHCA was twofold, the first of which being that the Limited Partner in this project, Midland Corporate Tax Credit XVI Limited Partnership, removed the General Partner (MMM Humble Memorial Gardens, LLC) due to various issues concerning non-compliance with terms set forth in the Partnership Agreement. Shortly after removing the General Partner, the parent company of the Limited Partner (MMA) went through a reorganization whereby different segments of the organization were spun off, which eventually resulted in Boston Financial Investment Management (BFIM) taking control of the Limited Partner position in this deal.

Although the turmoil caused by these two issues created a significant time lag in TDHCA receiving the cost certification documentation, once BFIM took control of the Limited Partner interest, they took quick action to bring the project back to a point where it could successfully apply for 8609's. One of the first steps BFIM took in achieving this was to bring in a replacement General Partner. Working together with the replacement General Partner, as well as with consultant Jeff Spicer, BFIM was able to successfully place permanent financing on the project as well as get all required materials to TDHCA for the issuance of 8609's.

Should you have any questions regarding our request, or the circumstances that led to the delay, please feel free to contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Barnes', with a horizontal line extending to the right from the end of the signature.

Christopher P. Barnes  
Vice President of General Partner  
Humble Memorial Gardens, Ltd.  
Direct: (763) 354-5610  
Email: [cbarnes@dominiuminc.com](mailto:cbarnes@dominiuminc.com)

**HTC No. 05441, Cobblestone Manor**  
**(Cost Certification Extension)**

Summary of Request: Pursuant to §49.15(a) of the 2005 Qualified Allocation Plan "...Developments requesting IRS Forms 8609 must submit the required Cost Certification documentation no later than April 1 of the year following the date the buildings were placed in service...". The owner of this development elected to initiate the credit period in 2007 but missed the April 1, 2008 deadline to submit cost certification documentation due to a change in the developer. The owner in this case submitted the full cost certification documentation approximately two years and five months after the deadline on September 1, 2010. The documentation is currently under review by staff.

Should there be any credit that ultimately is unused but is not released by the applicant or cannot be identified as returned by the Department within 180 days of the end of the first year of the credit period, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's.

Owner:	OHC/Cobblestone, Ltd.
General Partner:	Shelter Resource Corporation.
Developer:	Noel Project Development, LLC
Principals/Interested Parties:	Will Cooper, Sr. and David Shafer.
City/County:	Fort Worth/Tarrant
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Elderly
Units:	180 HTC units
2005 Allocation:	\$444,656
Allocation per HTC Unit:	\$2470
Extension Request Fee Paid:	\$2,500
Current Deadline:	April 1, 2008
New Deadline Requested:	September 1, 2010
<b>New Deadline Recommended:</b>	<b>September 1, 2010</b>
Previous Extensions:	N/A
<b>Staff Recommendation:</b>	<b>Approve the extension as requested.</b>

# COBBLESTONE MANOR

August 24, 2010

Kent Bedell, Multifamily Housing Specialist  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

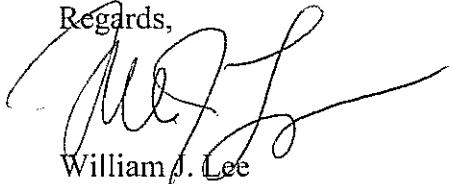
Re: Cobblestone Manor (the "Project")  
TDHCA No. 05-441  
Request for Extension of Deadline for Submission of Cost Certification

Dear Mr. Bedell:

On behalf of OHC Cobblestone, Ltd. (the Partnership), the Development Owner with respect to the above referenced Project, we are submitting this letter to request an extension of the deadline for the submission of the cost certification documentation for the Project. A check in the amount of \$2,500 for the payment of the extension fee is enclosed.

Delay in submittal of these documents was due to problems with the former developer. The former developer has been removed. The Developer has been removed. These issues have been resolved and the Cost Certification documentation is ready to be submitted. Consequently, the Partnership respectfully requests an extension of the deadline for the submission of its Cost Certification to September 1, 2010.

Regards,



William J. Lee  
For the Partnership

Cc: Robbye Meyer  
TDHCA, Director of Multifamily Finance

Rosalio Banuelos  
TDHCA, Cost Certification Specialist

**HTC No. 09019/09703, Timber Village II (HTC/TCAP Application)**  
**(Closing Deadline)**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to submit evidence of construction loan and syndication closing for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010. The owner's original deadline to submit evidence of construction loan and syndication closing was December 30, 2009. The Applicant has already received three extensions, approximately 8 months, to the original deadline: (1) March 31, 2010 approved at the January 20, 2010 Board meeting; (2) June 30, 2010 approved at the May 12, 2010 Board meeting, and (3) August 31, 2010 approved at the June 28, 2010 Board Meeting.

The reason given for this additional request is that it was determined that the project needed to be re-underwritten by the Real Estate Analysis Division in early August due to changes in funding sources. It was anticipated that the underwriting would be completed in time for the August 31, 2010 closing date; however, the changes in the financing structure posed some new underwriting concerns that are in the process of being resolved. Therefore, an additional extension request is necessary to allow for the completion of the underwriting and the subsequent closing. The owner has also requested a waiver of the \$2500 extension fee because the delay is due to the Department's need to complete the underwriting.

Owner:	Timber Village Apartments II, Ltd.
General Partner:	Timber Village II, LLC
Developer:	Timber Village Development II, LLC
Principals/Interested Parties:	Rick Deyoe and John Boyd
City/County:	Marshall/Harrison
Set-Aside:	N/A
Type of Area:	Rural
Type of Development:	New Construction
Population Served:	Family
Units:	72 HTC units
2009 Allocation:	\$817,794
Allocation per HTC Unit:	\$11,358
Extension Request Fee Paid:	\$2,500
Original Deadline:	December 30, 2009
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	(3) January 20, 2010; May 12, 2010, June 28, 2010

**Staff Recommendation: Approve the extension as requested.**

August 26, 2010

**VIA E-MAIL**

Robbye Meyer, *Director of Multifamily Programs*  
Lisa Vecchietti, *TCAP Administrator*  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Timber Village II (Marshall)  
TDHCA No. 08240/09019 (HTC) / 09703 (TCAP)  
**Request for Extension of Closing Deadline**

Dear Robbye and Lisa:

We represent Timber Village Apartments II, Ltd. (the "**Development Owner**"), which is the Development Owner with respect to the referenced development (the "**Project**"). The Project is a second phase of a successful tax credit project that is currently occupied at 100 percent with a waiting list of 200 families. The Project applied for 9% tax credits in the 2008 application round, and the Board approved a 2009 forward commitment.

As a 2009 forward commitment, the Project is subject to an August 31, 2010 closing deadline for its construction loan and equity financing. The Project has also received an award of TCAP funds, and is subject to an August 31, 2010 closing deadline for the TCAP funds as well. We are submitting this letter to request an extension to the referenced deadlines.

The Development Owner was moving toward closing by the August 31 deadline, when it was notified by the Department at the beginning of August that the Project would need to be re-underwritten. We were advised that the re-underwriting was anticipated to be completed by the week of August 9. Consequently, the expectation was that closing would be able to take place thereafter in time to meet the August 31 deadline. However, the Development Owner has now been advised that Real Estate Analysis has not completed the underwriting yet, and that the TCAP program division will not be able to prepare the TCAP documents for closing until the revised underwriting has been finalized. To the Development Owner's knowledge, it has provided Real Estate Analysis with all the



relevant documentation for the re-underwriting. However, the Development Owner has not been given a timeframe for when the process will be completed, and thus faces some uncertainty as to when the closing will be able to be scheduled.

In light of the foregoing, we respectfully request that the TCAP and construction loan/equity closing deadlines for the Project be extended until **September 30, 2010**. Because the delay in closing is due to the additional time that the Department needs to complete the re-underwriting, and is not a matter within the Development Owner's control, we are also requesting a waiver of the \$2,500 extension fee in this case.

If there is any additional information that the Department needs to process this request, please let us know.

Thank you for your assistance.

Sincerely,



Christine R. Richardson

cc: Tom Gouris (TDHCA)  
Kent Bedell (TDHCA)  
Henry Flores (Realtex Development Corporation)  
Cynthia L. Bast (Firm)  
*via e-mail*

**HTC No. 09916, Mid-Towne Apartments**  
**(USDA/Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction/10% Test)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds by June 30, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities and evidence of meeting the 10% Test requirement, and evidence must be submitted not later than August 31, 2010. The owner of this development has requested an extension of the deadline to submit the documentation for commence substantial construction (COC) and the 10% Test to October 31, 2010.

The reason given for the request was that the closing was delayed because the development is a mixed financed development, which required approval from the national USDA office to transfer the property. The development closed on July 14, 2010 and the owner has indicated that approximately 3.5% of the total budget has been expended to date; the development is on schedule to be 20% expended by October 2010, and the development is on schedule to meet the placed in service requirement.

Owner:	HVM Mid-Towne, Ltd.
General Partner:	HVM Ventures, LLC
Developer:	Dennis Hoover
Principals/Interested Parties:	Benjamin Farmer, Paul Farmer, Dennis Hoover, Dana Hoover, and John Hoover
City/County:	Tomball/Harris
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	54
2009 Allocation:	\$314,755
Allocation per HTC Unit:	\$5,829
Extension Request Fee Paid:	\$2,500
Current COC Deadline:	August 31, 2010
New COC Deadline Requested:	October 31, 2010
<b>New COC Deadline</b>	
<b>Recommended:</b>	<b>October 31, 2010</b>
Current 10% Deadline:	August 31, 2010
New 10% Deadline Requested:	October 31, 2010
<b>New COC Deadline</b>	
<b>Recommended:</b>	<b>October 31, 2010</b>
Previous Extensions:	

**Staff Recommendation:** **Approve the extension as requested.**

**HVM MID-TOWNE, LTD.**  
Mid-Towne Apartments  
TDHCA #09916

August 17, 2010

TDHCA  
Attention: Robbye Meyer  
P. O. Box 13941  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

Re: HVM Mid-Towne, Ltd.  
10% Test and Commencement of Substantial Construction

Dear Ms. Meyer,

Please accept this letter as an official request by the owners referenced above, to consider the extensions of the *10% Test and Commencement of Substantial Construction* requirements that are due on August 31, 2010.

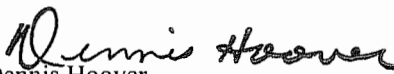
This is a USDA property. After the extension of the closing deadline to June 30, 2010 by the board, the closing did not actually happen until July 15<sup>th</sup>, 2010. The delay of closing was due in part to, although valiant efforts on everyone's part, the inability to coordinate and have all documents submitted in a timely manner to the Title Company including TDHCA, USDA, the Title Company and the Owners. Everyone was cooperative in efforts to reach the deadline set by the board but was unable to receive all documents required by all parties involved by a mutual date, until July 15<sup>th</sup>.

Having no ability to begin the construction or, proceed with any draws for construction until after the closing date, we have not been able to satisfy the 10% test and have been unable to fulfill all the Department's requirements as of this date. In addition, the owner has been unable to use at least 20 percent of the construction budget to fulfill part of the minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments.

We would like to ask for a 60-day extension. We are certain we will meet that deadline for both the 10% Test and the Commencement of Substantial Construction. We would also like to ask for forgiveness of an additional \$2500.00 fee for this extension request. The inability to close and fund by the already extended date was not from our lack of meeting all deficiencies and requests from all departments in a timely manner.

Thank you in advance for your consideration in this matter and look forward to hearing from you soon.

Sincerely,

  
Dennis Hoover  
President, Hamilton Valley Management, Inc.  
Manager of HVM Ventures, LLC-General Partner  
of HVM Mid-Towne, Ltd.

## Kent Bedell

---

**From:** Kim Treiber [KimTreiber@hamiltonvalley.com]  
**Sent:** Wednesday, September 01, 2010 4:23 PM  
**To:** Kent Bedell  
**Subject:** HVM Mid-Towne, Ltd. TDHCA# 09916

Kent,

HVM Mid-Towne, Ltd. has expended approximately 3.5% of the total budget to date, the development is on schedule to meet the 20% expenditure requirement by October, 2010, and the development is on schedule to meet its placed in service requirement.

Kim (Treiber) Youngquist  
Dev. Coordinator  
Phone: (512) 756-6809 ext. 218  
Fax: (512) 756-9885  
Hamilton Valley Management, Inc.  
P. O. Box 190  
Burnet, Texas 78611

**HTC No. 09917, Alta Vista Apartments**

**(USDA/Tax Credit Exchange Program App)**

**(Commencement of Substantial Construction/10% Test)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds by June 30, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities and evidence of meeting the 10% Test requirement, and evidence must be submitted not later than August 31, 2010. The owner of this development has requested an extension of the deadline to submit the documentation for commence substantial construction (COC) and the 10% Test to October 31, 2010.

The reason given for the request was that the closing was delayed because the development is a mixed financed development, which required approval from the national USDA office to transfer the property. The development closed on July 14, 2010 and the owner has indicated that approximately 3% of the total budget has been expended to date; the development is on schedule to be 20% expended by October 2010, and the development is on schedule to meet the placed in service requirement.

Owner:	HVM Alta Vista, Ltd.
General Partner:	HVM Ventures, LLC
Developer:	Dennis Hoover
Principals/Interested Parties:	Benjamin Farmer, Paul Farmer, Dennis Hoover, Dana Hoover, and John Hoover
City/County:	Marble Falls/Burnet
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	64
2009 Allocation:	\$345,445
Allocation per HTC Unit:	\$5,398
Extension Request Fee Paid:	\$2,500
Current COC Deadline:	August 31, 2010
New COC Deadline Requested:	October 31, 2010
<b>New COC Deadline</b>	
<b>Recommended:</b>	<b>October 31, 2010</b>
Current 10% Deadline:	August 31, 2010
New 10% Deadline Requested:	October 31, 2010
<b>New COC Deadline</b>	
<b>Recommended:</b>	<b>October 31, 2010</b>
Previous Extensions:	

**Staff Recommendation:** Approve the extension as requested.

**HVM ALTA VISTA, LTD.**  
Alta Vista Apartments  
TDHCA #09917

August 17, 2010

TDHCA  
Attention: Robbye Meyer  
P. O. Box 13941  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410

Re: HVM Alta Vista, Ltd.  
10% Test and Commencement of Substantial Construction

Dear Ms. Meyer,

Please accept this letter as an official request by the owners referenced above, to consider the extensions of the *10% Test and Commencement of Substantial Construction* requirements that are due on August 31, 2010.

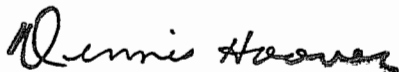
This is a USDA property. After the extension of the closing deadline to June 30, 2010 by the board, the closing did not actually happen until July 15<sup>th</sup>, 2010. The delay of closing was due in part to, although valiant efforts on everyone's part, the inability to coordinate and have all documents submitted in a timely manner to the Title Company including TDHCA, USDA, the Title Company and the Owners. Everyone was cooperative in efforts to reach the deadline set by the board but was unable to receive all documents required by all parties involved by a mutual date, until July 15<sup>th</sup>.

Having no ability to begin the construction or, proceed with any draws for construction until after the closing date, we have not been able to satisfy the 10% test and have been unable to fulfill all the Department's requirements as of this date. In addition, the owner has been unable to use at least 20 percent of the construction budget to fulfill part of the minimum activity necessary to meet the requirement of Commencement of Substantial Construction for rehabilitation Developments.

We would like to ask for a 60-day extension. We are certain we will meet that deadline for both the 10% Test and the Commencement of Substantial Construction. We would also like to ask for forgiveness of an additional \$2500.00 fee for this extension request. The inability to close and fund by the already extended date was not from our lack of meeting all deficiencies and requests from all departments in a timely manner.

Thank you in advance for your consideration in this matter and look forward to hearing from you soon.

Sincerely,



Dennis Hoover  
President, Hamilton Valley Management, Inc.  
Manager of HVM Ventures, LLC-General Partner  
of HVM Alta Vista, Ltd.

## Kent Bedell

---

**From:** Kim Treiber [KimTreiber@hamiltonvalley.com]  
**Sent:** Wednesday, September 01, 2010 4:21 PM  
**To:** Kent Bedell  
**Subject:** HVM Alta Vista, Ltd. TDHCA #09917

Kent,

HVM Alta Vista, Ltd., has expended approximately 3% of the total budget to date, the development is on schedule to meet the 20% expenditure requirement by October, 2010, and the development is on schedule to meet its placed in service requirement.

Kim (Treiber) Youngquist  
Dev. Coordinator  
Phone: (512) 756-6809 ext. 218  
Fax: (512) 756-9885  
Hamilton Valley Management, Inc.  
P. O. Box 190  
Burnet, Texas 78611

**HTC No. 09910, Lexington Square Apartments**  
**(Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds by June 30, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities, and evidence must be submitted not later than August 31, 2010. The owner of this development has requested an extension of the deadline to submit the documentation for commence substantial construction (COC) to September 30, 2010.

The reason given for the request was that the closing was delayed due to the necessity to coordinate the funding schedules of the Exchange and CDBG Disaster Recovery so that they closed simultaneously. The development closed on July 13, 2010 and the owner has indicated that approximately 10% of the total budget has been expended to date, the development is on schedule to be 20% expended by September 30, 2010, and the development is on schedule to meet the placed in service requirement.

Owner:	NHDC Lexington Square Apartments, LP
General Partner:	NHDC Lexington Square, LLC
Developer:	National Community Renaissance Development Corp. (NCRDC)
Principals/Interested Parties:	Richard Whittingham, Doretta M. Bryan, Veronica Cooper and NCRDC
City/County:	Angleton/Brazoria
Set-Aside:	Non-Profit/At-Risk
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	80 HTC units
2009 Allocation:	\$389,310
Allocation per HTC Unit:	\$4,866
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
<b>New Deadline Requested:</b>	<b>September 30, 2010</b>
Previous Extensions:	N/A

**Staff Recommendation:** **Approve the extension as requested.**



# NHDC LEXINGTON SQUARE APARTMENTS, LP

August 31, 2010

**By E-Mail to [teresa.shell@tdhca.state.tx.us](mailto:teresa.shell@tdhca.state.tx.us)**

Ms. Teresa Shell

Texas Department of Housing  
and Community Affairs

221 East 11<sup>th</sup> Street

Austin, TX 78701-2410

RE: Lexington Square, Angleton, Texas (TDHCA # 09910/ 09820/ 07246);  
Request for Extension of Commencement of Substantial Construction Deadline;  
Request for Extension of 50% Construction Completion Deadline.

Dear Teresa:

This letter is to request an extension of certain Tax Credit Exchange Program deadlines in connection with Lexington Square Apartments (the "Project"). As you are aware, the Exchange and the CDBG Disaster Recovery funding on the Project took place on July 13, 2010. The closing was delayed due to the need to coordinate the CDBG and Exchange funding schedules, because Exchange could not be closed without the CDBG financing also being closed. The delay in closing was permitted under a prior extension request.

Exhibit K to the Exchange Subaward Agreement indicates that for the 2007 and 2008 Award Pool (which includes the Project) the deadlines for the Closing, the Commencement of Substantial Construction and the Documentation of the 10% Test were all May 31, 2010. The deadline for the 50% construction completion within 8 months of Closing is stated to be no later than November 30, 2010. These deadlines were extended by the TDHCA Board on May 12, 2010, as shown on the Schedule of Events posted on the Exchange webpage and attached hereto.

Unfortunately, the Project is not going to be able to meet the updated schedule, due to the late closing. We respectfully request that the deadlines shown in Exhibit K of the Subaward Agreement be amended and extended as follows: (i) Closing- July 13, 2010 (actual closing date); (ii) Commencement of Substantial Construction (requires expenditure of 20% of the total development amount for rehabs) - September 30, 2010; (iii) 50% construction completion - March 13, 2011; and (iv) Placed in Service Date – July 31, 2011. We do not request an extension of the Documentation of the 10% Test, because that was accomplished initially while the Project was still in the Tax Credit Program, and we are filing another set of documentation today to reflect the 10% Test having been met with updated anticipated costs consistent with the Exchange/CDBG financing.

Ms. Teresa Shell  
Texas Department of Housing  
and Community Affairs  
August 31, 2010  
Page 2

We appreciate your attention to this matter. A check in the amount of \$2,500.00 will be delivered to you tomorrow to support this extension request.

Sincerely,



Jennifer Chester

Enclosure

cc: Robbye Meyer  
Kent Bedell  
David Jackson  
Richard Whittingham

## Kent Bedell

---

**From:** Jennifer Chester [jchester@nationalcore.org]  
**Sent:** Wednesday, September 01, 2010 3:10 PM  
**To:** Kent Bedell  
**Subject:** RE: Lexington Square (09910) Construction Commencement Extension Request

My construction folks tell me that by the end of this week we'll have expended 10% of the construction budget, so...

Approximately 10% of the total budget has been expended to date, the development is on schedule to meet the 20% expenditure requirement by September 30th, 2010, and the development is on schedule to meet its placed in service requirement.



Jennifer Chester, National Policy Director  
National Community Renaissance ®  
**National CORE**  
1172 S. Dixie Highway, Ste 510  
Coral Gables, FL 33146  
(850)443-1316  
(305) 357-6984 Fax  
jchester@nationalcore.org

Please Don't Forget to support our **“Pepsi Refresh Projects”**

Vote online for ideas from National CORE *and* Hope Through Housing and help us refresh our communities with funding for these important projects! Click on both these links and... Thank You!



---

**From:** Kent Bedell [mailto:kent.bedell@tdhca.state.tx.us]  
**Sent:** Wed 9/1/2010 3:48 PM  
**To:** Jennifer Chester  
**Subject:** RE: Lexington Square (09910) Construction Commencement Extension Request

Are you close to having the info I requested?

Kent Bedell

Multifamily Housing Specialist

**HTC No. 09921, Oak Manor/Oak Village Apartments**  
**(Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds after March 31, 2010 and before May 31, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities, and evidence must be submitted not later than July 31, 2010. The owner of this development missed the deadlines to commence substantial construction (COC) and to submit the documentation and has requested a new deadline of November 30, 2010.

The reason given for the request is that, the owner mistakenly followed the HUD required construction guidelines rather than TDHCA's Commencement of Substantial Construction Guidelines. The owner has indicated that approximately 8.4% of the total budget has been expended to date, the development is on schedule to be 20% expended by September 2010, and the development is on schedule to meet the placed in service requirement.

Owner:	OM/OV, LP
General Partner:	OM/OV GP, LLC
Developer:	Housing and Community Services, Inc., Lucas & Associates, LP, and OM/OV GP, LLC
Principals/Interested Parties:	Gilbert M. Piette, Raymond H. Lucas, Sean R. Lucas, Joshua C. Lucas, and Raymond H. Lucas, Jr.
City/County:	San Antonio/Bexar
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	229 HTC units
2009 Allocation:	\$1,502,652
Allocation per HTC Unit:	\$6,562
Extension Request Fee Paid:	\$2,500
Current Deadline:	July 31, 2010
<b>New Deadline Requested:</b>	<b>November 30, 2010</b>
Previous Extensions:	N/A

**Staff Recommendation:**           **Approve the extension as requested.**



Gilbert M. Piette  
Executive Director

TG 102, Inc., Sole Member

OM/OV GP, LLC, General  
Partner

- o -

Administrative Notice:

Official correspondence should  
be sent to the  
Executive Director  
8610 North New Braunfels, Suite  
500  
San Antonio, TX 78217-6397

210.821.4300  
210.821.4303 Fax  
888.732.3394 Toll Free

# OM/OV, LP

8610 North New Braunfels, Suite 500  
San Antonio, Texas 78217-6397  
TAX ID # 26-3227731

July 30, 2010

Kent Bedell, Multifamily Programs Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711-2410

RE: Oak Manor/Oak Village Apartments TDHCA number #09921/08150  
Request to extend the Commencement of Substantial Construction  
Requirement to November 30, 2010.

Dear Mr. Bedell:

This project closed on April 7, 2010. Part of the funding was from the TDHCA exchange program. This project is the acquisition and rehabilitation of 229 units located at 2330 Austin Highway, San Antonio, TX 78218. San Antonio building permits were pulled before closing.

Although work is commencing on schedule, we will not meet the 20% completion required for the Commencement of Substantial Construction requirement.

As part of the closing the work schedule outline in the closing documents (HUD-5372 form) indicated that we would be at 20% in October. The actual rehab is following this schedule. Attached is the most recent draw form and HUD-5372 for you review.

To be safe as this is a rehab project, we are requesting an extension through the month of November as stated on the HUD 5372 form. We have attached the request for \$2,500 as per your conversation with Roger Canales in our office on July 30, 2010.

Sincerely,

Gilbert M. Piette  
Executive Director

Enclosures

C:\Documents and Settings\Roger Canales\Local Settings\Temporary Internet  
Files\OLK14\Substantial\_construction\_extension2.doc

08-03-10A00:16 PCVD

**From:** [Roger Canales](#)  
**To:** [Kent Bedell](#)  
**Subject:** RE: Commencement of Substantial Construction Extension Request for 09921  
**Date:** Friday, August 13, 2010 2:58:43 PM

---

Oak Manor Apartments followed the HUD required construction guideline rather than the Commencement of Substantial Completion deadline. We are on schedule to meet the placed in service dates.

Thank you,

Roger H. Canales

Roger H. Canales

Real Estate Development

Housing and Community Services, Inc.

Wk: 210-821-4300

Cell: 210-247-8192

Fax: 210-821-4303

---

**From:** Kent Bedell [mailto:kent.bedell@tdhca.state.tx.us]  
**Sent:** Friday, August 13, 2010 1:39 PM  
**To:** Roger Canales; Kent Bedell  
**Subject:** RE: Commencement of Substantial Construction Extension Request for

09921

**Importance:** High

Roger,

Per our conversation on the phone, please confirm/describe how you confused the HUD construction deadlines with the Department's Commencement of Substantial Construction deadline. Also, please confirm that you are still on schedule to meet the Placed in Service requirement for this Development.

Thanks,

**Kent Bedell**

**Multifamily Housing Specialist**

**Texas Dept. of Housing and Community Affairs**

**(512) 475-3882 (P)**

**(512) 475-1895 (F)**

**[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)**

**From:** Roger Canales [<mailto:rogerc@hscorp.org>]

**Sent:** Friday, August 13, 2010 9:44 AM

**To:** Kent Bedell

**Subject:** FW: Commencement of Substantial Construction Extension Request for 09921

My apologies for the delay, is the information below sufficient?

The property has currently spent \$880, 496 or 8.40% of the total \$10,600,000 budget. As attached, we currently on schedule and anticipate hitting the 20% in September 2010 where the amount is expected to be over \$2,332,000 or 22% of the project and then submitting the Substantial construction documents.

When starting the rehab of a project it often will take longer to start. And often once demolition begins, the first building take longer to get started just knowing what and how to do the work effectively. Often in rehab the General Contract will have to provide material updates and changes based on what is being constructed and when selecting colors and other materials it often takes several parties.

Thank you,

Roger H. Canales

Roger H. Canales

Real Estate Development

Housing and Community Services, Inc.

Wk: 210-821-4300



Cell: 210-247-8192

Fax: 210-821-4303

---

**From:** Kent Bedell [mailto:kent.bedell@tdhca.state.tx.us]  
**Sent:** Tuesday, August 10, 2010 3:15 PM  
**To:** Roger Canales; Gil Piette  
**Subject:** Commencment of Substantial Construction Extension Request for 09921

I am processing your extension request to place it on the September 9<sup>th</sup> board agenda for approval; however, I need a little more detail as to why you are delayed. Please respond back to this email outlining a few reasons for the current delays that justify your request for the new extension deadline. Also, please give me an estimate of the percent of the construction budget expended to date and confirm that you are still on progress to meet your placed in service requirement.

Please let me know if you have further questions.

Regards,

**Kent Bedell**

**Multifamily Housing Specialist**

**Texas Dept. of Housing and Community Affairs**

**HTC No. 09922, Parkview Terrace Apartments**  
**(Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds by June 30, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities, and evidence must be submitted not later than August 31, 2010. The owner of this development has requested an extension of the deadline to commence substantial construction (COC) and to submit the documentation to October 31, 2010.

The reason given for the request was that the closing was delayed because the development is a mixed financed development, which required HUD approval of the final subsidy prior to closing. The development closed on June 11, 2010 and the owner has indicated that approximately 7% of the total budget has been expended, the demolition and abatement phase are completed, site work has commenced, and the development is on schedule to meet its placed in service requirement.

Owner:	PHDC Parkview Terrace, Ltd.
General Partner:	PHDC Parkview Terrace GP, LLC
Developer:	Brownstone Affordable Housing, Ltd. and Three B Ventures, Inc.
Principals/Interested Parties:	William L. Brown, Doak D. Brown, Jed A. Brown, Wil C. Brown and J. Fernando Lopez
City/County:	Pharr/Hidalgo
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	Reconstruction
Population Served:	Family
Units:	100 HTC units
2009 Allocation:	\$1,117,413
Allocation per HTC Unit:	\$11,174.13
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
<b>New Deadline Requested:</b>	<b>October 31, 2010</b>
Previous Extensions:	N/A

**Staff Recommendation:** **Approve the extension as requested.**



6517 Mapleridge  
Houston, TX. 77081  
T. 713.432.7727  
F. 713.432.0120

February 18, 2010

Ms. Teresa Shell  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup>  
Austin, Texas 78701

Re: Parkview Terrace #09922 - Extension Request for Exchange Deadlines

Dear Teresa:

8/31/10

Enclosed herein is our check for \$2,500 for purposes of requesting an extension on the following exchange deadlines: closing deadline to May 31, 2010, the commencement of substantial construction to October 31, 2010 and the placed in service deadline to August 31, 2011.

On February 15, 2010, we responded to an e-mail from Robbye inquiring about our closing date and whether or not an extension was needed. At the time we responded to that e-mail, we were not aware that an extension fee would be required. Therefore, we would like to amend that response and request an extension of the closing date to May 31, 2010.

Consequently, with an amended closing date, we will need an extension on the commencement of substantial construction and the placed in service deadlines. We would like to point out that this development is a reconstruction project so the construction schedule is longer than a regular new construction project. Our construction schedule is a 15 month construction schedule. The first 3 months of these 15 months are for demolition of the existing buildings. Thus, we are requesting an extension of the commencement of substantial construction deadline 5 months (2 months for the extension of the closing date and 3 months for allowing demolition for a total of 5 months) after the May 31 deadline to October 31, 2010. We will also need to request an extension of the placed in service deadline to August 31, 2011 (this represents 2 months for the closing deadline extension and 3 months for demolition).

The justification for our closing extension is that this particular development is a mixed finance development. HUD must provide us with final subsidy approval prior to closing. We

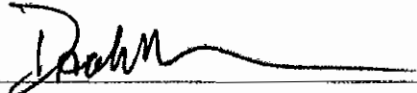
are hopeful that all the extended closing time requested herein will not be necessary. I am very confident that we can meet these time frames based upon past experience with HUD mixed finance approvals.

If you have any further questions regarding this request, please call me at 713-432-7727 ext. 208.

Sincerely,

BROWNSTONE AFFORDABLE HOUSING, LTD.

BY: THREE B VENTURES, INC., ITS GENERAL  
PARTNER

BY:   
Doak Brown, Vice President

## Kent Bedell

---

**From:** Leslieholleman@aol.com  
**Sent:** Tuesday, August 31, 2010 11:15 AM  
**To:** kent.bedell@tdhca.state.tx.us  
**Cc:** doak@thebrownstonegroup.net  
**Subject:** #09922 Parkview Terrace extension

Hi Kent,

I got your voicemail yesterday regarding the extension for Parkview Terrace in Pharr. I think we should be OK with the placed-in-service date of 8/31/11, but I am checking with the contractor and will get back to you later today. This is a 15-month construction period because this is the demolition and complete reconstruction of 100 existing units. We closed exchange on 6/14 and have already completed the demo and abatement and are working on the underground utilities. I've asked the contractor for an update of % complete and a revised construction schedule, just to be sure.

I can be reached at 970-731-9943 or by email. As I said before, I will follow-up with more definitive info later today.

Thanks for the call!

### *Leslie*

Leslie Holleman & Associates, Inc.

Thru December 31, 2010

P. O. Box 5846

Pagosa Springs, CO 81147

(970) 731-9943 ph

Permanent Address

6459 Safe Haven Lane

Brownwood, TX 76801

(325) 784-9797 ph

(325) 998-0705 cell

[leslieholleman@aol.com](mailto:leslieholleman@aol.com)

## Teresa Shell

---

**From:** Leslieholleman@aol.com  
**Sent:** Saturday, August 14, 2010 2:09 PM  
**To:** teresa.shell@tdhca.state.tx.us  
**Cc:** doak@thebrownstonegroup.net; robbye.meyer@tdhca.state.tx.us  
**Subject:** #09922 Parkview Terrace - commencement of substantial construction  
**Attachments:** Parkview-ExchangeExtensionRequest.pdf

Hi Teresa,

Please see the attached extension request - this transaction closed on 6/14/10 and I am unsure if we have been approved for an extension of *Commencement of Substantial Construction* (due 8/31/10 according to the Schedule of Events) or if we need to submit a new one?? We requested an extension of this benchmark was requested back in Feb 2010 in the attached letter along with the closing extension.

This transaction is a "mixed finance" involving the demolition and complete reconstruction of an existing public housing development. Currently we are 7% overall complete, have completed the demo and abatement phase and are commencing with site work - - but we won't make all of the benchmarks for CSC by the end of this month (namely all utilities installed and the clubhouse foundation poured).

Please let me know if we need further action on this matter.

Thanks for your help!

### *Leslie*

Leslie Holleman & Associates, Inc.

Thru December 31, 2010

P. O. Box 5846

Pagosa Springs, CO 81147

(970) 731-9943 ph

Permanent Address

6459 Safe Haven Lane

Brownwood, TX 76801

(325) 784-9797 ph

(325) 998-0705 cell

leslieholleman@aol.com

**HTC No. 09929, Buena Vida Senior Village**  
**(Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds by June 30, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities, and evidence must be submitted not later than August 31, 2010. The owner of this development has requested an extension of the deadline to submit the documentation of commencement of substantial construction to February 2, 2011.

The reason given for the request was that the closing was delayed because the owner had difficulties obtaining their loan funding. The development closed on July 13, 2010 and the owner has indicated that 10 to 12 percent of the construction contract has been expended, approximately 50% of the rough grading is completed, utilities are available at the site, and the development is on schedule to meet its placed in service requirement. A representative of the owner confirmed they will be able to meet the 30% expenditure requirement for the Exchange Program by December 31, 2010.

Owner:	RRAH Corpus Christi, LP
General Partner:	Rocky Ridge Affordable Housing, LLC
Developer:	Rocky Ridge Developer, LP
Principals/Interested Parties:	Randy Stevenson and Matt Stevenson
City/County:	Corpus Christi/Nueces
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Elderly
Units:	100 HTC units
2009 Allocation:	\$929,969
Allocation per HTC Unit:	\$9300
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
<b>New Deadline Requested:</b>	<b>February 2, 2011</b>
Previous Extensions:	N/A

**Staff Recommendation:**           **Approve the extension as requested.**

Rocky Ridge Affordable Housing, LLC  
2400 A Roosevelt Dr  
Arlington, TX 76016

Phone: (817) 261-5088  
Fax: (817) 261-5095

August 2, 2010

Mr. Michael Gerber  
Executive Director  
Texas Department of Housing & Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

Re: Buena Vida Senior Village Extension Request  
TDHCA #08235/09929

8/31/10  
2/2/2011  
08-04-10A10:07 RCVD

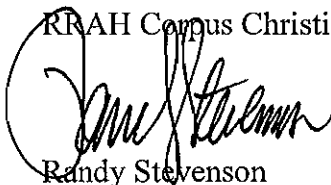
Dear Mr. Gerber,

Please accept this letter as our formal request for an extension of the Commencement of Substantial Construction Report which is due August 31, 2010 according to our TCE Subaward Agreement. We had applied for and received an extension to close our construction loan prior to July 31<sup>st</sup> due to the difficulty in obtaining our loan funding. We are requesting an extension for six months until February 2, 2011 and plan to be in full onsite construction beginning August 2, 2010 following our loan closing on July 14, 2010. This project consists of 13 residential buildings (100 units) plus a clubhouse which we should fully complete and have the entire project ready for occupancy prior to 8/31/11 as required for placement in service. The market for housing in Corpus Christi is great and we anticipate these units being leased soon after we receive building CO's. We will submit the construction report and all required documentation as soon as we reach the requirements.

As required by the QAP, enclosed is our check in the amount of \$2,500 as payment of this extension request. We respectfully request that you administratively grant this extension and confirm same to us as soon as possible. Thank you for your prompt consideration.

Sincerely,

RRAH Corpus Christi, LP



Randy Stevenson  
President of the General Partner

ATTACHS: BLDG. PERMITS



## Kent Bedell

---

**From:** Sharon [Sharon@swrealtors.net]  
**Sent:** Tuesday, August 31, 2010 10:44 AM  
**To:** kent.bedell@tdhca.state.tx.us  
**Subject:** Buena Vida Start Construction Extension Request #09929

We submitted a request for extension of the date to submit the Commencement of Substantial Construction Report from August 31, 2010 for six months to February 2, 2010 due to the delay of closing our construction loan. We anticipate meeting the requirements within 4 months unless coastal weather becomes an issue.

Per your request, we are estimating the following completion target dates.

### Requirements for new construction:

Partnership agreement – exchange sub-award closed with TDHCA – 7/14/10

Construction loan and agreement – closed with Stearns Bank – 7/14/10

Building Permits – City of Corpus Christi released 8/2/10

Rough Grading – 50% completed

Utilities – All available to site

Right of Way access – acquired

10%-12% of construction contract expended – anticipate by 10/25/10

Clubhouse foundation poured – anticipate complete early November

20% of construction contract expended – anticipate in November

At the current time we are 50% complete on grading/dirt work, initial staking has been done, onsite sewer and water utilities should be completed in two weeks and the parking lot should be started in 3 weeks. The clubhouse will be staked and poured as soon as access is available. Total construction should be completed within 10 months, weather permitting. We anticipate receiving all building CO's by the end of May or early June.

We are currently working on another project of similar size in Odessa and have reached 34% of construction completion on our 4<sup>th</sup> monthly draw and Buena Vida should progress at the same rate.

Please contact Randy Stevenson at 817-261-5088 or via [randy@swrealtors.net](mailto:randy@swrealtors.net) if you have other questions regarding our timeframe.

Sharon Laurence

817-261-5088

**HTC No. 09932, Constitution Court Apartments**  
**(Tax Credit Exchange Program App)**  
**(Commencement of Substantial Construction)**

Summary of Request: Pursuant to the Exchange Policy, for Developments that closed on Exchange funds after March 31, 2010 and before May 31, 2010, the Development Owner must submit evidence of having commenced and continued substantial construction activities, and evidence must be submitted not later than July 31, 2010. The owner of this development has requested an extension of the deadline to commence substantial construction (COC) and to submit the documentation to December 31, 2010.

The reason given for the request was that the Development did not receive their Notice to Proceed from the Department until June 3, 2010, which did not give them sufficient time to meet the current deadline. The development closed on July 13, 2010 and the owner has indicated that approximately 98% of the rough grading is completed, the foundation subcontractors are setting the forms, the plumbing contractors have started roughing-in the plumbing, and the development is on schedule to meet its placed in service requirement. The has confirmed they will be able to meet the 30% expenditure requirement for the Exchange Program by December 31, 2010.

Owner:	Constitution Court, Ltd.
General Partner:	Cambridge Interests, Inc., LLC
Developer:	Homestead Development Group, Ltd. and Ponderosa Management, Inc.
Principals/Interested Parties:	Emanuel H. Glockzin, Jr. and Elaina D. Glockzin
City/County:	Copperas Cove/Coryell
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	New Construction
Population Served:	Family
Units:	108 HTC units
2009 Allocation:	\$1,091,187
Allocation per HTC Unit:	\$10,104
Extension Request Fee Paid:	\$2,500
Current Deadline:	July 31, 2010
<b>New Deadline Requested:</b>	<b>December 31, 2010</b>
Previous Extensions:	N/A

**Staff Recommendation:** **Approve the extension as requested.**

## **CONSTITUTION COURT, LTD.**

4500 Carter Creek Parkway, Suite 101, Bryan, TX 77805

● Phone (79) 846-8878 ● Fax (979) 846-0783

August 30, 2010

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

Attn: Mr. Kent Bedell – Multifamily Housing Specialist  
Re: Constitution Court, Ltd. - TDHCA #08257/09932

Dear Mr. Bedell:

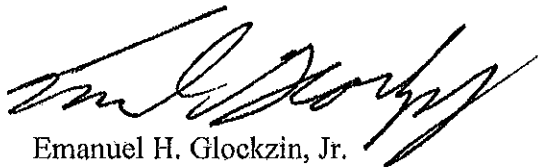
This letter is in response to your email of August 30, 2010 regarding an update to our original request of extension of the Construction Progress Report – Commencement of Substantial Construction for Constitution Court.

We are approximately 98% completed on the rough grading, and the foundation subcontractors are setting the forms now. Plumbing subcontractors have started roughing-in the plumbing already also.

There was a lot of rock demolition which had to be done to the site, which was not expected; however now that this has been completed, the development should move forward and be 30% complete by the end of the year as required, and is still scheduled to meet the scheduled Placed in Service Requirement of March 31, 2010.

Should you need any additional information, please feel free to call me at the number listed above.

Thank you,



Emanuel H. Glockzin, Jr.  
Homestead Development Group, Ltd.  
Developer

attachments

09932

**CONSTITUTION COURT, LTD.**

4500 Carter Creek Parkway, Suite 101, Bryan, TX 77805  
● Phone (79) 846-8878 ● Fax (979) 846-0783

07-22-10A10:37 RCVD

July 20, 2010

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

Attn: Ms. Teresa Shell – Programs Manager  
Re: Constitution Court, Ltd. - TDHCA #08257/09932

7/31/10

Dear Ms. Shell:

I am writing this letter to request an extension on the due date of the Construction Progress Report – Commencement of Substantial Construction which is due for Constitution Court on July 31, 2010. Our check in the amount of \$2,500.00, the required extension fee, is attached with this request.

I would like to extend this due date by five months, to December 31, 2010. Some of the items required are available now; however since we only received our Notice To Proceed from the Department on June 3, 2010, it is not possible that we could have all grading completed, completion of the foundation of the clubhouse, and 10 percent of the construction contract amount for the development expended.

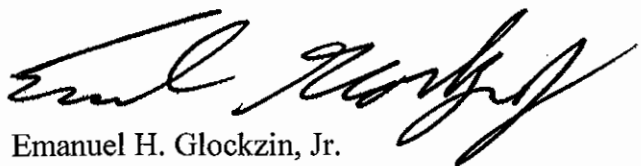
We are approximately 75% completed on the rough grading, and the foundation subcontractors will set the forms next week, so that the plumbing subcontractors can rough-in the plumbing and concrete foundations can be poured for all buildings.

There are no reasonably foreseeable issues that we can see as of this time, which will prevent the development from being on schedule to meet the Placed in Service Requirement which has been established of March 31, 2010.

12011

Should you need any additional information, please feel free to call me at the number listed above.

Thank you,



Emanuel H. Glockzin, Jr.  
Homestead Development Group, Ltd.  
Developer

attachments

## HOME PROGRAM DIVISION

### BOARD ACTION REQUEST

September 9, 2010

#### Recommended Action

Approve Conditional Awards for the Housing Tax Credit Assistance Program (TCAP). Conditions include: application and scoring review, underwriting review, previous participation review, and environmental clearance.

**WHEREAS**, the Board approved the TCAP Plan, Policy and Policy Supplement on May 21, 2009 and clarified the Policy on October 15, 2009 to allow for the allocation and award of \$148,354,769 in TCAP funds, and

**WHEREAS**, all of the applicants from two previous rounds have withdrawn or been satisfied and there remains a balance of funds that could be awarded by the state so long as they can be disbursed by February 16, 2012 and there remains a pool of eligible applicants that have not completed their cost certification or previously requested either TCAP or Exchange Program funds

**RESOLVED**, that the Executive Director and his designees and each of them be and they hereby are authorized and empowered, for and on behalf of this Department, to conditionally award an additional Round 3 applicant (10711 Sutton Homes, San Antonio) for the allocation of TCAP Funds remaining after allocation to Round 1 and Round 2 applicants as presented in this meeting.

#### Background

The American Recovery and Reinvestment Act of 2009 provides for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits ("LIHTCs") between October 1, 2006, and September 30, 2009. These funds will be issued through the U.S. Department of Housing and Urban Development (HUD) under a plan approved by HUD on July 21, 2009 and under an agreement executed by the Department. Through this agreement the Department is able to award \$148,354,769 in TCAP funds. All of the funds must be used or returned to HUD by February 16, 2012.

In summer 2009, the Board approved the Plan, Policy, and Policy Supplement ("TCAP Policy") for the administration and distribution of these funds. The Policy prioritizes developments that are ready to proceed, leveraging of other resources, previous tax credit priority scoring, and development in Rural areas. Additionally, the Policy identified three TCAP financing tools: Equity Bridge Zero Percent Loans, Permanent Loan Replacement Loans, and Tax Credit Replacement Forgivable Loans.

The TCAP Policy and Policy Supplement provided for two application rounds. Round 1 Applications for developments with Award of LIHTC's made in 2007 or 2008 and Round

2 Applications for developments with Award of LIHTC's made in 2009. The following provides a summary of the results from both rounds.

**Table 1. TCAP Round 1 and Round 2 Funding Status as of April 23, 2010**

	<b>Round 1</b>	<b>Round 2</b>	<b>Total</b>
<b>Submitted Applications</b>	57	46	103
<b>Total Requested</b>	\$211,828,645	\$154,503,894	\$366,332,539
<b>Active Applications</b>	24	24	46
<b>Total Awards</b>	\$70,264,930	\$58,903,353	\$129,168,283

There remains approximately \$19M in TCAP funds available to Round 3 applicants. This figure may continue to increase as applications drop-out or TCAP awards are resized based on outside investor and lender requirements. At the March 11, 2010 Board meeting, a Round 3 was authorized with the application acceptance period commencing on March 25, 2010 and ending on April 26, 2010. Exchange and TCAP Round 1 and Round 2 awardees were excluded from the TCAP Round 3. In addition, those developments with cost certifications in-house at TDHCA were not allowed to make application.

Applicants could apply for more than one of the TCAP financing tools. At the March 12, 2010 meeting, eleven (11) applications totaling \$17,074,613 were conditionally awarded. Subsequently, staff was informed that an application submitted by the April 26, 2010 deadline was not included on the list of conditionally awarded Round 3 developments. The applicant submitted the TCAP application to the development's housing tax credit FTP account and failed to notify TCAP staff.

Sutton Homes is a 195-unit development located in San Antonio. The applicant requests \$750,000 in permanent loan replacement funds. This addition will result in a total allocation of \$14,624,613 to Round 3, leaving \$4,561,873 available for Round 4 applicants. In approving Round 4, the Board provided authority for the Executive Director to approve awards subject to ratification in order to move forward with the expedited allocation and use of these remaining funds.

Staff will continue to review and evaluate each eligible application in priority based upon the verified score. The Department's Real Estate Analysis division will complete an underwriting review and the Compliance and Asset Oversight division will be consulted to determine if applicants have issues which could make their application ineligible for funding. Finally, the Program Services division will process materials to provide Environmental Clearance.

**Texas Tax Credit Assistance Program (TCAP)  
Round 3 Application Log**

9/2/2010

Region	Subregion R=Rural U=Urban	TCAP File Number	HTC File Number	Project Name	TCAP final score	Date Submitted	Equity Bridge Loan Request	Perm Loan Replacement Request	HTC Replacement Request	Total Round 3 TCAP Funds Requested @ Underwriting	Total Round 3 TCAP Conditional Award	Funded @ I = Initial R = Rural SW = State-Wide
--------	---------------------------------	---------------------	--------------------	--------------	------------------------	----------------	----------------------------------	-------------------------------------	-------------------------------	--	--	---

**AT-RISK**

*Available in At-Risk \$ 5,655,540*

										\$0	\$ -	
										\$0	\$ -	
<b>Total Available for AT-RISK</b>										\$0	\$0	

**REGION 1**

*Available in Urban \$0*

**\$0**

1	U									\$0	\$ -	
1	U									\$0	\$ -	

*Available in Rural \$707,853*

**\$0**

1	R									\$0	\$ -	
1	R									\$0	\$ -	

**Total Available in Region 1 \$707,853**

\$0 \$0

**REGION 2**

*Available in Urban \$346,831*

**\$0**

2	U									\$0	\$ -	
2	U									\$0	\$ -	

*Available in Rural \$453,349*

**\$0**

2	R									\$0	\$ -	
2	R									\$0	\$ -	

**Total Available in Region 2 \$800,180**

\$0 \$0

**REGION 3**

*Available in Urban \$0*

**\$1,500,000**

3	U	10703	08223	Evergreen at Morningstar	598	3/25/2010		\$1,500,000		\$1,500,000	\$ 1,500,000	SW
3	U									\$0	\$ -	

*Available in Rural \$0*

**\$0**

3	R									\$0	\$ -	
3	R									\$0	\$ -	

**Total Available in Region 3 \$0**

\$1,500,000 \$1,500,000

**REGION 4**

*Available in Urban \$479,118*

**\$0**

4	U									\$0	\$ -	
4	U									\$0	\$ -	

*Available in Rural \$104,604*

**\$0**

4	R									\$0	\$ -	
4	R									\$0	\$ -	

**Total Available in Region 4 \$583,723**

\$0 \$0

**REGION 5**

*Available in Urban \$0*

**\$0**

5	U									\$0	\$ -	
5	U									\$0	\$ -	

*Available in Rural \$483,346*

**\$0**

5	R									\$0	\$ -	
5	R									\$0	\$ -	

**Total Available in Region 5 \$483,346**

\$0 \$0

**KEY**

strikethrough: withdrawn, no longer active

\*\*\* after Project Name: has not been conditionally approved by the TDHCA Board



**Texas Tax Credit Assistance Program (TCAP)  
Round 3 Application Log**

9/2/2010

Region	Subregion R=Rural U=Urban	TCAP File Number	HTC File Number	Project Name	TCAP final score	Date Submitted	Equity Bridge Loan Request	Perm Loan Replacement Request	HTC Replacement Request	Total Round 3 TCAP Funds Requested @ Underwriting	Total Round 3 TCAP Conditional Award	Funded @ I = Initial R = Rural SW = State-Wide
<b>REGION 6</b>					<i>Available in Urban</i>			<b>\$3,469,934</b>		<b>\$11,139,613</b>		
6	U	10708	07309	Glenwood Trails	692	3/25/2010		\$1,200,000		\$1,200,000	\$ 1,200,000	SW
6	U	10700	08126	South Acres Ranch	595	3/25/2010		\$750,000		\$750,000	\$ 750,000	SW
6	U	<del>10702</del>	<del>09317</del>	<del>Champion Homes at Marina Lane</del>	<del>475</del>	<del>3/25/2010</del>		<del>\$3,200,000</del>		<del>\$3,200,000</del>	\$ -	
6	U	10707	07619	Costa Rialto	395	3/25/2010		\$1,500,000		\$1,500,000	\$ 1,500,000	SW
6	U	10710	07457	Wyndham Park	395	3/25/2010		\$1,489,613		\$1,489,613	\$ 1,489,613	SW
6	U	10705	07415	Costa Vizcaya	395	3/25/2010		\$1,500,000		\$1,500,000	\$ 1,500,000	SW
6	U	10706	08602	Costa Ibiza	395	3/25/2010		\$1,500,000		\$1,500,000	\$ 1,500,000	SW
<i>Available in Rural</i>					<b>\$1,113,636</b>			<b>\$0</b>		<b>\$0</b>		
6	R									\$0	\$ -	
6	R									\$0	\$ -	
<b>Total Available in Region 6</b>					<b>\$4,583,570</b>			<b>\$11,139,613</b>		<b>\$ 7,939,613</b>		
<b>REGION 7</b>					<i>Available in Urban</i>			<b>\$0</b>		<b>\$0</b>		
7	U									\$0	\$ -	
7	U									\$0	\$ -	
<i>Available in Rural</i>					<b>\$330,275</b>			<b>\$0</b>		<b>\$0</b>		
7	R									\$0	\$ -	
7	R									\$0	\$ -	
<b>Total Available in Region 7</b>					<b>\$330,275</b>			<b>\$0</b>		<b>\$0</b>		
<b>REGION 8</b>					<i>Available in Urban</i>			<b>\$1,262,870</b>		<b>\$0</b>		
8	U									\$0	\$ -	
8	U									\$0	\$ -	
<i>Available in Rural</i>					<b>\$0</b>			<b>\$0</b>		<b>\$0</b>		
8	R									\$0	\$ -	
8	R									\$0	\$ -	
<b>Total Available in Region 8</b>					<b>\$1,262,870</b>			<b>\$ -</b>		<b>\$ -</b>		
<b>REGION 9</b>					<i>Available in Urban</i>			<b>\$0</b>		<b>\$4,505,000</b>		
9	U	10701	09198	Montabella Pointe	605	3/25/2010		\$1,755,000		\$1,755,000	\$ 1,755,000	SW
9	U	10711	08190 & 09015	Sutton Homes *	582	3/25/2010		\$750,000		\$750,000	\$ -	
9	U	10704	08401	San Pedro Creek	395	3/25/2010		\$2,000,000		\$2,000,000	\$ 2,000,000	SW
<i>Available in Rural</i>					<b>\$0</b>			<b>\$0</b>		<b>\$0</b>		
9	R									\$0	\$ -	
9	R									\$0	\$ -	
<b>Total Available in Region 9</b>					<b>\$0</b>			<b>\$4,505,000</b>		<b>\$ 4,505,000</b>		
<b>REGION 10</b>					<i>Available in Urban</i>			<b>\$314,044</b>		<b>\$0</b>		
10	U									\$0	\$ -	
10	U									\$0	\$ -	
<i>Available in Rural</i>					<b>\$649,191</b>			<b>\$0</b>		<b>\$0</b>		
10	R									\$0	\$ -	
10	R									\$0	\$ -	
<b>Total Available in Region 10</b>					<b>\$963,236</b>			<b>\$0</b>		<b>\$0</b>		

**KEY**

~~strikethrough~~: withdrawn, no longer active

\*\*\* after Project Name: has not been conditionally approved by the TDHCA Board

**Texas Tax Credit Assistance Program (TCAP)  
Round 3 Application Log**

9/2/2010

Region	Subregion R=Rural U=Urban	TCAP File Number	HTC File Number	Project Name	TCAP final score	Date Submitted	Equity Bridge Loan Request	Perm Loan Replacement Request	HTC Replacement Request	Total Round 3 TCAP Funds Requested @ Underwriting	Total Round 3 TCAP Conditional Award	Funded @ I = Initial R = Rural SW = State-Wide	
<b>REGION 11</b>					<i>Available in Urban</i>		<b>\$1,642,219</b>			<b>\$0</b>			
11	U									\$0	\$	-	
11	U									\$0	\$	-	
					<i>Available in Rural</i>		<b>\$1,585,854</b>			<b>\$0</b>			
11	R									\$0	\$	-	
11	R									\$0	\$	-	
					<b>Total Available in Region 11</b>		<b>\$3,228,073</b>			<b>\$0</b>		<b>\$0</b>	
<b>REGION 12</b>					<i>Available in Urban</i>		<b>\$0</b>			<b>\$0</b>			
12	U									\$0	\$	-	
12	U									\$0	\$	-	
					<i>Available in Rural</i>		<b>\$257,209</b>			<b>\$0</b>			
12	R									\$0	\$	-	
12	R									\$0	\$	-	
					<b>Total Available in Region 12</b>		<b>\$257,209</b>			<b>\$0</b>		<b>\$0</b>	
<b>REGION 13</b>					<i>Available in Urban</i>		<b>\$0</b>			<b>\$0</b>			
13	U									\$0	\$	-	
13	U									\$0	\$	-	
					<i>Available in Rural</i>		<b>\$330,612</b>			<b>\$680,000</b>			
13	R	10709	08163	San Elizario Palms	672	3/25/2010		\$680,000		\$680,000	\$	<b>680,000</b>	<b>R</b>
13	R									\$0	\$	-	
					<b>Total Available in Region 13</b>		<b>\$330,612</b>			<b>\$680,000</b>		<b>\$680,000</b>	

**SUMMARY**

<b>ROUND 1 SUMMARY</b>			<b>Applications</b>	<b>Request</b>
Amount Available	\$	148,354,769	57	\$ 211,828,645
Amount Awarded	\$	70,264,930	33	\$ 139,837,642
Amount Remaining for Round 2	\$	78,089,839	24	\$ 71,991,003
			Total Recommended at Underwriting	\$ 70,264,930

<b>ROUND 2 SUMMARY</b>			<b>Applications</b>	<b>Request</b>
Amount Available	\$	78,089,839	46	\$ 154,503,894
Amount Awarded	\$	58,903,353	24	\$ 91,717,524
Amount Remaining for Round 3	\$	19,186,486	22	\$ 62,786,370
			Total Recommended at Underwriting	\$ 58,903,353

<b>ROUND 3 SUMMARY</b>			<b>Applications</b>	<b>Request</b>
Amount Available	\$	19,186,486	12	\$ 17,824,613
Amount Conditionally Awarded	\$	13,874,613	1	\$ 3,200,000
Amount Requested, but not Conditionally Awarded	\$	750,000	11	\$ 14,624,613
Amount Remaining for Round 4	\$	4,561,873	Total Recommended at Underwriting	

**KEY**

~~strikethrough~~: withdrawn, no longer active

\*\*\* after Project Name: has not been conditionally approved by the TDHCA Board

**HOME PROGRAM DIVISION**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve HOME Program Award Recommendations from the 2009 HOME Program Single Family Owner-Occupied Housing Assistance (OCC), Tenant-Based Rental Assistance (TBRA), and Homebuyer Assistance (HBA) Programs Notice of Funding Availability (NOFA), involving the award of two (2) applications, totaling \$732,000 in project funds and \$29,280 in administrative funds, which will result in assistance for 21 low-income households.

**RESOLVED**, that the award of two contracts to the City of Primera totaling \$732,000 in project funds and \$29,280 in administrative funds, resulting in assistance for 21 low income households, are hereby approved in the form presented to this meeting.

**Background**

Staff is recommending for award applications received in response to the 2009 Single Family Programs NOFA. The award recommendations total \$732,000 in project funds and \$29,280 in administrative funds to assist 21 households for the following two (2) applications:

**City of Primera**

Applicant will receive \$432,000 in project funds which will be used to provide up to \$80,000 per household for the rehabilitation or reconstruction of 6 homes owned by low-income households that are in significant disrepair.

**City of Primera**

Applicant will receive \$300,000 in project funds to provide up to \$20,000 in downpayment and closing costs assistance to 15 eligible low-income homebuyers.

The Board previously approved funding for 59 applications totaling \$21,013,928 in project funds and \$959,894 in administrative funds under this NOFA.

The NOFA was approved on July 16, 2009 which made available \$25,923,970 in HOME funds originally restricted in set-asides for each activity and by region. The NOFA expired on April 30, 2010 and the unsubscribed balance of funds totaling \$2,500,000 was approved for reprogramming by the Board on May 12, 2010. There are no pending

applications under this NOFA and the current balance of \$1,678,041 in unsubscribed funds is being recommended for reprogramming in a separate action item today.

All applications being recommended for funding have been reviewed by the Compliance and Asset Oversight Division, and no issues of material non-compliance, unresolved audit findings or questioned or disallowed costs have been identified.

Attached are the Application and Award Recommendations Logs.

# 2009 SF Application Log Final Collapse

*Sorted by date/time received*

**Total NOFA Amount - \$25,923,970**

**Total Amount Available: \$4,910,041**

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0019 2009 OCC	8/17/2009	1:45 PM	City of Cooper	4	\$432,693	\$17,307	5	\$432,693	\$17,307	5	Awarded 10/15/2009
2009-0021 2009 TBRA	8/19/2009	3:27 PM	Ellis Community Resources Inc.	9	\$300,000	\$36,000	27				Withdrawn
2009-0022 2009 OCC	8/28/2009	2:06 PM	City of Weimar	6	\$432,000	\$17,280	6	\$432,000	\$17,280	6	Awarded 10/15/2009
2009-0026 2009 HBA	8/31/2009		Community Development Corporation of Brownsville	11	\$300,000	\$12,000	30				Terminated
2009-0030 2009 OCC	8/31/2009	2:55 PM	City of Martindale	7	\$432,000	\$17,280	6	\$432,000	\$17,280	6	Awarded 11/9/2009
2009-0024 2009 OCC	8/31/2009	4:00 PM	City of Huntsville	6	\$432,000	\$17,280	6	\$432,000	\$17,280	6	Awarded 10/15/2009
2009-0023 2009 OCC	8/31/2009	4:00 PM	City of Bloomburg	4	\$240,000	\$9,600	3	\$240,000	\$9,600	3	Awarded 10/15/2009
2009-0025 2009 OCC	8/31/2009	4:00 PM	Community Development Corporation of Brownsville	11	\$432,000	\$17,280	10	\$432,000	\$17,280	10	Awarded 10/15/2009
2009-0031 2009 TBRA	9/2/2009	1:17 PM	Buckner Children & Family Services, Inc. dba Buckner Family Place	6	\$162,624	\$22,176	11				Terminated
2009-0033 2009 TBRA	9/2/2009	2:22 PM	Buckner Children & Family Services, Inc. dba Buckner Family Place	5	\$133,056	\$18,144	11				Terminated

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0028 2009 OCC	9/2/2009	4:38 PM	City of Commerce	3	\$432,693	\$17,307	5	\$432,693	\$17,307	5	Awarded 11/9/2009
2009-0032 2009 OCC	9/3/2009	4:31 PM	City of Gatesville	8	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 10/15/2009
2009-0034 2009 HBA	9/18/2009	4:13 PM	City of Waxahachie	3	\$220,000	\$8,800	11	\$220,000	\$8,800	11	Awarded 11/9/2009
2009-0035 2009 TBRA	9/24/2009	2:43 PM	Housing Authority of New Braunfels	9	\$300,000	\$36,000	27	\$300,000	\$36,000	27	Awarded 11/9/2009
2009-0036 2009 OCC	9/29/2009	9:59 AM	City of Belton	8	\$400,000	\$16,000	5	\$0	\$0	0	Withdrawn
2009-0037 2009 TBRA	9/29/2009	10:00 AM	Affordable Caring Housing, Inc.	4	\$118,104	\$4,724	10				Withdrawn
2009-0039 2009 OCC	10/2/2009	12:07 PM	City of Lorenzo	1	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 12/17/2009
2009-0038 2009 OCC	10/2/2009	12:08 PM	City of Floydada	1	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 12/17/2009
2009-0040 2009 OCC	10/8/2009	4:15 PM	City of Sulphur Springs	4	\$432,693	\$17,307	5	\$432,693	\$17,307	5	Awarded 11/9/2009
2009-0044 2009 TBRA	10/12/2009	2:15 PM	Ellis Community Resources Inc.	9	\$300,000	\$36,000	27	\$300,000	\$36,000	27	Awarded 11/9/2009
2009-0041 2009 OCC	10/14/2009	9:21 AM	Town of Van Horn	13	\$432,000	\$18,000	5				Withdrawn
2009-0042 2009 OCC	10/15/2009	11:39 AM	City of Bowie	2	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 12/17/2009

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0043 2009 TBRA	10/15/2009	4:31 PM	Catholic Charities of Corpus Christi, Inc	10	\$300,000	\$36,000	10				Withdrawn
2009-0050 2009 HBA	11/2/2009	11:50 AM	Town of Combes	11	\$300,000	\$12,000	15				Withdrawn
2009-0047 2009 OCC	11/2/2009	4:49 PM	City of Belton	8	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 12/17/2009
2009-0048 2009 OCC	11/4/2009	5:08 PM	City of Olton	1	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 12/17/2009
2009-0051 2009 OCC	11/10/2009	3:44 PM	Village of Vinton	13	\$320,000	\$12,800	4	\$320,000	\$12,800	4	Awarded 1/20/2010
2009-0054 2009 OCC	11/24/2009	12:00 PM	City of Muleshoe	1	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 1/20/2010
2009-0053 2009 OCC	11/25/2009		City of Atlanta	4	\$432,000	\$17,280	6	\$432,000	\$17,280	6	Awarded 1/20/2010
2009-0052 2009 OCC	11/25/2009	12:36 PM	City of DeKalb	4	\$320,000	\$12,800	4	\$320,000	\$12,800	4	Awarded 1/20/2010
2009-0058 2009 HBA	11/25/2009	12:58 PM	Southeast Texas HFC	6	\$500,000	\$20,000	50				Withdrawn
2009-0057 2009 HBA	11/30/2009	5:33 PM	Temple Housing Authority	8	\$225,000	\$9,000	15	\$225,000	\$9,000	15	Awarded 1/20/2010
2009-0055 2009 HBA	12/1/2009	12:39 PM	Midland Neighborhood Housing Services, Inc.	12	\$300,000	\$12,000	24				Withdrawn
2009-0056 2009 OCC	12/9/2009	5:24 PM	County of Crane	12	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 1/20/2010

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0059 2009 HBA	12/21/2009	4:04 PM	City of Hillsboro	8	\$300,000	\$12,000	13	\$300,000	\$12,000	14	Awarded 3/11/2010
2009-0060 2009 OCC	12/27/2009	5:36 PM	City of Albany	2	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 3/11/2010
2009-0061 2009 OCC	12/28/2009	12:27 PM	Town of Van Horn	13	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 1/20/2010
2009-0062 2009 OCC	12/28/2009	12:28 PM	City of Edgewood	4	\$432,693	\$17,307	5	\$432,693	\$17,307	5	Awarded 3/11/2009
2009-0064 2009 HBA	12/28/2009	12:29 PM	The Nehemiah Foundation	4	\$200,000	\$8,000	10				Withdrawn
2009-0063 2009 HBA	12/28/2009	5:21 PM	City of Carrollton	3	\$96,000	\$3,840	5	\$96,000	\$3,840	5	Awarded 3/11/2010
2009-0067 2009 OCC	1/8/2010	12:29 PM	City of George West	10	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 3/11/2010
2009-0068 2009 TBRA	1/29/2010	4:47 PM	Buckner Children & Family Services, Inc. dba Buckner Family Place	5	\$300,000	\$36,000	18	\$300,000	\$36,000	18	Awarded 5/12/2010
2009-0069 2009 OCC	2/3/2010	4:44 PM	City of Asherton	11	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010
2009-0066 2009 OCC	2/3/2010	4:45 PM	City of Ingleside	10	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010
2009-0073 2009 OCC	2/18/2010	2:00 PM	Hill Country Home Opportunity Council, Inc.	9	\$240,000	\$9,600	3	\$240,000	\$9,600	3	Awarded 5/12/2010
2009-0072 2009 OCC	2/18/2010	4:33 PM	City of Sinton	10	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010



<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0070 2009 OCC	2/19/2010	4:55 PM	City of Encinal	11	\$432,000	\$18,000	7				Withdrawn
2009-0074 2009 OCC	2/22/2010	4:59 PM	City of West Tawakoni	3	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010
2009-0071 2009 HBA	2/23/2010	10:54 AM	Town of Combes	11	\$300,000	\$12,000	15	\$300,000	\$12,000	15	Awarded 3/11/2010
2009-0076 2009 OCC	3/12/2010	12:12 PM	Zavala County	11	\$432,000	\$17,280	6	\$432,000	\$17,280	6	Awarded 5/12/2010
2009-0075 2009 OCC	3/18/2010	10:42 AM	Terry County	1	\$375,000	\$15,000	5	\$375,000	\$15,000	5	Awarded 5/12/2010
2009-0077 2009 OCC	3/18/2010	10:43 AM	City of Brownfield	1	\$375,000	\$15,000	5	\$375,000	\$15,000	5	Awarded 5/12/2010
2009-0078 2009 OCC	3/18/2010	10:44 AM	Cochran County	1	\$375,000	\$15,000	5	\$375,000	\$15,000	5	Awarded 5/12/2010
2009-0079 2009 OCC	3/23/2010	10:42 AM	City of Aransas Pass	10	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010
2009-0080 2009 TBRA	4/6/2010	3:13 PM	Burke Center	5	\$291,770	\$35,012	30	\$291,770	\$35,012	30	Awarded 5/12/2010
2009-0082 2009 HBA	4/9/2010	1:50 AM	City of Texarkana	4	\$100,000	\$4,000	5	\$100,000	\$4,000	5	Awarded 5/12/2010
2009-0081 2009 OCC	4/9/2010	1:49 PM	City of Texarkana	4	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 5/12/2010
2009-0083 2009 OCC	4/9/2010	1:52 PM	Haskell County	2	\$432,000	\$17,280	5	\$432,000	\$17,280	5	Awarded 5/12/2010

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0085 2009 OCC	4/15/2010	1:37 PM	Willacy County	11	\$400,000	\$16,000	6	\$400,000	\$16,000	6	Awarded 7/29/2010
2009-0089 2009 OCC	4/22/2010	4:48 PM	City of Beeville	10	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 6/28/2010
2009-0088 2009 HBA	4/26/2010	1:03 PM	Community Development Corporation of Brownsville	11	\$300,000	\$12,000	30	\$300,000	\$12,000	30	Awarded 7/29/2010
2009-0090 2009 TBRA	4/26/2010	1:12 PM	Texas Star Homes Consultant	6	\$250,000	\$10,000	10				Terminated
2009-0094 2009 HBA	4/26/2010	1:14 PM	City Of Paris	4	\$300,000	\$12,000	14	\$300,000	\$12,000	14	Awarded 6/28/2010
2009-0091 2009 HBA	4/27/2010	11:12 AM	City of Whitney	8	\$300,000	\$12,000	14	\$300,000	\$12,000	14	Awarded 6/28/2010
2009-0093 2009 OCC	4/27/2010	11:45 AM	Rockwall Housing Development Corporation	3	\$160,000	\$6,400	2	\$160,000	\$6,400	2	Awarded 6/28/2010
2009-0092 2009 TBRA	4/27/2010	11:41 PM	Affordable Housing of Parker County, Inc.	3	\$301,350	\$12,054	14	\$300,000	\$36,000	14	Awarded 6/29/2010
2009-0105 2009 OCC	4/30/2010		City of Deport	4	\$432,693	\$17,307	5	\$432,693	\$17,307	5	Awarded 6/28/2010
2009-0101 2009 OCC	4/30/2010		City of Bonham	3	\$432,700	\$17,300	5	\$432,693	\$17,307	5	Awarded 6/28/2010
2009-0095 2009 HBA	4/30/2010	9:22 AM	El Paso Collaborative for Community and Economic Development	13	\$500,000	\$20,000	25				Withdrawn
2009-0097 2009 OCC	4/30/2010	9:23 AM	City of Queen City	4	\$400,000	\$16,000	5	\$400,000	\$16,000	5	Awarded 6/28/2010

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0096 2009 OCC	4/30/2010	9:23 AM	El Paso Collaborative for Community and Economic Development	13	\$432,000	\$18,000	5				Withdrawn
2009-0098 2009 HBA	4/30/2010	9:24 AM	City of Rio Hondo	11	\$300,000	\$12,000	15	\$300,000	\$12,000	15	Awarded 6/28/2010
2009-0087 2009 HBA	4/30/2010	9:25 AM	Midessa Homes, LLC	12	\$100,000	\$4,000	5				Terminated
2009-0086 2009 HBA	4/30/2010	9:26 AM	Midland Community Development Corp.	12	\$300,000	\$12,000	14	\$300,000	\$12,000	14	Awarded 7/29/2010
2009-0099 2009 HBA	4/30/2010	10:32 AM	Fannin County	3	\$200,000	\$8,000	10	\$200,000	\$8,000	10	Awarded 6/28/2010
2009-0100 2009 HBA	4/30/2010	10:32 AM	Starr County	11	\$300,000	\$12,000	15	\$300,000	\$12,000	15	Awarded 7/29/2010
2009-0104 2009 OCC	4/30/2010	4:45 PM	City of Santa Rosa	11	\$432,000	\$18,000	6				Terminated
2009-0103 2009 HBA	4/30/2010	4:45 PM	City of Primera		\$300,000	\$12,000	15	\$300,000	\$12,000	15	Pending Award
2009-0102 2009 OCC	4/30/2010	4:45 PM	City of Primera	11	\$432,000	\$18,000	6	\$432,000	\$17,280	6	Pending Award
2009-0109 2009 TBRA	5/4/2010	3:15 PM	Orange Inter City Re-Development Corporation		\$116,540	\$4,616	80				Terminated
<b>Totals:</b>					<b>\$27,455,609</b>	<b>\$1,273,601</b>	<b>866</b>	<b>\$21,745,928</b>	<b>\$989,174</b>	<b>521</b>	

# ***2009 HOME SF NOFA (2009 OCC) - Award Recommendations Log***

August 18, 2010

*Sorted by Date and Time Received*

<b>Statewide Summary</b>	<b>Totals</b>
<b>SF NOFA Amount:</b>	<b>\$25,923,970</b>
<b>OCC Set-Aside Amount:</b>	<b>\$18,146,779</b>
<b>Total Recommended:</b>	<b>\$432,000</b>
<b>Total Apps. Recommended:</b>	<b>1</b>

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0102	4/30/2010	4:45 PM	City of Primera	11	\$432,000	\$18,000	6	\$432,000	\$17,280	6	Pending Award
<b>Totals:</b>					<b>\$432,000</b>	<b>\$18,000</b>	<b>6</b>	<b>\$432,000</b>	<b>\$17,280</b>	<b>6</b>	

# ***2009 HOME SF NOFA (2009 HBA) - Award Recommendations Log***

August 18, 2010

*Sorted by Date and Time Received*

<b>Statewide Summary</b>	<b>Totals</b>
<b>SF NOFA Amount:</b>	<b>\$25,923,970</b>
<b>HBA Set-Aside Amount:</b>	<b>\$3,888,595</b>
<b>Total Recommended:</b>	<b>\$300,000</b>
<b>Total Apps. Recommended:</b>	<b>1</b>

<b>App number</b>	<b>Received Date</b>	<b>Time Received</b>	<b>Applicant</b>	<b>Region</b>	<b>Project Funds Requested</b>	<b>Admin Funds Requested</b>	<b>Total Units</b>	<b>Project Funds Awarded and/or Recommended</b>	<b>Admin Funds Awarded and/or Recommended</b>	<b>Total Units</b>	<b>Comments</b>
2009-0103	4/30/2010	4:45 PM	City of Primera		\$300,000	\$12,000	15	\$300,000	\$12,000	15	Pending Award
<b><i>Totals:</i></b>					<b>\$300,000</b>	<b>\$12,000</b>	<b>15</b>	<b>\$300,000</b>	<b>\$12,000</b>	<b>15</b>	

**HOUSING TRUST FUND DIVISION**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve Housing Trust Fund (HTF) Program award recommendations from the 2010-2011 Affordable Housing Match Program Notice of Funding Availability (NOFA) for four (4) applications, totaling \$500,000 in project Match funds which will leverage \$5,800,000 in total federal, private and local dollars from primary funding sources to serve an estimated 278 low income households.

**RESOLVED**, that the award of a commitment letter and contract to Foundation Communities, National Farm Workers Service Center, Inc., Green Doors, and Habitat for Humanity of San Antonio totaling \$500,000 in Match funds, resulting in assistance for 278 low income households, is hereby approved as presented to this meeting and staff authorized and directed to proceed with the issuance of a letter of commitment and contract with each of the awarded applicants.

**Background**

A Notice of Funding Availability (NOFA) of \$750,000 for the 2010–2011 Affordable Housing Match Program was approved by the Board on July 30, 2009, as part of the 2010-2011 Housing Trust Fund Plan. The purpose of the HTF Affordable Housing Match Program is to provide Texas-based nonprofit organizations, community development financial institutions (CDFIs), and rural municipalities and counties the direct match funds needed to apply for affordable housing funding that, without the required direct match, may otherwise not be accessed.

The 2010–2011 Affordable Housing Match Program NOFA was posted on March 30, 2010 with an open application cycle ending December 31, 2010. Twelve applications have been received. Two applications were awarded a combined total of \$250,000 in Match funds at the June 28, 2010 Board meeting and two applications were awarded a combined total of \$250,000 at the July 29, 2010 Board meeting, leaving \$250,000 remaining in the NOFA. Four of the twelve applications have not been recommended for funding, as noted on the attached Application Log. There are four pending applications totaling \$500,000 in HTF Match funds that are being recommended for award today.

The funding recommendations in excess of the \$250,000 balance available under the NOFA will be funded from prior HTF contracts that have been partially or fully deobligated. Staff recommends \$500,000 in funding commitments for the remaining four applications that will leverage \$36,931,153 in total project funds as noted below:

**Foundation Communities**

Foundation Communities will be submitting an application for \$250,000 to the Kresge Foundation Challenge Grant Program and will leverage a total of \$2,500,000 as part of that challenge. This funding will help fill a funding gap on M Station, a new construction affordable housing project in Austin that will serve 135 families at or below 60% median income.



**National Farm Workers Service Center, Inc**

NFWSC, Inc. has submitted an application for \$3,000,000 to the USDA in response to the NOFA for Sec. 514/516 Farm Worker Housing Grants. The proposed housing will be built on land currently owned by NFWSC in Hidalgo County and will provide 36 rental units for low income farm workers in the area. The total project cost is projected to be \$3,693,000.

**Green Doors**

Green Doors will be submitting an application to the Austin Housing Finance Corporation for \$1,350,000 in funding for the acquisition and rehabilitation of a 47 unit multifamily property in Austin that will serve working families and individuals whose household income does not exceed 50% AMFI. Over 50% of the units will target individuals struggling with homelessness and disabilities whose income is below 30% AMFI. The total project cost is projected to be \$3,279,830.

**Habitat for Humanity of San Antonio**

Habitat for Humanity of San Antonio will be submitting an application to the City of San Antonio HOME Program for \$1,200,000 in funding for infrastructure development for a 60 unit subdivision in San Antonio. Habitat will subsequently build homes on these 60 lots for low income homebuyers. The total cost of the project is anticipated to be \$4,325,000.

A summary of the proposed use of Match funds that would be awarded through this board item is provided below.

Applicant	Region	Primary Funding Source	HTF Funds Requested	Funds Leveraged	Total Project Funds	Assisted Units
Foundation Communities	7	Kresge Foundation	\$125,000	\$250,000	\$25,633,323	135
National Farm Workers Service Center, Inc.	11	USDA Section 514/516 Farm Labor Housing	\$125,000	\$3,000,000	\$3,693,000	36
Green Doors	7	Austin Housing Finance Corporation	\$125,000	\$1,350,000	\$3,279,830	47
Habitat for Humanity of San Antonio	9	City of San Antonio	\$125,000	\$1,200,000	\$4,325,000	60
<b>TOTAL</b>			<b>\$500,000</b>	<b>\$5,800,000</b>	<b>\$36,931,153</b>	<b>278</b>

In total, \$1,000,000 in 2010-2011 HTF Match funds will have been awarded to assist 655 households with \$7,450,000 in funds from the primary funding sources and \$45,554,638 in total project funds.

All awards are conditioned upon there being no findings or issues of material non-compliance, unresolved audit findings or questioned or disallowed costs.

The Application Log and Award Summary are attached.

# Housing Trust Fund Application Log

## 2010-2011 Affordable Housing Match Program

Original Funding Available: **\$750,000**  
 Total Funds Currently Awarded: **\$500,000**  
 Funds Remaining: **\$250,000**

Release Date of the Notice of Funding Availability (NOFA): **4/2/2010**  
 Collapse Date for Regional Allocation Formula (RAF): **4/30/2010**  
 Deadline for Applications, if being Accepted: 5:00pm CST on **12/31/2010**

Application Number	Date Received	Applicant	Applicant City	Region(s) Served	Area(s) Served	Units	Match Funds Requested	Proposed Funds Leveraged from Primary Source	Match Funds Recommended or Awarded	Anticipated Units	Anticipated Funds to be Leveraged from Primary Source	Status/Notes
2010-0011	4/30/2010	<b>Temenos Community Development Corporation</b>	Houston	6	Harris County	71	\$125,000	\$400,000	\$125,000	71	\$400,000	<b>Awarded 6/28/2010</b>
2010-0012	5/3/2010	Family Gateway, Inc.	Dallas	3	Dallas	60	\$125,000	\$398,235	Not recommended for funding	N/A	N/A	Applicant already awarded by primary source
2010-0013	5/25/2010	Family Promise of East Bell County	Temple	8	Bell County	100	\$125,000	\$688,387	Not recommended for funding	N/A	N/A	Review terminated per Applicant request
2010-0015	5/27/2010	Family Gateway, Inc.	Dallas	3	Dallas	30	\$125,000	\$455,550	Not recommended for funding	N/A	N/A	Application withdrawn 6/3/2010, primary source did not require match
2010-0019	5/28/2010	<b>Motivation, Education &amp; Training, Inc.</b>	Austin	1	Hale Center	16	\$125,000	\$1,875,000	\$125,000	16	\$1,875,000	<b>Awarded 6/28/2010</b>
2010-0022	6/8/2010	WOMAN, Inc.	Houston	6	Galveston	10	\$31,174	\$173,556	Not recommended for funding	N/A	N/A	Applicant already awarded by primary source

Application Number	Date Received	Applicant	Applicant City	Region(s) Served	Area(s) Served	Units	Match Funds Requested	Proposed Funds Leveraged from Primary Source	Match Funds Recommended or Awarded	Anticipated Units	Anticipated Funds to be Leveraged from Primary Source	Status/Notes
2010-0024	7/1/2010	Family Gateway, Inc.	Dallas	3	Dallas	60	\$125,000	\$125,000	\$125,000	60	\$125,000	Awarded 7/29/2010
2010-0027	7/9/2010	Foundation Communities	Austin	3, 7	Austin, Arlington, Carrollton	230	\$125,000	\$250,000	\$125,000	230	\$250,000	Awarded 7/29/2010
2010-0030	7/27/2010	Foundation Communities	Austin	7	Austin, Travis County	135	\$125,000	\$250,000	\$125,000	135	\$250,000	Pending Award 9/9/10
2010-0031	7/28/2010	National Farm Workers Service Center, Inc.	Austin	11	Edcouch, Hidalgo County	36	\$125,000	\$3,000,000	\$125,000	36	\$3,000,000	Pending Award 9/9/10
2010-0032	7/28/2010	Green Doors	Austin	7	Austin	47	\$125,000	\$1,350,000	\$125,000	47	\$1,350,000	Pending Award 9/9/10
2010-0033	8/13/2010	Habitat for Humanity of San Antonio, Inc.	San Antonio	9	San Antonio	60	\$125,000	\$1,200,000	\$125,000	60	\$1,200,000	Pending Award 9/9/10
	<b>TOTALS</b>					<b>855</b>	<b>\$1,406,174</b>	<b>\$8,759,554</b> (Excluding Match)	<b>\$1,000,000</b>	<b>655</b>	<b>\$8,450,000</b>	<b>133% of Funds Recommended and/or Awarded</b>

# Housing Trust Fund Award Summary

## *2010-2011 Affordable Housing Match Program*

Original Funding Available: **\$750,000**

Total Funds to be Awarded: **\$1,000,000**

Current Funds Remaining (prior to board action): **\$250,000**

Release Date of the Notice of Funding Availability (NOFA): **4/2/2010**

Collapse Date for Regional Allocation Formula (RAF): **4/30/2010**

Deadline for Applications, if being Accepted: 5:00pm CST on **12/31/2010**

Application Number	Date Received	Applicant	Applicant City	Region(s) Served	Area(s) Served	Match Funds Requested	Anticipated Funds to be Leveraged from Primary Source	Anticipated Total Project Funds	Match Funds Recommended or Awarded	Anticipated Units	Status/Notes
2010-0011	4/30/2010	Temenos Community Development Corporation	Houston	6	Harris County	\$125,000	\$1,875,000	\$2,550,000	\$125,000	71	Awarded 6/28/2010
2010-0019	5/28/2010	Motivation, Education & Training, Inc.	Austin	1	Hale Center	\$125,000	\$400,000	\$6,175,250	\$125,000	16	Awarded 6/28/2010
2010-0024	7/1/2010	Family Gateway, Inc.	Dallas	3	Dallas	\$125,000	\$125,000	\$523,235	\$125,000	60	Awarded 7/29/2010
2010-0027	7/9/2010	Foundation Communities	Austin	3, 7	Austin, Arlington, Carrollton	\$125,000	\$250,000	\$375,000	\$125,000	230	Awarded 7/29/2010
2010-0030	7/27/2010	Foundation Communities	Austin	7	Austin, Travis County	\$125,000	\$250,000	\$25,633,323	\$125,000	135	Pending Award
2010-0031	7/28/2010	National Farm Workers Service Center, Inc.	Austin	11	Edcouch, Hidalgo County	\$125,000	\$3,000,000	\$3,693,000	\$125,000	36	Pending Award
2010-0032	7/28/2010	Green Doors	Austin	7	Austin	\$125,000	\$1,350,000	\$3,279,830	\$125,000	47	Pending Award

Application Number	Date Received	Applicant	Applicant City	Region(s) Served	Area(s) Served	Match Funds Requested	Anticipated Funds to be Leveraged from Primary Source	Anticipated Total Project Funds	Match Funds Recommended or Awarded	Anticipated Units	Status/Notes
2010-0033	8/13/2010	Habitat for Humanity of San Antonio, Inc.	San Antonio	9	San Antonio	\$125,000	\$1,200,000	\$4,325,000	\$125,000	60	Pending Award
	<b>TOTALS</b>					<b>\$1,000,000</b>	<b>\$7,450,000</b> (Excluding HTF Match)	<b>\$45,554,638</b> (Excluding HTF Match)	<b>\$1,000,000</b>	<b>655</b>	<b>133% of Funds Recommended and/or Awarded</b>

**To Be Posted  
three days  
prior to the meeting**

**To Be Posted  
three days  
prior to the meeting**



**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve resolution number 11-002 concerning the holding of real estate beyond three year limitation.

**Resolution 11-002**

Whereas, The Department acquired through foreclosure the following tracts of land:

5001 Allison Street Edinburg, Texas 78539  
Lot 19 Pioneer Road Eagle Pass, Texas 78852  
1856 W. Orquidia Lane Rio Bravo, Texas 78046  
1207 Paseo de Neva Rio Bravo, Texas 78046  
1453 Margarita Lane Rio Bravo, Texas 78046  
9322 County Road 6520 Lubbock, Texas 79416  
1754 Centeno Lane Rio Bravo, Texas 78046  
Lot 3, Block 1 Mission, Texas

Whereas, TDHCA has been working with numerous potential buyers to negotiate a disposition of the tracts, and

Whereas, to date, despite diligent efforts, TDHCA has been unsuccessful in disposing of these tracts, and

Whereas, TEX. GOV'T. CODE, §2306.174 requires that this Board adopt a resolution if despite such efforts, TDHCA will be holding the tracts for more than three years,

Now, therefore, be it RESOLVED, that this Board finds that TDHCA has made diligent efforts to dispose of the tracts as provided for in TEX. GOV'T. CODE, §2306.174 and, therefore, the tracts must be held beyond the third anniversary of the date on which it was acquired by foreclosure and

FURTHER RESOLVED, that staff is directed to make diligent efforts to sell the tracts including, but not limited to, working with the Texas General Land Office for disposition strategies.

### Summary

The Department currently owns eight single family lots. These homes were owned by participants in the Department's single family home ownership programs. These borrowers grossly failed to make require mortgage payments and the Department's Review Committee voted to foreclose. If the Department owns property for more than three years, Texas Government Code §2306.174 requires this Board to adopt a resolution stating that a purchaser cannot be found and the Department will continue to try to find a purchaser.

The Department is exploring the possibility of transferring these properties to the Texas General Land Office to handle disposition.

## HOUSING RESOURCE CENTER

### BOARD ACTION REQUEST

September 9, 2010

#### Recommended Action

Approve the publication for public comment on the draft of the 2011 Regional Allocation Formula (RAF) Methodology.

**RESOLVED**, that the Draft 2011 RAF Methodology for the HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) programs, in the form presented to this meeting, is hereby approved and

**FURTHER RESOLVED**, that the Executive Director and his designees are authorized and empowered to publish the Draft 2011 RAF Methodology for the HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) programs for public comment and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

#### Background

§2306.111(d) of the Texas Government Code requires that the Department use a Regional Allocation Formula (RAF) to allocate its HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) funding. This RAF objectively measures the affordable housing need and available resources in 13 State Service Regions used for planning purposes. The RAF also allocates funding to rural and urban areas within each region. As a dynamic measure of need, the RAF is revised annually to reflect updated data; respond to public comment; and better assess regional housing needs and available resources.

The HOME, HTC and HTF RAFs use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. §2306.111(c) of the Texas Government Code requires that 95 percent of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the HOME RAF only uses need and available resource data for non-PJs.

The Draft 2011 RAF methodology will be made available for public comment from September 17<sup>th</sup> through October 18<sup>th</sup>, 2010. The final methodology will be published on the Department website. It should be noted that the Board is approving the formula methodology, not specific allocation amounts. The 2010 HISTA data, or Households by Income, Size, Tenure and Age, from Ribbon Demographics is utilized in the RAF. HISTA data is based upon special tabulations of 2000 US Census data with demographic projections provided by Claritas. This data is expected to arrive in late September and the RAF will be updated accordingly at that time.

Staff recommends updating the formula with recent award data following any Board action impacting 2010 awards during the November 10<sup>th</sup> Board meeting. Staff recommends updating the formula with available data until November 19<sup>th</sup>, permitting the Department to submit the RAF with the HTC Application Submission Procedures Manual submitted to the Governor for signature with the Qualified Action Plan by December 1<sup>st</sup>.

Staff recommends that the Board approve the 2011 Regional Allocation Formula Methodology (Draft for Public Comment) as discussed herein.

**ATTACHMENT A**  
**2011 REGIONAL ALLOCATION FORMULA METHODOLOGY**

---

**BACKGROUND**

Sections 2306.111(d) and 2306.1115 of the Texas Government Code require that TDHCA use a Regional Allocation Formula (RAF) to allocate its HOME, Housing Trust Fund (HTF), and Housing Tax Credit (HTC) funding. This RAF objectively measures the affordable housing need and available resources in 13 State Service Regions used for planning purposes. These regions are shown in “Figure 1. State Service Regions”. The RAF also allocates funding to rural and urban areas within each region.

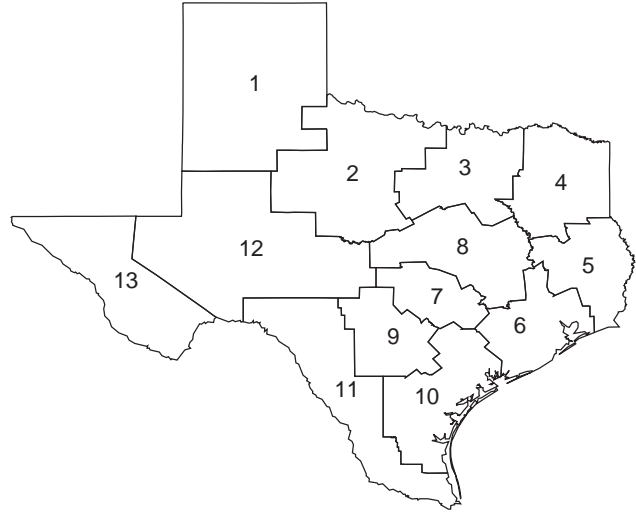


Figure 1. State Service Regions

As a dynamic measure of need, the RAF is revised annually to reflect updated demographic and resource data; respond to public comment; and better assess regional housing needs and available resources. The RAF is submitted annually for public comment.

The HOME, HTF and HTC RAFs use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. §2306.111(c) of the Texas Government Code requires that 95 percent of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the HOME RAF only uses need and available resource data for non-PJs.

**METHODOLOGY**

*Consideration of Affordable Housing Need*

The first part of the RAF determines the funding allocation based solely on objective measures of each region’s share of the State’s affordable housing need. The RAF uses the following 2000 US Census data to calculate this regional need distribution.

- Poverty: Number of persons in the region who live in poverty.
- Cost Burden: Number of households with a monthly gross rent or mortgage payment to monthly household income ratio that exceeds 30 percent.
- Overcrowded Units: Number of occupied units with more than one person per room.
- Units with Incomplete Kitchen or Plumbing: Number of occupied units that do not have all of the following: sink with piped water; range or cook top and oven; refrigerator, hot and cold piped water, flush toilet, and bathtub or shower.

Non-poverty data is for households at or below 80% of the Area Median Family Income (AMFI).

- Because the HTC program supports rental development activities, renter household data is used for the HTC RAF.

- Because the HOME and HTF programs support renter and owner activities, both renter and owner data is used in the HOME and HTF RAFs.

The following steps are used to measure regional need.

1. Need data is adjusted to current year levels by applying a growth factor based on the growth experienced since 2000.<sup>1</sup>
2. Each need measure is weighted to reflect its perceived relevance in assessing affordable housing need. Half the measure weight is associated with poverty because of the significant number of persons in poverty and the use of this factor in the HUD Community Planning and Development Program Formula Allocations. The remaining measure weight is proportionately allocated based on the relative size of the other three measure populations. The resulting need measure weights are: poverty = 50 percent, cost burden = 36 percent, overcrowding = 12 percent, and substandard housing = 2 percent.
3. The following steps calculate the funding distribution based on the need measures.
  - a. The total RAF funding amount is multiplied by each need measure weight to determine the amount of funding distributed by that measure.
  - b. Each measure's amount of funding is regionally distributed based on the distribution of persons or households in need.
4. The resulting regional measure distributions are then combined to calculate each region's need-based funding amount.
5. Each region's need based funding amount is divided by the total RAF funding amount. This quotient is the region's need percentage.

#### *Consideration of Available Housing Resources*

In addition to TDHCA, there are many other sources of funding that address affordable housing needs. To mitigate any inherent inequities in the way these resources are regionally allocated, the RAF compares each region's level of need to its level of resources.

Because the resources used in the RAF reflect the three programs' eligible households and activities, the following data is used.

- The HTC RAF uses rental funding sources.
- The HTF RAF uses sources of rental and owner funding.
- The HOME RAF uses sources of rental and owner funding in non-PJs.

The following resources are used in the HOME, HTF and HTC RAFs.

- Housing Tax Credits (4% and 9%)<sup>2</sup>
- Housing Trust Fund Rental Development Funding
- HUD HOME Funds (TDHCA and Participating Jurisdiction)
- HUD Housing for Persons with AIDS Funding
- HUD Public Housing Authority (PHA) Capital Funding

---

<sup>1</sup> The 2010 HISTA data, or Households by Income, Size, Tenure and Age, from Ribbon Demographics is utilized in the RAF. HISTA data is based upon special tabulations of 2000 US Census data with demographic projections provided by Claritas.

<sup>2</sup> Estimated capital raised through the syndication of the HTCs. This figure is \$0.70 based upon a survey of HTC applications.

- HUD §8 Tenant-Based Rental Assistance (TDHCA & PHA)
- Multifamily Texas Housing Trust Fund
- Multifamily Tax-Exempt Bond Financing<sup>3</sup>
- United States Department of Agriculture (USDA) Multifamily Development Funding
- USDA Rental Assistance

The HOME and HTF RAFs also include the following sources of owner funding.

- USDA 502 and 504 Loans and Grants
- Single Family Bond Financing (TDHCA and Housing Finance Corporations)

These steps calculate the regional distribution of available housing resources.

1. The available resources are summed by region and for the state. The resulting sums are the regional and state resource totals.
2. The regional resource total is divided by the state resource total. This quotient is the region's resource percentage.

#### *Comparison of Regional Need and Available Resource Distributions*

In theory, if the measurement of regional need is accurate, then the region's need percentage should reflect its resource percentage. A region with a negative resource and need difference is considered to be "under allocated." This region should have received a larger portion of the available resources to address their need. Similarly, a region with a positive difference is considered "over allocated." Conversely, it should have received a smaller portion of the available resources.

To address differences between the regional need and resource distributions, the RAF uses a resource funding adjustment to shift a portion of the need based funding distribution from over allocated to under allocated regions.

A resource funding adjustment limit is used to ensure that a particular region or geographical area is not overly penalized or benefited by the resource funding adjustments. A region's need based funding amount cannot be reduced or increased by more than the percentage of the state's available resources that are not already regionally distributed. This percentage is calculated by finding the average difference between each funding source's regional distribution and the regional need percentages. Sources whose average of the regional differences exceeds five percent or that are not distributed to all regions are included in the resource funding adjustment limit.

The following steps calculate the resource funding adjustments.

1. The regional resource percentage and regional need percentage differences are calculated.
2. The resulting over allocated (positive) resource differences are summed to calculate the state resource difference.
3. The state resource difference is multiplied by the total RAF funding. This product is the state over allocated resource amount.
4. Each over allocated resource difference is divided by the state resource difference. This quotient is the over allocation percentage.

---

<sup>3</sup> The value of the bonds is 62 percent of the total bond amount. This is an estimate of the capital required to fill an affordability gap that remains after the capital raised through the syndication of the 4% HTCs is deducted from the total development cost. The Final RAF will utilize the most current award data available.

5. Each over allocation percentage is multiplied by the state over allocated resource amount to determine the base resource funding adjustment.
6. The region's need based funding amount is multiplied by the resource funding adjustment limit. This product is the maximum resource funding adjustment.
7. The lesser of the base resource funding adjustment and the maximum resource funding adjustment is the over allocated region's resource funding adjustment.
8. The over allocated regions' resource funding adjustments are summed. This total is the state under allocated resource amount.
9. Each under allocated (negative) resource difference is divided by the state resource difference to determine the under allocation percentage.
10. Each under allocation percentage is multiplied by the state under allocated resource amount. This product is the under allocated region's resource funding adjustment.

*Consideration of Rural and Urban Need<sup>4</sup>*

There are a number of factors that affect the distribution of resources to rural and urban areas. These include rural area feasible development sizes, allowable rent and income levels, and proximity to developers, contractors, and materials. Access to resources is also an issue because some funding, such as multifamily tax-exempt bond financing, does not work very well in rural areas. As required by §2306.111(d) of the Texas Government Code, to ensure an equitable distribution of funding to both rural and urban areas, the RAF analyzes the distribution of rural and urban need and resources at the regional level.

The RAF uses the following definitions to categorize rural and urban areas.

1. Area - The geographic area contained within the boundaries of:
  - a. an incorporated place, or
  - b. a Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.
2. Rural – An Area that is:
  - a. outside the boundaries of a metropolitan statistical area (MSA); or
  - b. within the boundaries of a MSA, if the Area has a population of 25,000<sup>5</sup> or less and does not share a boundary with an Urban Area.<sup>6</sup>
  - c. in an Area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an Area that is located in a municipality with a population of more than 50,000.<sup>7</sup>

---

<sup>4</sup> §2306.111(d) requires the RAF to consider "rural and urban areas" in its distribution of program funding.

<sup>5</sup> The definition of "population" in state law (Sec. 311.005(3), Government Code) is "the population shown by the most recent federal decennial census." Because of this requirement, the decennial census place population must be used to make the area type determination.

<sup>6</sup> Applicants may petition TDHCA to update the "Rural" designation of an incorporated area within a metropolitan statistical area by providing a letter from a local official. Such letter must clearly indicate that the area's incorporated boundary touches the boundary of another incorporated area with a population of over 25,000. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

<sup>7</sup> TDHCA utilizes the most recent list of designated places produced by the Texas USDA Rural Development State Office. Applicants may petition TDHCA to update the "Rural" designation of an area by providing a letter from a USDA Rural Development official clearly stating that the area is eligible for funding by USDA Rural Development. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.



3. Urban – An Area that:
  - a. is located within the boundaries of a metropolitan statistical area (MSA); or
  - b. does not meet the Rural Area definition.

#### *Measuring Rural and Urban Affordable Housing Need*

The following steps calculate the level of need in rural and urban areas.

1. Need data are adjusted to current year levels by applying a growth factor based on the growth experienced since 2000.
2. The same need measure weights used to determine the regional need distribution are multiplied by the region's funding amount. This product is the measure funding amount.
3. Area level measure data is identified as being rural or urban based on the RAF area definitions.
4. Using the coded area data, each measure's affected number of rural and urban persons or households in the region is calculated.
5. The corresponding measure rural and urban percentages are calculated.
6. For each measure, the regional funding amount is multiplied by the measure rural and urban percentages to calculate the rural and urban measure funding amounts.
7. The rural and urban measure funding amounts are summed for the measures. These totals are the region's rural and urban need based funding amounts.
8. The region's rural and urban need based funding amounts are divided by the region's total funding amount. These quotients provide the region's rural and urban need percentages.

#### *Measuring Rural and Urban Available Resources*

The following steps calculate the Rural and Urban distribution of available housing resources.

1. The geographically coded area data is summed to calculate regional rural and urban resource totals. Funding allocated at the county level is proportionately distributed based on the percentage split between rural and urban areas within the county. The resulting totals are the rural and urban resource totals.
2. The corresponding regional rural and urban resource percentages are calculated.

#### *Rural and Urban Available Resources Funding Adjustment*

The following steps calculate the rural and urban area resource funding adjustments.

1. The differences between the rural and urban resource percentages and rural and urban need percentages are calculated. The resulting differences shows which of the two areas (rural or urban) were over or under allocated.
2. Each over allocated (positive) area resource difference is multiplied by the region's funding amount. For example, if the urban area is over allocated, then the difference is multiplied by the Regional Funding Amount. The resulting product is the area's base resource funding adjustment.
3. The over allocated area's need based funding amount is multiplied by the resource funding adjustment limit. This product is the area's maximum resource funding adjustment.
4. The lesser of the area's base resource funding adjustment or the maximum resource funding adjustment is the area's resource funding adjustment.

#### *Rural and Urban Regional Funding Amounts*

The area's over allocated resource funding adjustment is subtracted from the over allocated area's need based funding amount and is added to the under allocated area's need based funding amount.

For the HTC RAF, the regional amount of rural funding is adjusted to a minimum of \$500,000, if needed, and the overall state rural percentage of the total tax credit ceiling amount is adjusted to a minimum of 20 percent, if needed.

#### QUESTIONS AND COMMENTS

Email: [elizabeth.yevich@tdhca.state.tx.us](mailto:elizabeth.yevich@tdhca.state.tx.us)

Phone: (512) 463-7961

Mail: TDHCA, P.O. Box 13941, Austin, TX 78711-3941

## HOUSING RESOURCE CENTER

### BOARD ACTION REQUEST

September 9, 2010

#### Recommended Action

Approve the publication for public comment on the draft of the 2011 Affordable Housing Need Score (AHNS) Methodology.

**RESOLVED**, that the Draft 2011 AHNS Methodology for the HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) programs, in the form presented to this meeting, is hereby approved and

**FURTHER RESOLVED**, that the Executive Director and his designees are authorized and empowered to publish the Draft 2011 AHNS Methodology for the HOME, Housing Tax Credit (HTC) and Housing Trust Fund (HTF) programs for public comment and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

#### Background

The AHNS scoring criterion is used to evaluate HOME, HTC, and HTF applications. The formula is submitted annually for public comment. The final methodology and resulting scores are published on the TDHCA website.

While not specifically legislated by the state, the AHNS helps address other need based funding allocation requirements by responding to:

- an IRS Section 42 requirement that the selection criteria used to award the HTC funding must include “housing needs characteristics.”
- State Auditor’s Office (SAO) and Sunset findings that called for the use of objective, need based criteria to award TDHCA’s funding.

Through the AHNS, applicants are encouraged to request funding to serve communities that have a high level of need. The HOME, HTC, and HTF programs use slightly modified versions of the AHNS because the programs have different eligible activities, households, and geographical areas. Under §2306.111(c) of the Texas Government Code, 95 percent of HOME funding is set aside for non-participating jurisdictions (PJ). Therefore, the HOME AHNS only uses need data for non-PJs.

The Draft 2011 AHNS Methodology will be made available for public comment from September 17<sup>th</sup> through October 18<sup>th</sup>, 2010. Staff recommends updating the scores with recent award data until November 19<sup>th</sup> to allow for any changes in 2010 awards during the November 10<sup>th</sup> Board meeting. The 2010 HISTA data, or Households by Income, Size, Tenure and Age, from Ribbon Demographics is utilized in the AHNS. HISTA data is based upon special tabulations of 2000 US Census data with demographic projections provided by Claritas. This data is expected to arrive in late September and the AHNS will be updated accordingly at that time.

Staff recommends that the Board approve the 2011 Affordable Housing Need Score (AHNS) Methodology (Draft for Public Comment) as discussed herein.

## Attachment A

### 2011 Affordable Housing Needs Score Methodology

---

#### Background

The AHNS scoring criterion is used to evaluate HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) applications. The formula is submitted annually for public comment. The final version is published in the SLIHP.

While not specifically legislated by the state, the AHNS helps address other need based funding allocation requirements by responding to:

- an IRS Section 42 requirement that the selection criteria used to award the HTC funding must include “housing needs characteristics.”
- State Auditor’s Office (SAO) and Sunset findings that called for the use of objective, need based criteria to award TDHCA’s funding.

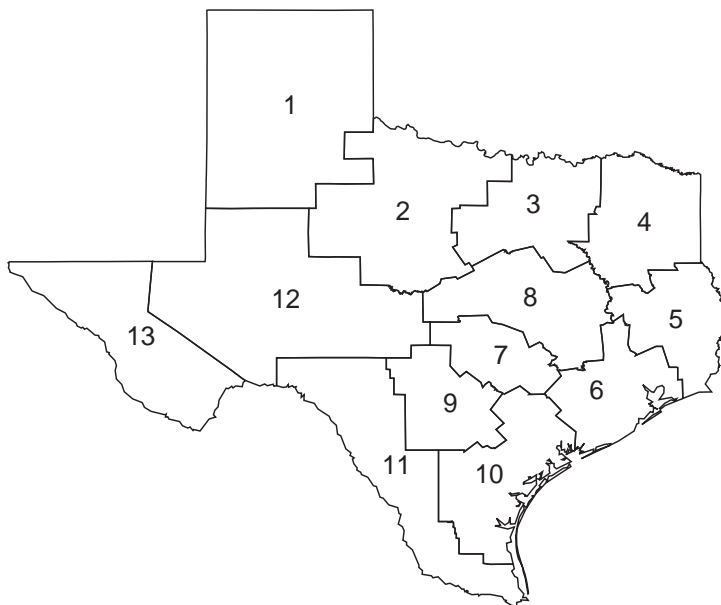


Figure 1. State Service Regions

The AHNS is an extension of the TDHCA Regional Allocation Formula (RAF) in that it provides a comparative assessment of each area’s level of need relative to the other areas within its State Service Region. Through the AHNS, applicants are encouraged to request funding to serve communities that have a high level of need.

The HOME, HTF, and HTC programs use slightly modified versions of the AHNS because the programs have different eligible activities, households, and geographical areas. Under §2306.111(c) of the Texas Government Code, at least 95 percent of HOME funding is set aside for non-participating jurisdictions. Therefore, the HOME AHNS only uses need data for non-participating jurisdictions.

#### Methodology

The following steps measure each area’s level of affordable housing need.

- 1) The Census number of households at or below 80% AMFI with cost burden establishes baseline for each area’s number of households in need of housing assistance. The type of household considered for this baseline varies by activity.
  - a) Renter data is used for the rental development (RD), tenant based rental assistance (TBRA), and down payment assistance (DPA) scores.
  - b) Owner data is used for the owner occupied rehabilitation (OCC) score.
- 2) For each activity, an adjusted number of households with cost burden is calculated based on the difference between the area’s population in the 2000 Census and the most accurate and recent population estimate data available.
- 3) The number of households assisted using TDHCA funding since the Census was taken (April 1, 2000) is subtracted from the adjusted number of households with cost burden. The resulting number shows the area’s estimated remaining need.
  - a) For HTC scores, RD activity is used;

- b) For HOME and HTF TBRA and RD scores, TBRA<sup>1</sup> and RD activity is used;
  - c) For HOME and HTF DPA scores, First Time Homebuyer and HOME DPA activity is used; and
  - d) For HOME and HTF OCC scores, HOME OCC activity is used.
- 4) The estimated remaining need measure is used to quantify the area's level of need for each scoring activity as measured by the ratio of the area's households in need to the area's total households. This ratio shows the concentration of need within an area.
  - 5) A sliding scale that compares each area's level of need to the region's other areas is used to assign points to each area based on its relative concentration of need (maximum of 6 points).

### **Rural and Urban Need**

Section 2306.111(d) of the Government Code requires the RAF to consider rural and urban areas in its distribution of funds. To assist with this distribution, each area is classified using the RAF's geographic area definitions.

The RAF and AHNS use the following definitions to categorize rural and urban areas.

1. Area - The geographic area contained within the boundaries of:
  - a. an incorporated place, or
  - b. a Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.
2. Rural – An Area that is:
  - a. outside the boundaries of a metropolitan statistical area (MSA); or
  - b. within the boundaries of a MSA, if the Area has a population of 25,000 or less<sup>2</sup> and does not share a boundary with an Urban Area.<sup>3</sup>
  - c. in an Area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an Area that is located in a municipality with a population of more than 50,000.<sup>4</sup>
3. Urban – An Area that:
  - a. is located within the boundaries of a metropolitan statistical area (MSA); or
  - b. does not meet the Rural Area definition.

For the HOME program, a county score is used for activities that will serve more than one Area within a county. If multiple counties or Areas in multiple counties will be served by an application, then the county scores will be averaged. Participating Jurisdictions (PJ) receive a score of zero.

---

<sup>1</sup> Because of the limited duration of TBRA, a conversion factor was used to equate the value of a voucher to an affordable housing unit. This factor equaled the voucher duration divided by the number of years since the Census. For 2010, this is 2 years/10 years or an approximate reduction in the number of households in need by 25 percent for each TBRA voucher.

<sup>2</sup> The definition of "population" in state law (Sec. 311.005(3), Government Code) is "the population shown by the most recent federal decennial census." Because of this requirement, the decennial census place population must be used to make the area type determination.

<sup>3</sup> Applicants may petition TDHCA to update the "Rural" designation of an incorporated area within a metropolitan statistical area by providing a letter from a local official. Such letter must clearly indicate that the area's incorporated boundary touches the boundary of another incorporated area with a population of over 25,000. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

<sup>4</sup> TDHCA utilizes the most recent list of designated places produced by the Texas USDA Rural Development State Office. Applicants may petition TDHCA to update the "Rural" designation of an area by providing a letter from a USDA Rural Development official clearly stating that the area is eligible for funding by USDA Rural Development. To treat all applicants equitably, such letter must be provided to TDHCA prior to the commencement of the pre-application submission period for HTC applications, or application submission period for HOME applications.

**Housing Resource Center**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve the publication for public comment on the draft of the 2011 State of Texas Consolidated Plan: One-Year Action Plan

RESOLVED, that the Draft 2011 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment), in the form presented to this meeting, is hereby approved and

FURTHER RESOLVED, that the Executive Director and his designees are authorized and empowered to publish the Draft 2011 State of Texas Consolidated Plan: One-Year Action Plan for public comment and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

**Background**

The Texas Department of Housing and Community Affairs (TDHCA), Texas Department of Rural Community Affairs (TDRA), and Department of State Health Services (DSHS) prepared the 2011 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDRA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Shelter Grants (ESG) Program and the HOME Investment Partnerships (HOME) Program by TDHCA.

The Plan reports on the intended use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development (HUD) for Program Year 2011. The Program Year begins on February 1, 2011, and ends on January 31, 2012. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2010-2014 State of Texas Consolidated Plan.

The Plan will be available for public comment from September 17 through October 18, 2010. Comment on the Plan may be provided in writing or directly at one of the consolidated public hearings to be held across the state. The final version of the Plan will be presented to the Board in November and is due to HUD by December 15, 2010.

**Summary of significant changes from the 2010 Consolidated Plan: One-Year Action Plan for the HOME and ESG programs.** Note that the Plan includes revisions to the CDBG and HOPWA portions of the document; however CDBG and HOPWA programs are administered by TDRA and DSHS.

HOME Program:

- Simplified Action Plan by removing restated federal definitions and requirements.
- Incorporated updates regarding rule changes, especially regarding the administration of the HOME program through pilot programs for a reservation system and direct administration.
- Planned new efforts to meet the Section 3 responsibilities and reporting requirements for HUD-funded construction.
- Completed a new Homeless and Special Needs Goals chart.
- Department is in process of conducting the Four-Factor Analysis required under Title VI of the Civil Rights Act of 1964. The Four-Factor Analysis is the first step to ensure access to TDHCA programs for residents of Texas designated as possessing limited English proficiency.

ESG Program:

- The name of the program changed from Emergency Shelter Grant Program to Emergency Solutions Grant Program effective Project Year 2011. The use of funds for the program will increase an emphasis on re-housing persons that are homeless and preventing homelessness while still providing a limited amount of funding for the support of homeless shelter operations.
- Planned new efforts to meet Section 3 responsibilities and reporting requirements for HUD-funded construction.
- Completed a new Homeless and Special Needs Goals chart.

Other TDHCA actions:

- More detail provided on TDHCA's role in a number of advisory workgroups and statutory commissions to enhance coordination among service providers and stakeholders.
- "Other Actions" taken by the state to meet the requirements of Consolidated Submissions for Community Planning 91.320(j) were moved from the programs' Action Plans to the end of the document to increase consistency and clarity for the reader. Topics under "Other Actions" include Meeting Underserved Needs; Fostering and Maintaining Affordable Housing; Lead-Based Paint Hazard Mitigation; Reducing Poverty-Level Households; Developing Institutional Structure; Coordination of Housing and Services; and Addressing Public Housing Authorities Needs.
- Under Coordination of Housing and Services, a new Housing and Transportation coordination effort has been undertaken by TDHCA and Texas Department of Transportation.

Staff recommends approval of the 2011 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment) as discussed herein.



# **2011 State of Texas Consolidated Plan Draft One-Year Action Plan**



Draft released September 17, 2010

Prepared by:

## **Texas Department of Housing and Community Affairs**

Housing Resource Center

PO Box 13941

Austin, TX 78711-3941

Phone: (512) 475-3976

Fax: (512) 475-3746

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

## **Office of Rural Community Affairs**

Community Development Division

PO Box 12877

Austin, TX 78711-2877

Phone: (512) 936-6701

Fax: (512) 936-6776

[www.orca.state.tx.us](http://www.orca.state.tx.us)

## **Department of State Health Services**

HIV/STD Program

1100 W. 49th St.

Austin, TX 78756

Phone: (512) 533-3000

Fax: (512) 371-4672

[www.dshs.state.tx.us](http://www.dshs.state.tx.us)



Executive summary.....	4
General Information.....	9
Citizen Participation .....	9
Managing the process.....	10
Available Resources .....	13
Geographic Areas of Jurisdiction and Allocation .....	15
Homelessness and Other Special Needs Categories .....	22
Barriers to Affordable Housing .....	25
Monitoring .....	27
Housing Action Plan: HOME Investment Partnerships Program.....	33
Homeless Action Plan: Emergency Solutions Grants Program.....	44
Community Development Action Plan: Texas Community Development Block Grant Program .....	52
Non-Homeless Special Needs Action Plan: Housing Opportunities for Persons with AIDS.....	114
Other Actions .....	119
Meeting Underserved Needs .....	119
Fostering and Maintaining Affordable Housing .....	122
Lead-Based Paint Hazard Mitigation .....	124
Reducing Poverty-Level Households.....	126
Developing Institutional Structure .....	128
Coordination of Housing and Services.....	130
Addressing Public Housing Authorities Needs .....	133

## **EXECUTIVE SUMMARY**

24 CFR §91.320(b)

The 2011 One-Year Action Plan (Plan) illustrates the combined actions of the Texas Department of Housing and Community Affairs (TDHCA), Texas Department of Rural Affairs (TDRA), and Department of State Health Services (DSHS), referred to collectively as the State. The One-Year Action Plan reports on the intended use of funds received by the State of Texas from the US Department of Housing and Urban Development (HUD) for Program Year (PY) 2011. This Plan is for the HOME Investment Partnerships (HOME) Program, the Emergency Solutions Grant Program (ESGP), the Community Development Block Grant (CDBG) Program, and the Housing Opportunities for Persons with AIDs (HOPWA) Program. The 2011 PY begins on February 1, 2011 and ends on January 31, 2012. The performance report on PY 2010 funds will be available in May 2011.

One-Year Action Plan consists of the following sections:

- **Summary.** Provides a detailed synopsis of the One-Year Action Plan.
- **General Information.** A description of the State's plan to undertake other activities that fulfill requirements of 24 CFR §91.320(b), §91.320(c), §91.320(f), §91.320(h), and §91.320(i).
- **Action Plans.** Program-specific plans for HOME, ESGP, CDBG, and HOPWA illustrating funding guidelines and fund allocations as required under 24 CFR §91.320(d), §91.320(e), §91.320(g), and §91.320(k).
- **Other Actions.** A description of the State's plan to undertake other activities that fulfill requirements of §91.320(j).

## **OBJECTIVES AND OUTCOMES**

The 2011 One-Year Action Plan:

1. Reports on the intended use of funds received by the State of Texas from the US Department of Housing and Urban Development (HUD) for Program Year (PY) 2011
2. Explains the State's method for distributing CDBG, ESG, HOME, and HOPWA program funds
3. Provides opportunity for public input on the development of the annual plan

The State's progress in achieving the goals put forth in the One-Year Action Plan will be measured according to HUD guidelines (24 CFR 91.520) and outlined in the Annual Performance Report released yearly in May.

In accordance with the guidelines from HUD, the State complies with the new CPD Outcome Performance Measurement System. Program activities are categorized into the objectives and outcomes listed in the chart on the next page.

OBJECTIVES	OUTCOME 1 Accessibility	OUTCOME 2 Affordability	OUTCOME 3 Sustainability
<b>OBJECTIVE #1</b> Suitable Living Environment	Enhance Suitable Living Environment Through Improved/New Accessibility ( <b>SL-1</b> )	Enhance Suitable Living Environment Through Improved/New Affordability ( <b>SL-2</b> )	Enhance Suitable Living Environment Through Improved/New Sustainability ( <b>SL-3</b> )
<b>OBJECTIVE #2</b> Decent Housing	Create Decent Housing with Improved/New Availability ( <b>DH-1</b> )	Create Decent Housing with Improved/New Affordability ( <b>DH-2</b> )	Create Decent Housing with Improved/New Sustainability ( <b>DH-3</b> )
<b>OBJECTIVE #3</b> Economic Opportunity	Provide Economic Opportunity Through Improved/New Accessibility ( <b>EO-1</b> )	Provide Economic Opportunity Through Improved/New Affordability ( <b>EO-2</b> )	Provide Economic Opportunity Through Improved/New Sustainability ( <b>EO-3</b> )

The objectives and outcomes as they apply to each of the four programs are listed below. The estimated performance figures are based on planned performance during the Program Year (February 1st through January 31st) of contracts committed and projected households to be served. In contrast, the performance measures reported to the Texas Legislative Budget Board for the State Fiscal Year (September 1st through August 31st) are based on anticipated units and households at time of award.

**HOME Program Performance Measures, PY 2011**

Outcomes and Objectives	Performance Indicators	Expected Number
DH-2	Rental units assisted through new construction and rehabilitation	262
DH-2	Tenant-based rental assistance units	170
DH-2	Existing homeowners assisted with reconstruction or rehabilitation	200
DH-2	Homebuyers assisted with acquisition costs and/or rehabilitation or new construction	210

**ESGP Performance Measures, PY 2011**

Outcomes and Objectives	Performance Indicators	Expected Number
SL-1	Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.	26,000
DH-2	The provision of non-residential services including homelessness prevention assistance.	35,000

**CDBG Performance Measures, PY 2011**

Objectives and Outcomes	Performance Indicators	Expected Number
SL-1	Neighborhood Facilities	4
SL-1	Water/Sewer Improvements	141
SL-2	Water/Sewer Improvements	9
SL-3	Water/Sewer Improvements	74
SL-1	Street Improvements	96
SL-2	Street Improvements	3

SL-3	Street Improvements	2
SL-1	Rehabilitation; Single Unit Residential	52
DH-2	Rehabilitation; Single Unit Residential	9
DH-3	Rehabilitation; Single Unit Residential	2
DH-2	Homeownership Assistance	1
SL-1	Parks, Playgrounds, and Other Recreational Facilities	2
SL-1	Public Service	3
SL-1	Other Public Utilities	3
EO-3	Other Public Utilities	1
SL-1	Clearance Demolition Activities	9
SL-3	Clearance Demolition Activities	1
SL-1	Fire Stations/Equipment	4
EO-1	ED Direct Financial Assistance for For-Profits	2
EO-2	ED Direct Financial Assistance for For-Profits	32

**HOPWA Performance Measures, PY 2011**

Outcomes and Objectives	Performance Indicators	Expected Number
DH-2	TBRA housing assistance	550
DH-2	STRMU housing assistance	650
DH-2	Supportive Services (restricted to case mgt., smoke detectors, and phone service)	1,200
DH-1	Permanent Housing Placement (security deposits, application fees, credit checks)	20

**EVALUATION OF PAST PERFORMANCE**

The HOME Program committed \$73,203,784 with 1,439 total beneficiaries reported in PY 2009 (February 1, 2009, through January 31, 2010). Distribution of the funds by activity is described in the table below.

**HOME Funds Committed, PY 2009**

Activity	Amount
Homebuyer Assistance (all activities)	\$2,313,755
Homeowner Rehabilitation	\$25,258,560
Tenant Based Rental Assistance	\$3,251,740
CHDO Rental Development	\$9,100,000
CHDO Operating Expenses	\$100,000
Rental Housing Development	\$33,179,729
<b>Total</b>	<b>\$73,203,784</b>

ESGP funds received for PY 2009 were awarded in May 2009. The State ESGP contracts using PY 2009 funds began on September 1, 2009, and will end August 31, 2010, corresponding with the Texas State Fiscal Year (FY). For PY 2009, ESGP committed \$4,986,035 through 74 grants, including shared administrative funds.

**ESGP Fund Expenditures by Activity, PY 2009  
(FY'08 2/1/09-8/31/09 and FY'09 9/1/09-1/31/10)**

Activity	Funding Amount	Percentage
Rehabilitation	\$22,840	.37%
Maintenance, Operations	\$2,306,478	37.23%
Essential Services	\$1,154,150	18.63%
Homeless Prevention	\$2,362,619	38.14%
Operations Administration	\$326,415	5.27%
Administration shared w/local govts	\$22,617	.37%
<b>Total Funds Committed</b>	<b>\$6,195,119</b>	

*\*Includes ESG expenditures from two contract periods, FY 2008 and FY 2009*

During Program Year 2009, the Texas CDBG Program committed a total of \$73,892,994 through 299 awarded contracts. For contracts that were awarded in PY 2009, 514,663 persons received service. Distribution of the funds by activity is described in the table below.

**CDBG Funds Committed, PY 2009**

Fund	Program Description	2009 Total Obligation
Community Development	Provides grants on a competitive basis to address public facility and housing needs such as sewer, water system, road, and drainage improvements.	\$49,470,236
Texas Capital Fund	Provides financing for projects that create and retain jobs primarily for low- and moderate-income persons.	\$8,570,400
Colonia Construction Fund	Colonia Construction Fund provides grants for colonia projects; primarily water, sewer and housing.	\$5,222,562
Colonia EDAP Fund	Provides grants for colonias for the cost of service lines, service connections, and plumbing improvements associated with being connected to a Texas Water Development Board's (TWDB) Economically Distressed Areas Program (EDAP)-funded water and sewer system improvement project.	\$1,473,600
Colonia Planning Fund	Colonia Area Planning Fund – provides grants for preliminary surveys and site engineering, provides assistance towards the cost of architectural services, mortgage commitments, legal services, and obtaining construction loans. Colonia Comprehensive Planning Fund - provides assistance that is used to conduct a	\$350,000

Fund	Program Description	2009 Total Obligation
	complete inventory of the colonias that includes demographic, housing, public facilities, public services, and land use statistics.	
Colonia Self-Help Centers	Provides grant funds for the operation of seven Self-Help Centers in colonias.	\$0
Planning / Capacity Building	Provides grants on a competitive basis to communities for planning activities that address public facility and housing needs.	\$916,681
Disaster Relief/ Urgent Need	Provides grants to communities on an as-needed basis for recovery from disasters such as floods or tornadoes and Urgent water and sewer needs of recent origin that are unanticipated and pose a serious public safety or health hazard.	\$5,493,320
STEP Fund	Provides grants to cities and counties for solving water and sewer problems with a self-help approach that requires local participation through donated labor and materials.	\$2,073,195
Renewable Energy	Provides grants to cities and counties for demonstration projects that employ renewable energy for at least 20% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy). The priority will be for projects that are connected with providing public facilities to meet basic human needs such as water or waste water.	\$323,000
<b>Total</b>		<b>\$73,892,994</b>

The HOPWA Program expended \$3,137,633 with 1,188 beneficiaries of housing assistance reported in PY 2009. Funds were used toward tenant-based rental assistance and emergency assistance to prevent homelessness of low-income persons with HIV/AIDS, support services and administration. Distribution of the funds by activity is described in the table below.

**HOPWA Program Expenditures, PY 2009**

Activity	Amount
Expenditures for Housing Information Services	\$0
Expenditures for Resource Identification	\$0
Expenditures for Housing Assistance (equals the sum of all sites and scattered-site Housing Assistance)	\$2,534,373
Expenditures for Supportive Services	\$408,902
Grantee Administrative Costs expended	\$30,800
Project Sponsor(s) Administrative Costs expended	\$163,540
<b>Total of HOPWA funds expended during period</b>	<b>\$3,137,633</b>



## **GENERAL INFORMATION**

The following General Information section meets the requirements of 24 CFR §91.320(b), §91.320(c), §91.320(f), §91.320(h), and §91.320(i). General Information includes Citizen Participation; Managing the Process; Available Resources; Geographic Areas of Jurisdiction and Allocation; Homeless Needs and Other Special Needs Categories; Barriers to Affordable Housing; and Monitoring.

## **CITIZEN PARTICIPATION**

§91.320(b)

### **CITIZEN PARTICIPATION PROCESS**

The Action Plan will be made available for a 32-day public comment period from September 17, 2010 to October 18, 2010. In addition, public hearings will be held at 6 locations across the state, including Austin, Brownsville, Dallas, El Paso, Houston, and Midland. Public hearing location dates and times can be found online at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

Written comment will be accepted at the public hearings and by mail, fax, or email. Public comment on the One Year Action Plan may be provided in writing via mail at Elizabeth Yevich, TDHCA, P.O. Box 13941, Austin, TX 78711-3941, or fax at (512) 469-9606 or email at [elizabeth.yevich@tdhca.state.tx.us](mailto:elizabeth.yevich@tdhca.state.tx.us).

### **EFFORTS MADE TO BROADEN PUBLIC PARTICIPATION**

The notification process for the public hearings will included the following: a notice in the Texas Register; a TDHCA website posting; email to TDHCA email lists including approximately 3,000 cities, counties, developers, non-profit organizations, legislative contacts, advocacy groups, subcontractors, and other interested parties. Spanish speaking staff will be in attendance at the hearings in El Paso and Brownsville to assist individuals who require a language interpreter.

### **SUMMARY OF PUBLIC COMMENTS**

A summary of the comments and the staff's reasoned responses will be provided in the final document.

## MANAGING THE PROCESS

### LEAD AGENCY

The Texas Department Housing and Community Affairs is the lead agency for the Plan.

### AGENCY PARTICIPATION

Before preparing the Plan, the Texas Department of Housing and Community Affairs, the Texas Department of Rural Affairs, and the Texas Department of State Health Services meet with various organizations concerning the prioritization and allocation of the Departments' resources. Because this is a working document, all forms of public input are taken into account in its preparation.

Collaborative efforts between TDHCA and numerous organizations resulted in a participatory approach towards defining strategies to meet the diverse affordable housing needs of Texans. TDHCA acknowledges the assistance provided by several public and private organizations to assist the Department in working towards reaching its mission, goals, and objectives, which relate directly to the formation of the Consolidated Plan. Contributions were made in various forms, from direct contact at conferences and remotely to availability of research materials on the Internet, from public and private organizations.

The Texas Department of Rural Affairs has had a good working relationship with HUD, state program committees, state agencies, federal funding partners, local communities, Councils of Governments (COGs), public and private sector, and others involved in the CDBG program. Through public hearings, application workshops, technical assistance visits, monitoring visits, interagency work groups, and general communications, TDRA has worked to keep the public aware of program modifications and changes.

The Texas Department of Agriculture administers the Texas Capital Fund under a memorandum of understanding. The agency coordinates activities including the public hearings on the Action Plan, a project Implementation Manual that contains the Texas Capital Fund, and presentations to the TDRA Board.

TDRA also works with a variety of other programs through several interagency workgroups. Workgroups focusing on state and federal funding coordination state-wide and in the colonias include the Texas Water Development Board (TWDB), the Secretary of State's Office, the U.S. Department of Agriculture's Rural Development division, the North American Development Bank & Border Environment Cooperation Commission, the Comptroller's Office, the Attorney General's Office, the Texas Commission on Environmental Quality (TCEQ), the U.S. Army Corps of Engineers, and TDHCA. Further, the division and TCEQ is currently working on a process in which TCEQ field representatives help verify new service to Texas CDBG Program project beneficiaries when first-time water or sewer is funded.

The Texas Department of State Health Services contracts with eight administrative agencies across the state to provide administrative support in implementing the state's HOPWA formula program. One of the Administrative Agencies' responsibilities is to work with HIV Planning councils in the major metropolitan areas of the state and with other organizations and stakeholders outside the major metropolitan areas to develop comprehensive HIV Services plans and needs assessments. In both the major metropolitan and other areas of the state, HIV Services Plans and needs assessments are

developed through consultation with clients and other stakeholders through interviews, focus groups, and public hearings. Administrative Agencies must communicate with stakeholders through dissemination of written copies of services plans, posting of the plans on the Internet, town hall meetings, and advisory groups. Administrative Agencies are also required to evaluate the effectiveness of the services plans in meeting the plans' stated goals and identified needs and to periodically assess the need for reallocation of resources to assure the efficient and appropriate expenditure of funds.

**ENHANCE COORDINATION**

Understanding that no single entity will be able to address the enormous needs of the state of Texas, TDHCA, TDRA and DSHS support the formation of partnerships in the provision of housing, housing-related and community development endeavors. The Departments work with many housing and community development partners including consumer groups, community-based organizations, neighborhood associations, community development corporations, community housing development organizations, community action agencies, real estate developers, social service providers, local lenders, investor-owned electric utilities, local government, nonprofits, faith-based organizations, property managers, state and local elected officials and other state and federal agencies.

TDHCA has staff committed to several external state advisory workgroups and statutory commissions. Many of these commissions have members from the public and private sectors. These external groups include, but are not limited to:

<i>Workgroup/Commission</i>	<i>Lead agency</i>
Aging Texas Well Advisory Committee (ATWAC)	Department of Aging and Disability Services
Community Resource Coordination Groups (CRCG)	Health and Human Services Commission
Faith and Community Based Initiative	One Star Foundation
Governor's Commission for Women	Governor's Office
Mental Health Planning Advisory Commission (MHPAC)	Department of State Health Services
Money Follows the Person Demonstration Project (MFTP)	Department of Aging and Disability Services
Promoting Independence Advisory Committee (PIAC)	Department of Aging and Disability Services
Reentry Task Force	Department of Criminal Justice
Interagency Coordinating Commission for Building Healthy Family (ICC)	Department of Family and Protective Services
Transformation Workgroup (TWG)	Department of State Health Services

In addition to the external workgroups and commissions, TDHCA is the lead agency for four groups: the Disability Advisory Workgroup (DAW), Rural Housing Workgroup (RHW), Texas Interagency Council on the Homeless (TICH), and the Housing and Health Services Coordination Council (HHSCC).

TDHCA has actively maintained a Disability Advisory Workgroup which provides ongoing guidance to the Executive Director on how TDHCA's programs can most effectively serve persons with disabilities. TDHCA has found that directly involving program beneficiary representatives, community advocates and potential applicants for funding in the process of crafting its policies and rules is extremely helpful. This process is often done through a working group format. The working groups provide an opportunity for staff to interact with various program stakeholders in a more informal environment than that provided by the formal public comment process.

Similarly, the Rural Housing Workgroup provides a forum for feedback to the Texas Department of Housing and Community Affairs (TDHCA) management and staff as they develop policies and rules for the federal and state programs administered by TDHCA. TDHCA programs serve urban and rural areas of the state. However, providing services and housing in rural areas presents unique challenges and opportunities. In order to address those challenges and make sure that rural input and concerns are adequately considered across all aspects of TDHCA's program development, design and implementation, TDHCA established the Rural Housing Workgroup in 2010. The Rural Housing Workgroup includes representatives from a spectrum of rural housing interests. The group includes for- and non-profit rural housing providers, rural policy advocates, and affordable housing membership organizations.

The Texas Interagency Council for the Homeless (TICH) was created in 1989 to coordinate the State's homeless resources and services. TICH consists of representatives from all state agencies that serve the homeless. The council receives no funding and has no full-time staff, but receives clerical and advisory support from TDHCA. The council holds public hearings in various parts of the state to gather information useful to its members in administering programs.

The 81st Legislature created the Housing and Health Services Coordination Council (Council) through SB 1878. The Council's purpose is to increase the amount of service-enriched housing for seniors and people with disabilities; improve interagency understanding of housing and services and increase the number of staff in state housing and state health services agencies that are conversant in both housing and health care policies; and offer a continuum of home and community-based services that is affordable to the state and the target population. The Council includes 16 members including the Executive Director of TDHCA, eight members appointed by the Governor, and seven members appointed by State Agencies. TDHCA provides clerical and advisory support. The first report of the Council was submitted to the Governor and the Legislative Budget Board on September 1, 2010 and is available to the public on the TDHCA website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

## AVAILABLE RESOURCES

§91.320(c)

The Plan must describe the Federal resources expected to be available to address the priority needs and specific objectives identified in the strategic plan, in accordance with §91.315. Descriptions of the funding amounts for the specific HUD programs covered by this Plan are provided in each program's Action Plan section. The Plan must also describe resources from private and non-federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The Plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. A description of the match requirements of the HUD programs covered by this Plan are provided in each program's Action Plan section.

### HOME ADDRESSES AVAILABLE RESOURCES

For the HOME Program, Section 2306.111(d) of the Texas Government Code requires that TDHCA use a Regional Allocation Formula (RAF) to allocate its HOME funding. This RAF objectively measures the affordable housing need and available resources in 13 State Service Regions TDHCA uses for planning purposes. To mitigate any inherent inequities in the way these resources are regionally allocated, the RAF compares each region's level of need to its level of resources. Regional funding adjustments are made based on the results of this comparison. The following available resources were determined to have been available or distributed in FY 2010 in the areas eligible for TDHCA HOME funds.

Source	Funding Level*
Texas Housing Trust Fund	\$3,234,693
Housing Opportunities for Persons with HIV/AIDS	\$605,200
HUD PHA Capital Funds	\$36,680,590
HUD Housing Choice Vouchers (Sec. 8)	\$134,241,243
USDA Multifamily Development	\$11,578,985
USDA Rental Assistance	\$31,783,102
Housing Tax Credits	\$198,542,440
TXBRB Multifamily Tax Exempt Bond	\$10,230,000
Housing Tax Credits w/ MF Tax Exempt Bond	\$8,269,640
USDA Owner Occupied	\$28,870,179
TXBRB Single Family Bond	\$54,341,886
HUD HOME Investment Partnerships Program	\$63,826,792
Total	\$582,204,750

\*2009 figures. Updated 2010 dollar amounts will be included in the final version of the Plan.

TDHCA expects similar funding levels for FY 2011 to serve priority needs in the state of Texas. The private funds available for priority needs may include loans or grant programs through private banks, for-profit or nonprofit organizations; this source of funding varies from year to year.

### ESGP ADDRESSES AVAILABLE RESOURCES

ESGP available resources are in the *Homeless and Other Special Needs Categories* section below, starting on page 20.

### **CDBG ADDRESSES AVAILABLE RESOURCES**

The following resources are expected to be available from the non-federal public sources. First, the state of Texas has appropriated general fund revenue in the amount of \$3,000,000 to supplement the Texas CDBG program. This appropriation recognized the considerable excess in demand for crucial facilities in excess of available Federal funds. In addition, the grant recipients provide for cost sharing on the funded projects. For Program Year 2009, the grant recipients provided additional financial resources in the amount of \$31,945,034. For economic development projects, the owners contribute equity funds into the CDBG-funded projects.

### **HOPWA ADDRESSES AVAILABLE RESOURCES**

Leveraged funds are absolutely essential for the provision of HOPWA program administration and supportive services for HOPWA clients in the state of Texas. DSHS, AAs, and Project Sponsors expect to continue to receive leveraged funds from federal, state, local, and private resources to administer the HOPWA program and to achieve established program objectives for 2011. Based on leveraged funds received in 2009, DSHS estimates \$370,000 in direct housing assistance, \$1,500,000 in supportive services and non-direct housing assistance. DSHS also estimates total administrative costs leveraged with AAs to be around \$400,000 in 2011.

### **OTHER PROGRAMS**

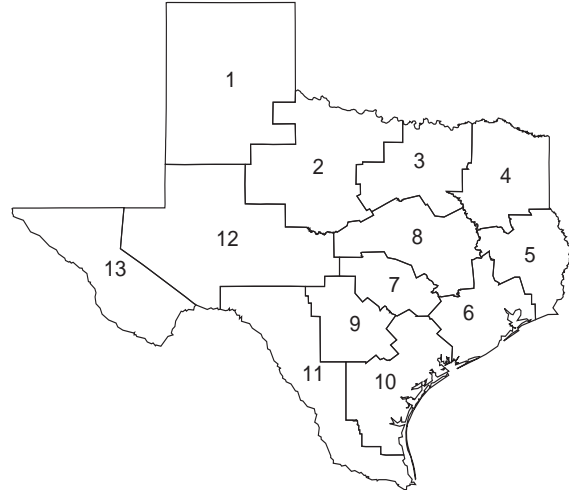
TDHCA is required by State law to publish a Program Guide that outlines state and federal housing and housing-related programs available in Texas. The guide describes all TDHCA programs and includes housing-related programs from other state and federal agencies. This detailed document is organized by activity area and then by administering entity. For each specific program, contact information at the appropriate agency is provided. The 160-plus page document is updated annually and is currently available on line at <http://www.tdhca.state.tx.us/ppa/housing-center/pubs.htm> or in hard copy upon request.

## GEOGRAPHIC AREAS OF JURISDICTION AND ALLOCATION

§91.320(f)

### HOME PROGRAM GEOGRAPHIC PRIORITIES

TDHCA uses a Regional Allocation Formula (RAF) to distribute its HOME Investment Partnerships Program (HOME). The 13 regions used under the RAF are shown in the figure to the right, State Service Regions. The RAF also determines how funding is allocated to rural and urban areas within each region. The RAF's funding distributions are based on objective measures of each region's affordable housing need and available resources to address this need. The RAF is legislatively required by Section 2306.111(d) of the Government Code.



The first step in the RAF is to determine how the program funding would be distributed based solely on measures of regional need provided by US Census data. With the exception of the poverty numbers, the most relevant Census data is for households at or below 80 percent of the Area Median Family Income (AMFI). The following factors are used in the RAF to measure affordable housing need:

- **Poverty:** Number of persons in the region who live in poverty.
  - **Extreme Cost Burden:** Units with a monthly gross rent to monthly household income ratio that exceeds 30 percent.
  - **Overcrowded Units:** Units with more than one person per room.
  - **Units with Incomplete Kitchen or Plumbing:** Units that do not have all of the following: a sink with piped water; a range or cook top and oven; refrigerator, hot and cold piped water, a flush toilet and a bathtub or shower.
- 1) Census need data is adjusted to current year levels by applying a growth factor based on the growth experienced since 2000.
  - 2) Each factor is assigned a weight based on its perceived value as a measure of affordable housing need (poverty = 50 percent, cost burden = 36 percent, overcrowding = 12 percent and substandard housing = 2 percent). In general, the weights reflect the relative number of persons or households affected by the housing problem.
  - 3) Each measure's weight is multiplied by total amount of funding available under the RAF to determine the measure's funding amount.
  - 4) For each measure, the region's number of affected persons or households is divided by the state total to determine the percentage of the state's need that is present in the region.
  - 5) Each region's percentage of state need is multiplied by the measure's funding amount.
  - 6) Finally, the funding distributed by the measures is summed for each region to determine the region's total allocation. The resulting regional funding distribution provides an overall measure of each region's affordable housing need.

*Consideration of Available Housing Resources*

In addition to TDHCA, there are many other funding sources that address affordable housing need. To address any inherent regional funding inequities, the RAF analyzes the regional distribution of state and federal sources that provide housing assistance to households that are similar to those served by the program.

*Other Considerations in Developing the Formula*

The allocation formula was developed under the premise that it would not serve as a static measure of need. Rather, the formula should be updated to reflect the availability of more accurate demographic information and the need to assess and modify the formula based on its actual performance. Specifically the following issues were considered:

- As information from other data sources becomes available, the formula should be revised to reflect this more recent data. The poverty statistics will be updated on an ongoing basis as they become available.
- As additional components of housing assistance may become relevant to the formula, the formula will continue to be open for public comment through the Department's public hearings.
- The affected programs have specific federal and state legislative requirements that govern how the funding may be distributed. In some instances, these rules may require that specific portions of funding shall be excluded from the allocation formula. It was also determined that dividing relatively small amounts of funding which are dedicated for specific uses on a regional basis would result in allocation amounts so small as to preclude their effective use by an applicant. Such issues will be carefully documented in each program's operating rules.

The 2011 RAF distributes funding for the following activities:

- CHDO Project Funds,
- Rental Housing Development Program,
- Single Family Activity Program.

The table below shows the regional funding distribution for all of the activities distributed under the RAF. Targeted funding amounts for each activity will also be established using the percentages generated by the RAF.



2010 Targeted Distribution of Funds under the RAF\*

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$1,720,257	4.6%	\$1,719,823	100.0%	\$434	0.0%
2	Abilene	\$1,081,834	2.9%	\$1,054,137	97.4%	\$27,697	2.6%
3	Dallas/Fort Worth	\$7,535,817	20.0%	\$2,500,475	33.2%	\$5,035,342	66.8%
4	Tyler	\$3,714,016	9.8%	\$2,889,040	77.8%	\$824,976	22.2%
5	Beaumont	\$1,996,997	5.3%	\$1,776,185	88.9%	\$220,812	11.1%
6	Houston	\$3,427,061	9.1%	\$1,162,092	33.9%	\$2,264,969	66.1%
7	Austin/Round Rock	\$2,482,338	6.6%	\$1,116,180	45.0%	\$1,366,157	55.0%
8	Waco	\$1,448,525	3.8%	\$706,773	48.8%	\$741,752	51.2%
9	San Antonio	\$1,929,426	5.1%	\$1,238,269	64.2%	\$691,157	35.8%
10	Corpus Christi	\$2,286,072	6.1%	\$1,501,480	65.7%	\$784,592	34.3%
11	Brownsville/Harlingen	\$7,450,756	19.7%	\$3,441,506	46.2%	\$4,009,250	53.8%
12	San Angelo	\$1,651,324	4.4%	\$791,664	47.9%	\$859,660	52.1%
13	El Paso	\$1,003,375	2.7%	\$752,565	75.0%	\$250,811	25.0%
Total		\$37,727,798	100.0%	\$20,650,188	54.7%	\$17,077,610	45.3%

\*The 2011 RAF will be provided in the final version of this document.

**2011 TARGETED DISTRIBUTION OF FUNDS UNDER THE RAF**

TDHCA does not provide priorities for allocating investment geographically to areas of minority concentration as described in Section 91.320(d). However, the geographic distribution of HOME funds to minority populations is analyzed annually. TDHCA is statutorily required by the Texas Government Code to provide a comprehensive statement on its activities during the preceding year through a document called the State of Texas Low Income Housing Plan and Annual Report. Part of this document describes the ethnic and racial composition of families and individuals applying for and receiving assistance from each housing-related program operated by TDHCA.

**ESGP GEOGRAPHIC PRIORITIES**

ESGP funds are reserved according to the percentage of poverty population identified in each of 13 TDHCA service regions (i.e., Region 1, with 3.95 percent of the State’s poverty population, was awarded 3.95 percent of the available funds). The top scoring applications in each region are recommended for funding, based on the amount of funds available for that region.

**CDBG GEOGRAPHIC PRIORITIES**

Funds for projects under the Community Development Fund are allocated among the 24 state planning regions through a formula based on the following factors:

Funds for projects under the Community Development Fund are allocated among the 24 state planning regions based on the following:

The original CD formula is used to allocate 40 percent of the annual state CDBG allocation; and the HUD formula is used to allocate 21.71 percent of the annual state CDBG allocation.

Original CD formula (40%) factors:

a.	Non-Entitlement Population	30%
b.	Number of Persons in Poverty	25%
c.	Percentage of Poverty Persons	25%
d.	Number of Unemployed Persons	10%
e.	Percentage of Unemployed Persons	10%

To the extent possible, the information used to calculate the regional allocations through these factors will be based on the eligible nonentitlement applicants within each region. The population and poverty information used is from the current available decennial census data. The unemployment information used is the current available annual average information.

HUD formula (21.71%) - the formula is the same methodology that HUD uses to allocate CDBG funds to the non-entitlement state programs. The HUD factors, percentages, and methodology are specified in 42 U.S.C. 5306(d). The TxCDBG will use available data to calculate the allocations to each region.

Using the HUD methodology, the allocation for each region shall be the greater of an amount that bears the same ratio to the allocation for all 24 regions available as either:

(A) the average of the ratios between:

- the population of the nonentitlement areas in that region and the population of the nonentitlement areas of all 24 regions (counted one time - 25% weight);
- the extent of poverty in the nonentitlement areas in that region and the extent of poverty in the nonentitlement areas of all 24 regions (counted two times - 50% weight); and
- the extent of housing overcrowding in the nonentitlement areas in that region and the extent of housing overcrowding in the nonentitlement areas of all 24 regions (counted one time - 25% weight);

OR

(B) the average of the ratios between:

- the age of housing in the nonentitlement areas in that region and the age of housing in the nonentitlement areas in all 24 regions (counted two and one half times - 50% weight);
- the extent of poverty in the nonentitlement areas in that region and the extent of poverty in the nonentitlement areas of all 24 regions (counted one and one half times - 30% weight); and
- the population of the nonentitlement areas in that region and the population of the nonentitlement areas of all 24 regions (counted one time - 20% weight).

The TxCDBG will continue to involve the non-entitlement communities and the public in a review of the regional allocation formula through public hearings, meetings of the ORCA board, Task Forces, and input from the State Community Development Review Committee, Regional Councils of Governments, local and state government officials, and other interested parties.

*General Information*

*Geographic Distribution*

Regional Priority Set-asides: Housing and Non-Border Colonia projects - Each Regional Review Committee (RRC) is encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.)

Overall, funds are allocated to the following priority categories:

FUND	2011 PERCENT
Community Development Fund	61.71
Texas Capital Fund (TCF)	14.51
Colonia Fund	
Colonia Planning and Construction Fund	7.26
Colonia EDAP Legislative Set-aside	2.74
Colonia Self-Help Centers Legislative Set-aside	2.50
Planning And Capacity Building Fund	1.0
Disaster Relief/Urgent Need Fund	
Disaster Relief	4.10
Urgent Need	Deob/PI
TxCDBG STEP Fund	3.04
Administration – Percentage (fungible)	Up to 3%
Administration - \$100,000	0.1370
Technical Assistance (fungible)	3 less admin percent
Pilot Programs (Deobligated Funds/ Program Income):	
Renewable Energy Demonstration Pilot Program	Deob/PI

Overall, this allocation methodology has resulted in approximately 86% to 97% of overall funding benefiting low and moderate income persons. It has resulted in funding the nonhousing priority needs described below while resulting in a very high percentage of awards primarily benefiting extremely low-income, low-income and moderate income households.

**Nonhousing Community Development  
Priority Needs Summary Table**

Priority Community Development Needs	Priority Need Level H=High, M=Medium, L=Low, N=No Such Need
PUBLIC FACILITY NEEDS	M
INFRASTRUCTURE IMPROVEMENT	H
Solid Waste Disposal Improvements	M
Drainage and Flood Control Improvements	H
Water System Improvements	H
Street and Bridge Improvements	H
Sewer System Improvements	H
PUBLIC SERVICE NEEDS	M
ECONOMIC DEVELOPMENT NEEDS	H
OTHER COMMUNITY DEVELOPMENT NEEDS	M
PLANNING	H

The Priority Needs Summary Table uses the following definitions:

- High Priority (H): Activities to address this need will be funded by the State during the five-year period.
- Medium Priority (M): If funds are available, activities to address this need may be funded by the State during the five-year period.
- Low Priority (L): The State will not fund activities to address this need during the five-year period. The State will consider certifications of consistency for other entities' applications for federal assistance.
- No Such Need (N): The State finds there is no need or the State shows that this need is already substantially addressed. No certifications of consistency will be considered.<sup>1</sup>

The tables below illustrate the amount of community development application requests for the 2005 to 2009 CDBG program years. Requested amounts are included for water, sewer, engineering, street paving, administration, housing rehabilitation, drainage, removal of architectural barriers, acquisition demolition, community center, senior centers and fire protection. Under the Community Development Fund, each region through its Regional Review Committee, establishes its funding priority through scoring factors that reflect local prioritization of need. To be competitive, the applications submitted generally reflect the local needs as prioritized through the Regional Review Committee process and are therefore reflective of local needs. Each cycle, the Regional Review Committee has an opportunity to revise its local priorities to reflect any change in needs.

**REQUESTS FOR COMMUNITY DEVELOPMENT PROGRAM FUNDS  
FOR 2005-2009 BY ACTIVITY**

Activity	Amount Requested
Water Facilities	\$229,969,144
Sewer Facilities	\$179,641,621
Engineering/Architectural Serv.	\$69,215,763
General Administration	\$44,548,476
Street Improvements	\$44,807,827
Rehabilitation of Private Properties (sewer service)	\$28,814,120
Flood and Drainage Facilities	\$19,472,416
Rehabilitation of Private Properties	\$7,261,474
Planning & Urban Env. Design	\$1,619,318
Rehabilitation of Private Properties (water service)	\$4,084,010
Neighborhood Facilities / Community Centers	\$4,634,209
Acquisition - Easement	\$2,531,743
Fire Protection Facilities and Equipment	\$2,993,850
Clearance Demolition Activities	\$1,980,785
Parks, Playgrounds, and Other Recreational Facilities	\$2,076,440
TCF - Economic Development - For Profit	\$1,199,500
Activity Delivery	\$1,066,530
Economic Development Loan	\$1,003,000
Pedestrian Malls and Walkways	\$390,000
Senior Centers	\$764,990
Other Public Utilities (Gas)	\$181,322
Removal of Architectural Barriers	\$301,650
Main Street Program	\$150,000
Acquisition	\$117,000
Specially Authorized Public Facilities and Improvements	\$90,956
Code Enforcement	\$19,200
<b>Total</b>	<b>\$ 644,935,345</b>

## HOPWA GEOGRAPHIC PRIORITIES

The funding allocations are geographically distributed across the state according to the HIV service delivery areas (HSDAs) and covers all 254 counties in Texas.

**HOMELESSNESS AND OTHER SPECIAL NEEDS CATEGORIES**

§91.320(h)

**SOURCES OF FUNDS**

Based on the 74 organizations funded in PY 2009 through the Emergency Shelter Grants Program (which name changed to Emergency Solutions Grant Program in PY 2011 as a result of the Homeless Emergency and Rapid Transition to Housing Act of 2009), it is estimated that 24 of the 74 organizations serve the chronically homeless. The Department estimates that 8,817 beds were available from the funded organizations for PY 2009. The Department is not aware of how many of the beds are utilized to shelter chronically homeless individuals. Nine of these organizations that serve the chronically homeless are Salvation Army organizations. These organizations are located across the State.

<b>Emergency Shelter</b>	<b>Existing Beds</b>	<b>Unmet Need</b>
Family Beds	4,523	2,795
Individual Beds	8,362	3,566
<b>Total</b>	<b>12,885</b>	<b>6,361</b>

<b>Transitional Housing</b>	<b>Existing Beds</b>	<b>Unmet Need</b>
Family Beds	4,139	3,855
Individual Beds	3,097	4,527
<b>Total</b>	<b>7,236</b>	<b>8,382</b>

<b>Permanent Supportive Housing</b>	<b>Existing Beds</b>	<b>Unmet Need</b>
Family Beds	2,821	4,274
Individual Beds	4,429	6,704
<b>Total</b>	<b>7,070</b>	<b>10,978</b>

**CHRONIC HOMELESSNESS**

While the Department does not have a complete “inventory” of the supportive services offered by the ESGP funded organizations, the Department began to collect information on the number of persons provided with supportive services in FY 2006. The range of supportive services include: legal advocacy, education, employment, housing, counseling, psychological treatment and/or psychological counseling, substance abuse treatment, medical assistance, parenting and budgeting classes, housing advocacy, transportation assistance, English-as-a-Second Language classes, and clothing.

## HOMELESS PREVENTION

### *TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS ADDRESSES HOMELESSNESS*

#### *Homelessness Prevention and Rapid Re-Housing Program*

The Homelessness Prevention and Rapid Re-Housing (HPRP) Program provides homelessness prevention assistance to households who would otherwise become homeless and provides assistance to rapidly re-house persons who are homeless. Made available through the American Recovery and Reinvestment Act of 2009, the U.S. Department of Housing and Urban Development (HUD) will provide the State of Texas, through TDHCA funding for HPRP, a program which will last approximately three years.

Funds to awarded program administrators can be used for four activities. (1) Financial assistance is limited to short-term (up to 3 months) and medium-term (up to 18 months) rental assistance; security deposits; utility deposits and payments; moving cost assistance; and motel and hotel vouchers. (2) Housing relocation and stabilization services are limited to case management (e.g. arrangement, coordination, monitoring and delivery of services related to meeting housing needs); outreach and engagement; housing search and placement; legal services (e.g. legal advice and representation in administrative or court proceedings related to tenant/landlord matters or housing issues, excluding mortgage legal services); and credit repair. (3) Data collection and evaluation including the use of the Homeless Management Information Systems (HMIS); or the use of a comparable client-level database. (4) Administrative costs are the fourth activity that can be funded through HPRP. On July 30, 2009, the TDHCA Board authorized funding awards to 59 recipients totaling approximately \$40 million.

Eligible applicants include units of general local government and private nonprofit organizations whose professional activities include the promotion of social welfare and the prevention or elimination of homelessness. Since the inception of the HPRP Program in September 2010, 58 sub-recipients have assisted 22,422 persons and 9,158 households. A total of \$17,351,315 has been expended. Of the persons assisted, 18,708 have received homelessness prevention assistance and 3,816 have received homeless assistance.

#### *Homeless Housing and Services Program*

Funded with state appropriated funds, the Homeless Housing and Services Program's (HHSP) purpose is assisting the eight largest urban areas in providing services to homeless individuals and families, including services such as case management, and housing placement and retention. In 2010, funding for this program was awarded by TDHCA through a competitive matching grant process whereby the eight largest cities sought additional funding for this purpose. The agency distributes these funds to the eight largest cities with populations larger than 285,500 persons per the latest U.S. Census figures. HHSP sub-recipients have assisted 344 persons and expended \$5.7 million. It is anticipated that activity will increase significantly in the next few months.

#### *Emergency Solutions Grants Program*

The Emergency Solutions Grants Program (ESGP) funds entities that provide shelter and related services for homeless persons. For purposes of this Plan, statewide information on homeless service providers has been collected from the ESGP applications that were submitted for funding in 2009. This is not a comprehensive listing of service providers. Because some local governments receive ESGP funding

directly from the US Department of Housing and Urban Development, organizations that apply for these local ESGP funds are not included. For SFY2009 program year contracts end 8/31/2010. In SFY 2010, 61,589 persons will be assisted. The majority of those assisted are individuals that are housed in emergency shelters.

*TEXAS DEPARTMENT OF RURAL AFFAIRS ADDRESSES HOMELESSNESS*

The Texas Department of Rural Affairs does not have a specific program directed at homelessness. It is a member of the Housing and Health Services Coordinating Council created by the Texas legislature. The Council is exploring the opportunity for service-enriched housing options as cost efficient housing alternatives for the homeless population.

*TEXAS DEPARTMENT OF STATE HEALTH SERVICES ADDRESSES SPECIAL NEEDS*

The Texas Department of State Health Services' (DSHS) mission is to improve the health and well-being in Texas. To achieve its mission, DSHS is responsible for certifications, licenses and permits for certain health-related equipment, facilities, businesses and occupations; community mental health and family health resources; substance abuse recovery resources; vital records, such as birth, death, marriage and divorce records; and health-related data and reports.

*Projects for Assistance in Transition from Homelessness (PATH)*

The Department of State Health Services Community Mental Health and Substance Abuse Division receives funds through the federal government's Center for Mental Health Services. Funds are used for administration of homelessness prevention services and mental health crisis services. Funds are available to subdivisions of state of Texas, units of local government and non-profit entities.

The HOPWA program prevents homelessness by providing short-term rent, mortgage, and utilities assistance (STRMU) to eligible individuals living with HIV/AIDS in emergency situations.



## **BARRIERS TO AFFORDABLE HOUSING**

### **§91.320(i)**

The State of Texas has given local jurisdictions a great amount of authority over their lands. As a result, many of the regulatory barriers to affordable housing found at the state level in other states do not exist in Texas. For instance, municipalities have zoning authority. Even though zoning may be a barrier to affordable housing depending on minimum lot size required, this is not a regulatory barrier imposed by the state. In fact, counties do not have zoning authority, eliminating the potential barrier completely in non-incorporated areas. The state also does not impose impact or development fees or deed restrictions on developments. Furthermore, TDHCA is not a regulatory agency for building codes with the exception of manufactured housing and projects that receive funding through TDHCA. Impact fees, deed restrictions and building codes may add to the cost of development, but these are not part of the State's regulations.

In contrast, TDHCA does have two regulatory barriers to affordable housing, as found below.

### *Environmental Regulations*

The Department works to enforce federal environmental regulations, such as the National Environmental Policy Act, Endangered Species Act, the National Pollutant Discharge Elimination System, and the Wetland regulations. In Texas, rules to protect the environment are promulgated by the Texas Commission on Environmental Quality (TCEQ). These include rules for the installation of septic systems and for development of the Edwards Aquifer. The restrictions associated with the regulations can add to the cost of development which, in turn, may raise the cost of the housing thereby decreasing affordability.

### *Public Opposition*

When a developer proposes an affordable housing development, regulations require that the developer notify local community groups and state and local officials. The required public notification process provides notice to persons who may oppose affordable housing.

## **STRATEGY TO OVERCOME REGULATORY BARRIERS TO AFFORDABLE HOUSING**

Local governments and officials more often have a greater awareness of their local economic, demographic and housing conditions. In order to meet the needs of residents in all parts of the second largest state in the nation, the State of Texas gives local governments a great deal of power over their own lands. Please note that, as a governmental entity, the Department cannot lobby or attempt to influence the policies related to the governing of the State of Texas. However, TDHCA can and does encourage localities to implement specific regulatory reforms related to affordable housing.

The State of Texas does not implement zoning, impose impact development fees or deed restrictions, or regulate building codes and so cannot directly affect these barriers. Nonetheless, TDHCA does act as an information resource to assist localities overcome unnecessary regulatory barriers which may increase the cost of housing. TDHCA accomplishes this as follows:

- Formation of a Housing and Health Coordination Services Council within TDHCA in 2009 to pursue opportunities to create and conduct policy research on service-enriched housing for persons with disabilities and seniors.

- Continuing education programs such as the Texas Statewide Homebuyer Education Program, which provides lenders, homebuyer educators and consumers information on serving traditionally underserved populations (e.g. persons with disabilities, lower income populations).
- Continuing research on defining and eliminating or reducing both state and local policy barriers.

TDHCA also mitigates the affects of its environmental and public notice regulatory barriers propagated by TDHCA. For example, TDHCA offers environmental compliance training free of charge for organizations that receive funding through TDHCA. These trainings are conducted throughout the state. In this way, TDHCA helps local communities comply with environmental rules.

To overcome the public opposition roused by public notice of affordable housing developments, TDHCA acts as an information resource for affordable housing studies and information. The Department has funds available for research studies from qualified professionals to determine the effect of affordable housing developments on property values, social conditions and quality of life in surrounding neighborhoods. The public often has misconceptions on which populations actually need affordable housing. For example, neighbors such as teachers, police officers, firefighters and nurses aids often spend more than 30 percent of their income on housing needs, creating a cost burden.<sup>2</sup> Affordable housing can allow productive members of the community to live in the same neighborhoods they serve.

The public may also fear that affordable housing increases traffic, increases crime and lowers property values. In actuality, allowing people who serve the community to afford to live the same community reduces traffic by reducing the distance between where people live and where they work. Furthermore, studies have not proven a link between affordable housing and crime; factors that negatively affect crime include community disinvestment, overcrowding, and lack of jobs and community services. In fact, affordable housing helps address several of these factors by allowing for community investment and alleviating overcrowding.

Regarding property values, studies have proven that affordable housing can actually improve property values.<sup>3</sup> By educating the public on the realities of affordable housing, TDHCA believes it can overcome public opposition.

---

<sup>2</sup> The Campaign for Affordable Housing. (2005). The truth about affordable housing. Retrieved from <http://www.tcah.org/research.cfm>.

<sup>3</sup> The Campaign for Affordable Housing. (2005) Busting the 5 myths of affordable housing. Retrieved from <http://www.tcah.org/research.cfm>.

## MONITORING

§92.330

### HOME AND ESGP MONITORING

TDHCA has established oversight and monitoring procedures within the TDHCA HOME, Compliance and Asset Oversight (CAO) and Community Affairs divisions to ensure that activities are completed and funds are expended in accordance with contract provisions and applicable state and federal rules, regulations, policies, and related statutes. TDHCA's monitoring efforts are guided by both its responsibilities under the HOME and ESGP and its affordable housing goals for the State of Texas. These monitoring efforts include the following:

- Identifying and tracking program and project results
- Identifying technical assistance needs of subrecipients
- Ensuring timely expenditure of funds
- Documenting compliance with program rules
- Preventing fraud and abuse
- Identifying innovative tools and techniques that support affordable housing goals
- Ensuring quality workmanship in funded projects
- Long-term compliance
- Risk management
- Sanctions

#### *Identifying and Tracking Program and Project Results*

HOME contract and project activities are tracked through the TDHCA Contract System, including funds committed, pending projects, funds drawn, activities and contracts completed, and funds disbursed through the internet-based system, HUD's IDIS, and other reports generated as needed. The Contract System provides information necessary to track the success of the program and identify process improvements and administrator training needs. IDIS tracks HOME Program data such as commitment and disbursement activities, the number of units developed, the number of households assisted, the ongoing expenditures of HOME funds, and beneficiary information.

Other resources utilized by TDHCA to track project results include a performance team, to provide oversight and monitor contract progress, and an asset management division and loan servicing division. If either of these areas identifies problems, steps are taken to resolve the issue, including project workouts and oversight of reserve accounts. Real Estate Analysis, the division for underwriting economic feasibility pre-award, is also responsible for identification of high risk housing developments, and is responsible for review of housing sponsored annual financial statements and other asset management functions during the affordability period. Finally, the establishment of a Physical Inspections section in the Compliance Division assists with maintaining quality and integrity during project construction.

ESGP project and contract activities are tracked through TDHCA's website, which maintains an Oracle-based reports system. This system maintains funds drawn, funds expended, performance data, and other reports as needed. ESGP data such as commitment and disbursement activities, number of persons assisted, ongoing expenditures, and program activities are also tracked through HUD's IDIS.

### *Identifying Technical Assistance Needs Subrecipients*

Identification of technical assistance needs for HOME and ESGP subrecipients is performed through analysis of administrator management practices, analysis of sources used by TDHCA to track technical assistance such as information captured in the HOME Division Database and Contract System, review of documentation submitted, desk reviews based on State and Federal requirements results of on-site audits, technical assistance visits, phone calls, e-mail and monitoring visits.

### *Ensuring Timely Expenditure of Funds*

TDHCA ensures adequate progress is made toward committing and expending HOME and ESGP funds. Regular review of internal reports and data from IDIS is performed to assess progress of fund commitment and to ensure that all funds are committed by the expiration date of 24 months from the last day of the month in which HUD and TDHCA enter into an Agreement. HUD Performance deadlines for spending and reporting matching funds are reviewed on a monthly basis to track expenditure totals. To ensure the timely reprogramming of funds, HOME set-aside requirements are also tracked as a part of the HOME Fund Balance Report, which reports the Division's status of HOME funds including program income and deobligated funds. Additionally, The Department includes performance benchmarks in the Department's State HOME Rule and as part of its written agreements with subrecipients. Through pilot programs, TDHCA is implementing reservation systems for most HOME Program activities in order to be more responsive to local needs and provide more timely access to HOME funds based on readiness-to-proceed.

### *Documenting Compliance with Program Rules*

Compliance with program rules is documented through contract administration and other formal monitoring processes. Staff document compliance issues as part of their ongoing contract management reviews and notify administrators of any noncompliance and required corrective action. On-site reviews, including physical onsite project site inspections of a representative sample of project sites, on-site reviews of client files, shelters, and the delivery of services are conducted with summarized reports identifying necessary corrective actions.

TDHCA has developed a set of standards for HOME administrators to follow to ensure that subcontractors and lower-tiered organizations entering into contractual agreements with administrators perform activities in accordance with contract provisions and applicable state and federal rules, regulations, policies, and related statutes.

TDHCA maintains a database to document an administrator's compliance history with rental housing developments. During the application process the previous participation of the applicant is evaluated. If there are any minor uncorrected issues of noncompliance identified, the request for funding will be denied unless those issues are corrected. If material noncompliance is identified, the application is terminated. The compliance history is considered by TDHCA's Board prior to finalizing awards and evaluated again prior to execution of written agreements.

### *Preventing Fraud and Abuse*

TDHCA monitors for mismanagement of funds in the HOME and ESGP during onsite visits through a review of supporting documentation provided by the administrator and through information gathered from outside sources. This is done throughout the contract period to ensure that funds are spent on

eligible activities. If an administrator mismanages funds, sanctions are enforced and disallowed costs are refunded to TDHCA. Also, if fraud is suspected, TDHCA makes referrals and works closely with HUD, the State Auditor's Office, the Inspector General, the Internal Revenue Service, and local law enforcement agencies as applicable.

*Identifying Innovative Tools and Techniques that Support Affordable Housing Goals*

Staff identifies innovative tools and techniques to support affordable housing goals by attending trainings and conferences, maintaining contact with other state affordable housing agencies, and through the HUD internet listserv and HUD website.

*Ensuring Quality in Funded Projects*

Ensuring the administrator provides the committed product, amenities and compliance with accessibility requirements is a Departmental priority. Staff ensures the quality of workmanship in HOME-funded projects through the inspection process. TDHCA staff, in conjunction with Manufactured Housing Inspectors, conducts inspections to substantiate the quality of the work performed. Deficiencies and concerns are identified during an initial inspection, with corrective action required by construction completion. The clearance of a final inspection is required of all rental housing developments funded by the Department.

TDHCA staff has attended trainings and become familiar with the construction standards of Section 504, Rehabilitation Act of 1973. Manufactured Housing Inspection Staff assisting with conducting inspections have been given the necessary tools to thoroughly complete these inspections and are provided annual training by Department staff on the procedures, expectations, and accessibility requirements.

Other processes used to ensure quality workmanship have included plan reviews. Beginning with the 2006 commitments, the Department required plans to have architectural sign off on specifications, and confirm compliance with committed amenities and compliance with any accessibility requirements.

*Long-Term Compliance*

The CAO Division is responsible for long term monitoring of income eligibility and tenure of affordability for applicable HOME projects. In other cases where written agreements require long-term oversight (such as land use restrictive covenants), reporting and enforcement procedures have been implemented.

The CAO Division performs on-site monitoring visits in accordance with the requirements of the HOME Program and Department policies and procedures, as described in the Financing/Loan Agreements, Deed Restrictions, and Regulatory and Land Use Restriction Agreement. If a property participates in more than one housing program, the most restrictive monitoring procedure is followed.

*Risk Management*

HOME contracts are monitored based on a risk assessment model that is updated on an annual basis or more frequently if required. Some of the elements of the Risk Assessment Model may include the type of activity, existence of a construction component, Davis/Bacon requirements, results of previous on-site visits, status of the most recent monitoring report, amount funded, previous administrator experience, entity type, and Single Audit status. In addition to the results of the risk assessment survey,

referrals from division staff are considered when determining in depth monitoring reviews or required technical assistance. An emphasis is placed on monitoring of contracts within the current draw period and contracts with projects in the affordability period as defined by HUD.

If complaints are received by the Department, they are considered a risk management element and will be reviewed in detail. Supplemental monitoring activities will be performed to ensure program compliance and detection of possible fraud or mismanagement.

The Risk Assessment Model is also implemented for ESGP. Some of the elements of the Risk Assessment Model include the following: length of time since last on-site visit, results of last on-site visit, status of most recent monitoring report, timeliness of grant reporting, total amount funded during assessment period, total amount funded for all TDHCA contracts during assessment period, number of TDHCA contracts funded during assessment period, and Single Audit Status. In addition to the results of the risk assessment survey consideration is also given to recommendations made from other TDHCA divisions regarding performance with other TDHCA-funded programs.

TDHCA monitors ESGP subrecipients based on an assessment of associated risks. The assessment of associated risks utilizes factors developed by the Department's Compliance and Asset Oversight Division in conjunction with the Community Affairs Division. The factors include the status of the most recent monitoring report, timeliness of grant reporting, results of the last on-site monitoring review, number and dollar amounts of Department funds contracts and single audit issues. Subrecipients with the highest rankings are considered high risk and will receive an on-site monitoring review. Subrecipients with low rankings will have a desk review conducted. During the monitoring review, staff determine subrecipients' compliance with the ESGP contract, ESGP State Regulations, State Policy Issuances, 24 CFR Ch V, Part 576, OMB Circulars related to expenditure of funds, and requirements of Chapter 58 of the Environmental Protection Act as it relates to projects funded for rehabilitation, conversion, or renovation.

### *Sanctions*

Based on the results of ongoing HOME monitoring, sanctions are imposed for noncompliance issues based on the severity of noncompliance, which may include delays in project set-ups, draw request processing, questioned/disallowed costs, suspension of the contract, or contract termination. When necessary, the Executive Director executes a referral to the State Auditor's Office for investigation of fraud as required by Section 321.022(a) of the Texas Government Code. Sanctions imposed may affect future application requests and scoring. In addition, if fraud or mismanagement of funds is suspected, TDHCA will make referrals and work closely with HUD, the State Auditor's Office, the Inspector General, the Internal Revenue Service, and local law enforcement agencies as applicable.

The majority of HOME administrators comply with program rules and regulations. However, for the handful who do not, after technical assistance and a corrective action period is provided, administrative penalties are considered. The Department has the authority to assess administrative penalties for event of noncompliance, ranging from \$100 to up to \$1000 per day for serious noncompliance events. Although still in its infancy, the administrative penalty process is proving to be a successful and effective tool for restoring compliance.

In addition, the Department has the ability to debar individuals and companies from participation in our programs. Debarred entities will be listed as such on the Department's website which will likely affect their ability to be awarded contracts with other state and federal agencies.

The results of ongoing ESGP monitoring will also determine if sanctions are imposed for noncompliance issues. Sanctions range from the use of the cost reimbursement method of payment, deobligation of funds, suspension of funds, and termination of the contract. TDHCA's legal staff is notified and referrals are made to the Attorney General's Office. Sanctions imposed affect the future consideration of ESGP applications for funding.

## **CDBG MONITORING**

The monitoring function of the TxCDBG has four components: project implementation, contract management, audit, and monitoring compliance.

### *Project Implementation*

Prior to the award of funds, each community is evaluated for compliance in prior contracts. The application scoring process at the state level includes a scoring factor for past performance on CDBG contracts. In addition, once a funding recommendation has been made the contract is routed through the Program Development Unit, Compliance Unit and Finance Division to verify that no outstanding issues in previously awarded contracts prevent the contract execution for the recommended award.

### *Contract Management*

All open TxCDBG projects are assigned to a specific Regional Coordinator who is responsible for contract compliance and project management. All projects have formal contracts that include all federal and state requirements. Regional Coordinators monitor progress and compliance through formal reporting procedures. Program Specialists for Labor Standards and Environmental compliance also exist under the TxCDBG project oversight function. Additionally, all reimbursement requests require complete supporting documentation before payment is made.

### *Audit*

The audit function is authorized by OMB A-133, which requires that governmental units and nonprofit organizations spending more than \$500,000 in either federal or state funds during their fiscal years ending after December 31, 2003, submit a copy of a Single Audit to the Agency. A Single Audit is required for desk review by TDRA regardless of whether there are findings noted in the audit pertaining to CDBG funds, since it is an additional monitoring tool used to evaluate the fiscal performance of grantees.

### *Monitoring Compliance*

The on-site programmatic reviews are conducted on every CDBG contract prior to close-out to ensure the contractual obligations of each grant are met. The projects are considered available for review when 75 percent of the contracted funds have been drawn down, and for construction projects, when construction has been substantially completed. Interim monitoring reviews may be conducted as necessary.

The areas reviewed include procurement procedures paid with CDBG funds or with match dollars, accounting records including copies of cancelled checks, bank statements and general ledgers (source documentation is reviewed at the time of draw requests), equipment purchases and/or procurement for small purchases, on-site review of environmental records, review of any applicable construction contracts, file review of any applicable client files for rehabilitation services, review of labor standards and/or a review of local files if internal staff used for construction projects, and a review of documentation on hand pertaining to fair housing and civil rights policies.

In addition to the formal monitoring function described above, the staff of the Compliance Unit communicates with the staff of the Project Management Unit as needed to evaluate issues throughout the contract implementation phase of CDBG contracts in order to identify and possibly resolve contract issues prior to the monitoring phase of the project.

### **HOPWA MONITORING**

A team of DSHS consultant staff monitor the AAs' HOPWA administration activities, and the AAs monitor the Project Sponsors for HOPWA program compliance. This monitoring involves periodic site visits, technical assistance, and the submission of quarterly progress reports. Desk audits are conducted by the Contract Management Unit at the division level in DSHS. Additionally, fiscal audits are conducted as part of a centralized service of DSHS, the Contract Monitoring and Oversight Section, directly under the Chief Operations Officer.

Administrative Agencies and Project Sponsors are required to comply with HUD regulations, the DSHS Program Manual and their contractual Statement of Work. The DSHS HOPWA program manual is located at <http://www.dshs.state.tx.us/hivstd/fieldops/hopwa.shtm>. The HOPWA monitoring tool is located at [http://www.dshs.state.tx.us/hivstd/fieldops/page\\_02/hopwa.doc](http://www.dshs.state.tx.us/hivstd/fieldops/page_02/hopwa.doc). The HOPWA Statement of Work is located at [http://www.dshs.state.tx.us/hivstd/funding/hopwa/HOPWA\\_Renewal.doc](http://www.dshs.state.tx.us/hivstd/funding/hopwa/HOPWA_Renewal.doc). Principles for fiscal administration are established by the Texas Uniform Grants Management Standards located at <http://www.governor.state.tx.us/divisions/stategrants/files/UGMS062004.doc>. The requirements for project monitoring are established by DSHS in the Administrative Agency Core Competencies document located at [http://www.dshs.state.tx.us/hivstd/pops/pdf/pdf\\_administrative\\_duties\\_standards.pdf](http://www.dshs.state.tx.us/hivstd/pops/pdf/pdf_administrative_duties_standards.pdf).



## HOUSING ACTION PLAN: HOME INVESTMENT PARTNERSHIPS PROGRAM

### FEDERAL RESOURCES EXPECTED PY 2011

The purpose of the HOME Investment Partnerships (HOME) Program is to expand the supply of decent, safe, and affordable housing for extremely low, very low, and low income households, and to alleviate the problems of excessive rent burdens, homelessness, and deteriorating housing stock. HOME strives to meet both the short-term goals of increasing the supply and the availability of affordable housing and the long-term goal of building partnerships between state and local governments and private and nonprofit organizations in order to strengthen their capacity to meet the housing needs of low-income Texans. TDHCA conducts detailed application workshops and provides technical assistance to all recipients of HOME funds to ensure that all participants meet and follow the state implementation guidelines and federal regulations.

The State of Texas HOME Program anticipates receiving \$40,000,000 in HOME allocated funds and \$3,000,000 in multifamily and single-family program income for a total of \$43,000,000 estimated funding available for distribution.

### ALLOCATION OF PY 2011 FUNDS

§91.320(d) and (f)

TDHCA will use the following method for allocating funds and may make adjustments throughout the program year to transfer funding from an undersubscribed activity or set-aside to an activity that may be experiencing higher demand with the Board's approval:

Use of Funds	Estimated Available Funding	% of Total HOME Allocation
Administration Funds (10% of Allocation) <sup>1</sup>	\$4,000,000	10%
CHDO Project Funds Set Aside (15% of Allocation)	\$6,000,000	15%
CHDO Operating Expenses Set Aside (5% of CHDO Set Aside) <sup>1</sup>	\$300,000	1%
State Mandated Funds for Contract for Deed Conversions <sup>1</sup>	\$2,000,000	5%
Housing Programs for Persons with Disabilities (5% of Allocation) <sup>1 2</sup>	\$2,000,000	5%
Rental Housing Development Program	\$5,000,000	13%
General Funds for Single Family Activities	\$20,700,000	52%
Total PY 2011 HOME Allocation	\$40,000,000	100%
Estimated Program Income for Multifamily Activities) <sup>1</sup>	\$2,000,000	—
Estimated Program Income for Single Pilot Programs <sup>1</sup>	\$1,000,000	—
Total Estimated Funding Available for Distribution	\$43,000,000	—

<sup>1</sup> The funding for these activities is not subject to the Regional Allocation Formula.

<sup>2</sup> Per Section 2306.111(c) of the Texas Government Code, TDHCA shall expend 95 percent of HOME funds for the benefit of non-PJ areas of the state. Five percent of HOME funds shall be expended for the benefit of persons with disabilities who live in any area of the state.

The following targets will be used to distribute General Funds for Single Family Activities:

Activity	Funding Amount	% of Available Funding
Homebuyer Assistance	\$3,105,000	15%
Homeowner Rehabilitation	\$14,490,000	70%
Tenant Based Rental Assistance	\$3,105,000	15%
Total Estimated Funding Available for Distribution	\$20,7000,000	100.0%

### *Estimated PY 2011 Beneficiaries*

Based on anticipated program activities TDHCA estimates that the number of PY 2011 beneficiaries assisted will be approximately 842 low-, very low-, or extremely low-income households. On the basis of historical performance, TDHCA estimates that approximately 50 percent of those households will be minority households.

### **DESCRIPTION OF ACTIVITIES**

§91.320(d) and (e)

#### *Homeowner Rehabilitation*

Rehabilitation, new construction or reconstruction cost assistance is provided to eligible homeowners for their existing home in the form of a grant or loan. The home must be the principal residence of the homeowner and the homeowner must meet all other eligibility requirements.

Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction, newly constructed single family housing must meet the International Residential Code (IRC) as currently required by State statute. In the absence of a local code for rehabilitation, the single family housing must meet the rehabilitation standards established by the Department. If a home is newly constructed or reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicants utilizing federal or state funds administered by TDHCA in the construction of single family housing.

The available funding for this activity is approximately \$14.4 million, which may only be used in non-PJs. The Department may set-aside a portion of these funds during the 2011 program year as a pilot program using a reservation system. In addition, the Department may set-aside a portion of the estimated program income toward a pilot program that would allow the refinance of existing debt for single-family, owner-occupied housing, when rehabilitation to correct substandard conditions is the primary use of the HOME funds.

### *Tenant-Based Rental Assistance*

According to the American Community Survey 3-Year Estimates, approximately 44% or 1,267,171 households that rent in Texas have a housing cost burden of equal or greater than 30 percent of their income between 2006-2008. Rental subsidy and security and utility deposit assistance is provided to tenants, in accordance with written tenant selection policies, for a period not to exceed 24 months. If available, additional funds may be set-aside to provide assistance beyond 24 months. Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) in 24 CFR §982.401. The Department may set-aside a portion of these funds during the 2011 program year as a pilot program using a reservation system. In addition, the Department may set-aside a portion of the estimated program income toward a pilot program that would allow the extension of assistance beyond 24 months. The available funding for this activity is approximately \$3.1 million, which may only be used in non-PJs. This amount does not include Housing Programs for Persons with Disabilities funding that may be issued under a separate NOFA.

### *Homebuyer Assistance with or without Rehabilitation*

§92.254

According to the American Community Survey 3-Year Estimates, approximately 26% or 1,398,322 households that own a home in Texas had a housing cost burden of equal or greater than 30 percent of their income between 2006-2008. Down payment, closing cost, rehabilitation, and contract for deed conversion assistance may be provided to homebuyers for the acquisition of affordable single family housing. This activity may also be used for the following:

- Construction costs associated with architectural barrier removal in assisting homebuyers with disabilities by modifying a home purchased with HOME assistance to meet their accessibility needs.
- Acquisition and rehabilitation costs associated with contract for deed conversions to serve colonia residents.
- Construction costs associated with the rehabilitation of a home purchased with HOME assistance.
- Acquisition or new construction costs for the replacement of manufactured housing.

Eligible homebuyers receive assistance in the form of a loan. HBA loans are required to be repaid at the time of resale of the property, refinance of the first lien, repayment of the first lien, or if the unit ceases to be the assisted homebuyer's principal residence. If any of these occur before the end of the loan term, the amount of recapture will be based on the pro-rata share of the remaining loan term and the shared net proceeds in the event of sale of the housing unit.

Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction, newly constructed single family housing must meet the International Residential Code (IRC) as currently required by State statute. In the absence of a local code for rehabilitation, the single family housing must meet the rehabilitation standards established by the Department. If a home is newly constructed or reconstructed, the

applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

The available funding for this activity is approximately \$3.1 million, which may only be used in non-PJs. This amount does not include Housing Programs for Persons with Disabilities funding, which may be issued under a separate NOFA. Additionally, the Department may set-aside a portion of these funds or a portion of the estimated program income during the 2011 program year as a pilot program for a loan program reservation system.

### *Rental Housing Development*

Awards for eligible applicants are to be used for the acquisition, construction, and rehabilitation of affordable multifamily rental housing. TDHCA will not provide funding for the refinancing and/or acquisition of affordable housing developments that were constructed within the past 10 years. A standard underwriting review will be performed on applications under this activity. TDHCA generally make awards in form of a loan. Owners of rental units assisted with HOME funds must meet affirmative marketing requirements as delineated in the Department's Compliance Rules. Owners of rental units assisted with HOME funds also must comply with initial and long-term income restrictions and keep the units affordable for a minimum period. Housing assisted with HOME funds must, upon completion, meet all applicable local, state, and federal construction standards and building codes. Additionally, the owner and/or all future owners of a HOME-assisted rental project must maintain all units in full compliance with local, state, and federal housing codes, which include, but are not limited to, the Uniform Physical Condition Standards (UPCS) as developed by the Real Estate Assessment Center (REAC), the International Building Code, Texas Government Code, and Section 504 of the 1973 Rehabilitation Act for the full required period of affordability.

Eligible expenses and activities may further be limited by TDHCA in accordance with state rule and legislation. Rental Housing Development funds may also be used for the acquisition and/or rehabilitation (including barrier removal activities) for the preservation of existing affordable or subsidized rental housing. Additionally, TDHCA will ensure that all multifamily rental housing developments are built and managed in accordance with its Integrated Housing Rule.

Approximately \$7 million, including an estimated \$2 million in Program Income, is available for Rental Housing Development Funding for these activities may only be used in non-PJs. This amount does not include the Housing Programs for Persons with Disabilities funding which may be issued under a separate NOFA.

### *Administrative Expenses*

Up to 10 percent of the sum of the Program Year HOME basic formula allocation and program income may be set aside for HOME Administrative expenses to cover the costs of administering the statewide program. A portion of this set-aside may be provided to applicants receiving HOME funds for the cost of administering the program. For-profit organizations are not eligible to receive administrative funds. TDHCA may utilize these funds for construction and Section 504 inspection costs as needed.

### *CHDO Set-Aside*

A minimum of 15 percent of the annual HOME allocation, approximately \$6 million (plus \$300,000 – for CHDO operating expenses) is reserved for CHDOs. CHDO set-aside projects are owned, developed, or sponsored by the CHDO, and result in the development of rental units or homeownership. Development includes projects that have a construction component, either in the form of new construction or the rehabilitation of existing units. If the CHDO owns the project in partnership, it or its wholly-owned for-profit or nonprofit subsidiary must be the managing general partner. These organizations can apply for multifamily rental housing acquisition, rehabilitation, or new construction, as well as for the acquisition, rehabilitation, or new construction of single family housing. CHDOs can also apply for homebuyer assistance if their organization is the owner or developer of the single family housing project.

In accordance with 24 CFR 92.208, up to 5 percent of the State's Fiscal Year HOME allocation may be used for operating expenses of CHDOs. In accordance with 92.300(a)(2)(f), a CHDO may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the CHDOs total operating expenses in that fiscal year. TDHCA may award CHDO Operating Expenses in conjunction with the award of CHDO Development Funds, or through a separate application cycle not tied to a specific activity.

### *Contract for Deed Conversions*

The 81st Legislature passed Appropriations Rider 6 to TDHCA's appropriation, which requires TDHCA to spend no less than \$4 million for the biennium on contract for deed conversions for families that reside in a colonia and earn 60 percent or less of the applicable area median family income (AMFI). Furthermore, TDHCA is targeted to convert no less than 200 contracts for deeds into traditional notes and deeds of trust. The intent of this program is to help colonia residents become property owners by converting their contracts for deeds into traditional mortgages. Households served under this initiative must not earn more than 60 percent of AMFI and the home converted must be their primary residence. The properties proposed for this initiative must meet TDHCA's definition of a colonia. HOME funds may be used in the administration of this program at the determination of the Department. If HOME funds are used for this activity, the program must comply with federal requirements as established in 24 CFR 92 and in accordance with §2306.111 (c), Texas Government Code, these funds may only be used in non-PJs. As a statutorily required set-aside, these funds would not be subject to the Regional Allocation Formula, pursuant to §2306.111(d-1)(2) of the Texas Government Code.

### *Housing Programs for Persons with Disabilities*

According to the American Community Survey 3-Year Estimates, between 2005-2007 there were approximately 3,019,042 million people in Texas over the age of five, or approximately 14.4 percent, had some type of long lasting condition or disability. Of these, 312,812 households, include persons with self-care limitations in Texas. Approximately 23.4 percent of people over the age of five with a disability were under the poverty level. However, leveraging other federal funds, the numbers of persons with disabilities transitioning from institutional living into community-based living is increasing, becoming a priority for the State of Texas. This is based on the most recent data available. The Department's Tenant-Based Rental Assistance Program for Persons with Disabilities is a critical component in the housing continuum toward helping households transition back into the community.

Approximately 5% of the State's annual HOME allocation shall be directed toward assistance for Persons with Disabilities (PWDs) who live in any area of the state. TDHCA will ensure that all housing developments are built and managed in accordance with its Integrated Housing Rule, 10 Texas Administrative Code §1.15.

### *Special Needs Populations*

Subject to the availability of qualified applications, TDHCA has a goal to allocate a minimum of 20 percent of the annual HOME allocation to applicants serving persons with special needs. Eligible applicants include nonprofits, for-profits, units of general local government, and PHAs with documented histories of working with special needs populations. All HOME Program activities will be included in attaining this goal. Additional incentives may be established under each of the eligible activities to assist TDHCA in reaching its goal. Funds will be made available via Notices of Funding Availability based on activity type.

### **FUNDING DISTRIBUTION**

Subject to Texas Government Code §2306.111, HOME funds will be distributed according to the established Regional Allocation Formula (RAF), The 2010 RAF distributes funding for the following activities:

- CHDO Project Funds,
- Rental Housing Development Program,
- General Funds for Single Family Activities.

The table below shows the regional funding distribution for all of the activities distributed under the RAF. Targeted funding amounts for each activity will also be established using the percentages generated by the RAF.

**2010 Targeted Distribution of Funds under the RAF\***

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$1,720,257	4.6%	\$1,719,823	100.0%	\$434	0.0%
2	Abilene	\$1,081,834	2.9%	\$1,054,137	97.4%	\$27,697	2.6%
3	Dallas/Fort Worth	\$7,535,817	20.0%	\$2,500,475	33.2%	\$5,035,342	66.8%
4	Tyler	\$3,714,016	9.8%	\$2,889,040	77.8%	\$824,976	22.2%
5	Beaumont	\$1,996,997	5.3%	\$1,776,185	88.9%	\$220,812	11.1%
6	Houston	\$3,427,061	9.1%	\$1,162,092	33.9%	\$2,264,969	66.1%
7	Austin/Round Rock	\$2,482,338	6.6%	\$1,116,180	45.0%	\$1,366,157	55.0%
8	Waco	\$1,448,525	3.8%	\$706,773	48.8%	\$741,752	51.2%
9	San Antonio	\$1,929,426	5.1%	\$1,238,269	64.2%	\$691,157	35.8%
10	Corpus Christi	\$2,286,072	6.1%	\$1,501,480	65.7%	\$784,592	34.3%
11	Brownsville/Harlingen	\$7,450,756	19.7%	\$3,441,506	46.2%	\$4,009,250	53.8%
12	San Angelo	\$1,651,324	4.4%	\$791,664	47.9%	\$859,660	52.1%
13	El Paso	\$1,003,375	2.7%	\$752,565	75.0%	\$250,811	25.0%
	<b>Total</b>	<b>\$37,727,798</b>	<b>100.0%</b>	<b>\$20,650,188</b>	<b>54.7%</b>	<b>\$17,077,610</b>	<b>45.3%</b>

*\*2011 RAF will be provided in the final version of this document.*

### *Review of Applications*

All programs will be operated through direct administration by TDHCA or announced by the release of a Notice of Funding Availability. For Notices of Funding Availability, applicants must submit a complete application to be considered for funding, along with an application fee determined by TDHCA. Applications received by TDHCA will be reviewed for applicable threshold, eligibility and/or scoring criteria in accordance with the Department's rules and application review procedures published in the NOFA and/or application materials.

### *Selection Process*

Qualifying applications are recommended for funding based on the Department's rules and any additional requirements established in the Notice of Funding Availability. Applications submitted for development activities will also receive a review for financial feasibility and underwriting. Applications will be reviewed and recommended for funding in the manner prescribed in the State of Texas HOME Program Rule.

### *Match Requirements*

TDHCA will provide matching contributions from several sources for HOME funds drawn down from the State's HOME Investment Trust Funds Treasury account within the fiscal year. The State sources may include the following:

- Loans originated from the proceeds of single family mortgage revenue bonds issued by the State. TDHCA will apply no more than 25 percent of bond proceeds to meet its annual match requirement.
- Match contributions from the State's Housing Trust Fund to affordable housing projects that are not HOME-assisted, but that meet the requirements as specified in 24 CFR 92.219(b)(2).
- Eligible match contributions from State recipients and subrecipients, as specified in 24 CFR 92.220.
- Match contributions from local political jurisdictions provided through the abatement of real estate property taxes for affordable housing properties developed and owned by qualified CHDO applicants.

### *Deobligated HOME Program Funds*

When administrators have not successfully expended the HOME funds within their contract period, TDHCA deobligates the funds and pools the dollars to award applicants according to TDHCA's Deobligated Funds Policy.

## **APPLICABLE FEDERAL AND STATE REGULATIONS**

### **§91.320(k)**

HOME funds will be distributed in accordance with the eligible activities and eligible costs listed in 24 CFR 92.205–92.209 and 10 TAC Chapter 53.

Developments receiving funding from TDHCA must comply with accessibility standards required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), as amended, and specified under 24 CFR Part 8, Subpart C. This includes a provision that a minimum of 5 percent of the total dwelling units or at least one unit, whichever is greater, must be made accessible for individuals with mobility impairments. An additional 2 percent of the total number of dwelling units or at least one unit, whichever is greater, must be accessible for individuals with hearing or vision impairments.

### *Minority Participation*

TDHCA encourages minority employment and participation among all applicants under the HOME Program. All applicants to the HOME Program are required to submit an affirmative marketing plan as part of the application process. Additionally, TDHCA encourages outreach to Historically Underutilized Businesses (HUBs) by including advertisement examples aimed at HUBs in the sample procurement plan during implementation training. Additionally, form HUD-702, which lists businesses used for the contract including HUBs, is required from sub-recipients with the final draw request for each HOME activity.

Furthermore, while Section 3 encourages the use of Section 3 business concerns and employment of Section 3 residents, the Section 3 residents may not be minorities. Section 3 residents are people who make 80 percent or less than the area median family income and reside in the neighborhood in which certain HUD-funded assistance takes place. However, there has historically been a correlation between low-income persons and minority status. To address this correlation and encourage minority participation, TDHCA will require sub-recipients that receive over \$200,000 for Section 3-covered assistance, including housing construction or reconstruction, to comply with and report on Section 3 starting with new contracts issued in SFY 2011.

Finally, the Housing Resource Center, a division that conducts research for the Department, is in the process of conducting the Four-Part Analysis for TDHCA to comply with the regulations under Title VI of the Civil Rights Act of 1964. Title VI ensures program access to residents of Texas designated as possessing "limited English proficiency" or LEP. The Four-Factor Analysis includes: (1) the number or proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity or service provided by the program; and (4) the resources available and costs to the recipient. After the Four-Factor Analysis is complete, TDHCA will complete its Language Access Plan which will determine reasonable steps to comply with the regulations and ensure access for all TDHCA programs to Texans regardless of their national origin and native languages.

### **RECAPTURE PROVISIONS UNDER HOMEOWNERSHIP PROGRAMS**

#### **§92.254(a)(4)**

If the participating jurisdiction intends to use HOME funds for homebuyers, the guidelines for resale or recapture must be described as required in 24 CFR 92.254(a)(5).

TDHCA has elected to utilize the recapture provision under 24 CFR 92.254(a)(5)(ii) as its method of recapturing HOME funds under any program the State administers that is subject to this provision. The following methods of recapture would be acceptable to TDHCA and will be identified in the note prior to closing:



1. Recapture the amount of the HOME investment reduced on a prorata share based on the time the homeowner has owned and occupied the unit measured against the required affordability period. The recapture amount is subject to available shared net proceeds in the event of sale or foreclosure of the housing unit.
2. In the event of sale or foreclosure of the housing unit, if the shared net proceeds (i.e., the sales price minus closing costs; any other necessary transaction costs; and loan repayment, other than HOME funds) are in excess of the amount of the HOME investment that is subject to recapture, then the net proceeds may be divided proportionately between TDHCA and the homeowner as set forth in the following mathematical formulas:

$(\text{HOME investment} / (\text{HOME investment} + \text{homeowner investment})) \times \text{net proceeds} = \text{HOME amount to be recaptured}$

$(\text{Homeowner investment} / (\text{HOME investment} + \text{homeowner investment})) \times \text{net proceeds} = \text{amount to homeowner}$

In certain instances, TDHCA may choose to utilize the resale provision at 24 CFR 92.254(a)(5)(i) under any program the State administers that is subject to this provision. The following method of resale would be acceptable to TDHCA and will be identified in the note prior to closing:

1. Resale requirements must ensure that, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low or very low income family and will use the property as its principal residence.
2. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low or very low income homebuyers.
3. The period of affordability is based on the total amount of HOME funds invested in the housing.

## OTHER FORMS OF INVESTMENT

### §91.320(k)(2)(i)

If a participating jurisdiction intends to use other forms of investment not described in §92.205(b), a description of the other forms of investment must be provided.

The State is not proposing to use any form of investment in its HOME Program that is not already listed as an eligible form of investment in 24 CFR 92.205(b).

### *Refinancing Debt*

### §91.320(k)(2)(iii)

If the State intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required under 24 CFR § 92.206(b).

TDHCA may use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds as described in 24 CFR § 92.206(b). TDHCA shall use its underwriting and evaluation standards, codified at 10 Texas Administrative Code, Chapter 1 and its HOME Program Rule at 10 Texas Administrative Code, Chapter 53, for refinanced properties in accordance with its administrative rules. At a minimum, these rules require the following:

- That rehabilitation is the primary eligible activity for developments involving refinancing of existing debt;
- No HOME funds will be used to refinance affordable housing developments that were constructed within the past 10 years.
- Sets a minimum funding level for rehabilitation on a per unit basis;
- Requires a review of management practices to demonstrate that disinvestments in the property has not occurred;
- That long term needs of the project can be met;
- That the financial feasibility of the development will be maintained over an extended affordability period;
- State whether new investment is being made to maintain current affordable units, and or create additional affordable units;
- Specifies the required period of affordability;
- Specifies that HOME funds may be used throughout the entire jurisdiction, except as TDHCA may be limited by the Texas Government Code; and
- States that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

### **CPD OUTCOME PERFORMANCE MEASUREMENT SYSTEM REPORTING**

§91.320(c)(3), §91.3320(e), §91.320(g)

In accordance with the guidelines from HUD, TDHCA will comply with the new CPD Outcome Performance Measurement System. Compliance will be attained through the creation and development of additional tracking screens in TDHCA's central database to enable the Department to capture information needed for input into IDIS. HOME Program eligible activities will be categorized into the objectives and outcomes listed in the chart below. It is anticipated most HOME Program eligible activities will be categorized as Outcome #2 and Objective #2.

The estimated performance figures are based on planned performance during the Program Year (February 1st through January 31st) of contracts committed and projected households served. In contrast, the performance measures reported to the Texas Legislative Budget Board for the State Fiscal Year (September 1st through August 31st) are based on anticipated units and households at time of award. The HOME performance figures reported herein may include funding from several years as funds from previous years are deobligated and refunded.

OBJECTIVES	OUTCOME 1	OUTCOME 2	OUTCOME 3
<b>OBJECTIVE #1</b> Suitable Living Environment	Enhance Suitable Living Environment Through Improved/New Accessibility	Enhance Suitable Living Environment Through Improved/New Affordability	Enhance Suitable Living Environment Through Improved/New Sustainability
<b>OBJECTIVE #2</b> Decent Housing	Create Decent Housing with Improved/New Availability	Create Decent Housing with Improved/New Affordability (DH-2)	Create Decent Housing with Improved/New Sustainability
<b>OBJECTIVE #3</b> Economic Opportunity	Provide Economic Opportunity Through Improved/New Accessibility	Provide Economic Opportunity Through Improved/New Affordability	Provide Economic Opportunity Through Improved/New Sustainability

**HOME Program Performance Measures**

Outcomes and Objectives	Performance Indicators	Expected Number
DH-2	No. of rental units assisted through new construction and rehabilitation	262
DH-2	No. of tenant-based rental assistance units	170
DH-2	No. of existing homeowners assisted through owner-occupied assistance	200
DH-2	No. of first-time homeowners assisted through homebuyer assistance	210

**HOME Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	50
Non-homeless households	500
Special needs households	350

## HOMELESS ACTION PLAN: EMERGENCY SOLUTIONS GRANTS PROGRAM

### **FEDERAL RESOURCES EXPECTED PY 2011**

TDHCA will receive \$5,236,361 for PY 2011.

### **RECIPIENTS**

Recipients of ESGP funds are units of general local government and private nonprofit organizations.

### **ESTIMATED PY 2011 BENEFICIARIES**

It is estimated that in PY 2011 74 private nonprofit entities and units of general local government will be funded to administer projects that will provide shelter and related services to homeless persons and/or intervention services to persons at risk of homelessness. It is anticipated that five of the subrecipient organizations which will be funded will be collaborative applications with one or more partners. It is estimated that approximately 61,000 homeless persons will be assisted in PY 2011.

#### *Targeted Beneficiaries*

The targeted beneficiaries are homeless individuals and individuals at risk of homelessness.

### **FUNDING DISTRIBUTION**

§91.320(d) and (f)

TDHCA has administered the Emergency Solutions Grants Program (ESGP) since 1987. TDHCA will administer the S-094-DC-48-0001 ESGP funds in a manner consistent with the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. Sec 11371 et seq.). TDHCA will obligate PY 2011 ESGP funds through a statewide competitive application process. ESGP funds are reserved for each of the State's 13 Uniform State Service Regions based on the poverty population of each region taken from the 2000 US Census.

### **OBJECTIVES**

§91.320(d)

The objectives of ESGP consist of the following:

- Help improve the quality of emergency shelters for the homeless.
- Make additional emergency shelters available.
- Help meet the costs of operating and maintaining emergency shelters.
- Provide essential services so that homeless individuals have access to the assistance they need to improve their situations.
- Provide emergency intervention assistance to prevent homelessness.

The State's strategy to help homeless persons includes: community outreach efforts to ensure that homeless persons and persons at risk of homelessness are aware of available services, providing funding to support emergency shelter and transitional housing programs, helping homeless persons make the transition to permanent housing and independent living through comprehensive case management, and supporting other efforts to address homelessness. This strategy is outlined below.

*Helping low income families avoid becoming homeless*

TDHCA awards ESGP funds using the competitive process described in the ESGP One-Year Action Plan. In that process, up to 30 percent of the State's ESGP annual allocation is made available to support homelessness prevention activities, and up to 30 percent of the ESGP annual allocation is made available to provide essential services. Homelessness prevention efforts include short-term rent and utility assistance for homeless individuals and families and, if they meet certain criteria, those who are at-risk of losing their housing.

Applicants for ESGP funding are required to demonstrate coordination with other providers in their communities as part of the ESGP scoring criteria. ESGP grant recipients are encouraged to maximize all community resources when providing homelessness prevention assistance to ensure the appropriate use of these limited resources.

*Reaching out to homeless persons and assessing their individual needs*

Each application for ESGP funding includes information about the case management system used by the applicant organization.

Each application for ESGP funding includes a description of services provided to homeless persons. This description is evaluated during the application review process as a criterion for receiving ESGP funding.

ESGP grant recipients will be required to report on outcomes achieved by homeless persons assisted. Reporting on outcomes will provide TDHCA with information on the long-term impact of the services provided such as the attainment of transitional housing or permanent housing, obtaining a GED or high school diploma or the achievement of other education and training goals, obtaining job skills, job placement, etc.

*Addressing the emergency shelter and transitional housing needs of homeless persons*

ESGP grants provide support to organizations that provide emergency services, shelter, and transitional housing to homeless persons and families.

To ensure equitable distribution of funding, a portion of the ESGP allocation is reserved for each of the 13 regions in the state on the basis of the poverty population in each region. TDHCA expects to fund 76 projects in PY 2011. (See the ESGP Obligation Process later in this section.)

*Helping homeless persons make the transition to permanent housing*

ESGP funds can be used to pay rent and utility deposits as well as first month's rent for homeless individuals making the transition to permanent housing.

ESGP will require sub-recipients that are performing construction or rehabilitation to submit a Section 3 report as to how many low-income households have the opportunity to perform work on the construction.

*Supporting other efforts to address homelessness*

The State has contracted with an organization to provide technical assistance in FY 2010 to rural homeless coalitions representing approximately 182 Texas counties and will support the State's effort to assist rural communities in their efforts to access federal CoC funds and that are interested in being part of the State's application for Continuum of Care funds for the balance of state areas in the State. Types of technical assistance to be rendered will include, but not be limited to, homeless counts/surveys, compilation of a housing and services inventory, identification of housing gaps, and development of homeless discharge plan strategies for their area. Organizations receiving the technical assistance must be located in a Balance of State area and applying for Continuum of Care funds through the U.S. Department of Housing and Urban Development. The State has provided State General Revenue funds to the Texas Homeless Network, the awardee of the RFP which the Department released in 2008, to provide the referenced technical assistance. The first year of funding began September 1, 2008 and the second year September 1, 2009. The Department expects that as a result of the technical assistance that will be rendered, the State will submit a more competitive application to HUD for Continuum of Care funds. If the State receives Continuum of Care funds for the Balance of State areas, additional homeless persons will be assisted in the State. The source of funding for this contract is State general revenue funds.

**ELIGIBLE ACTIVITIES**

§91.320(d)

The provision of assistance to obtain and maintain housing and the provision of funding to support the maintenance and operation of shelters help meet the priority needs of providing emergency shelter and transitional housing to very low-income individuals.

ESGP funds may be used for the following eligible activities:

- (1) Renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters for the homeless.
- (2) Provision of essential services, including, but not limited to, the following:
  - (A) Assistance in obtaining permanent housing
  - (B) Medical and psychological counseling and supervision
  - (C) Employment counseling
  - (D) Nutritional counseling
  - (E) Substance abuse treatment and counseling
  - (F) Assistance in obtaining other federal, state, and local assistance
  - (G) Other services such as child care, transportation, job placement, and job training

(H) Staff salaries necessary to provide the above services

These services may be provided only pursuant to Sec. 414 of the McKinney Act as amended by Sec. 832 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Sec. 11374), which requires that services funded with ESGP must be provided in a nondiscriminatory manner.

(3) Payment of maintenance, operation, and furnishings costs, except that not more than 10 percent of the amount of any ESGP grant may be used to pay operation staff costs.

(4) Developing and implementing homeless prevention activities as per Sec. 414 of the McKinney Act as amended by Sec. 832 of the Cranston-Gonzalez National Affordable Housing Act.

*Recipient Requirements*

Recipients of ESGP funding are required to meet certain minimum specifications that include, but are not limited to, the following:

- (1) Being a unit of general local government or private nonprofit organization.
- (2) Documenting, in the case of a private nonprofit organization, that the proposed project has the approval of the city, county, or other unit of local government in which the project will operate.
- (3) Providing for the participation of homeless or formerly homeless individuals on their board of directors or other policy-making entity.
- (4) Assuring that ESGP subrecipients obligate funds within 180 days from the date that TDHCA received the award letter from HUD.
- (5) Documentation of fiscal accountability, as specified in the application.
- (6) Proposing to undertake only eligible activities.
- (7) Demonstrating need.
- (8) Assuring ability to provide matching funds.
- (9) Demonstrating effectiveness in serving the homeless, including the ability to establish, maintain, and/or improve the self-sufficiency of homeless individuals.
- (10) Assuring that homeless individuals will be involved in the provision of services funded through ESGP, to the maximum extent feasible, through employment, volunteerism, renovating, maintaining or operating facilities, and/or providing direct services to occupants of facilities assisted with ESGP funds.
- (11) Assuring the operation of an adequate, sanitary, and safe homeless facility.
- (12) Assuring that it will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.
- (13) Assuring that it will develop and implement procedures to ensure the confidentiality of records of any individual receiving assistance as a result of family violence.

- (14) Proposing a sound plan consistent with the State of Texas Consolidated Plan, the McKinney-Vento Homeless Assistance Act, and all other assurances and certifications.
- (15) Assuring the participation in the development and implementation, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of person from publicly funded institutions and systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) to prevent such discharge from immediately resulting in homelessness for such persons. ESGP funds are not to be used to assist such persons in place of State and local resources.
- (16) Assuring that it will meet HUD's standards for participation in a local Homeless Management Information System and the collection and reporting of client-level information.
- (17) Any renovation carried out with ESGP assistance shall be sufficient to ensure that the building involved is safe and sanitary, and the renovation will assist homeless individuals in obtaining:
- (A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and
  - (B) other Federal, state, local, and private assistance available for such individuals.

## **FUND OBLIGATION PROCESS**

### **§91.320(k)**

TDHCA will obligate PY 2010 ESGP funds to units of general local government or to private nonprofit organizations which have local government approval to operate a project which assists homeless individuals. TDHCA will evaluate all applications received and award funds in accordance with the application specifications. This statewide competitive application process will allow ESGP funds to be distributed equitably.

The State's anticipated ESGP allocation for PY 2011 is \$5,236,361 less 5 percent (\$261,818) for state administration costs of which approximately \$18,612 will be shared with subrecipient organizations which are units of general local government. TDHCA reserves ESGP funds for each of the 13 Uniform State Service Regions. Funds are reserved for each region in direct proportion to the percentage of poverty population that exists in each region according to the most recent county Census data. Applicants compete only against other applicants in their Uniform State Service Region.

TDHCA is statutorily required by the Texas Government Code to provide a comprehensive statement on its activities during the preceding year through a document called the State of Texas Low Income Housing Plan and Annual Report. Part of this document describes the ethnic and racial composition of families and individuals applying for and receiving assistance from each housing-related program operated by TDHCA.

TDHCA issues a notice of funding availability (NOFA) and posts an application to its website. Applications are also provided directly to any organization or individual upon request. The applications are reviewed using a standardized review instrument. A variety of factors, as per the application instructions, are evaluated and scored to determine each application's merit in identifying and



addressing the needs of the homeless population, as well as the organization's capacity to carry out the proposed project.

The top scoring applications in each region will be recommended for funding based on the amount of funds reserved for each region. All available ESGP funds are obligated each year through 12-month contracts.

#### **APPLICABLE FEDERAL AND STATE REGULATIONS**

- 24 CFR 576 as amended;
- Title IV, Subtitle B of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. sec, 11371 et seq.)
- 10 Texas Administrative Code, Chapter 5, Subchapter C.
- 24 CFR 135, also known as Section 3\*

\*Section 3 requires certain recipients of HUD financial assistance to provide job training, employment, and contract opportunities for low- or very-low income residents in connect with projects and activities in their neighborhoods. Grant recipients rehabilitating or constructing homeless shelters with ESGP funds will be required to submit a Section 3 report. TDHCA will require subrecipients that receive over \$200,000 for Section 3-covered assistance to take actions to meet Section 3 requirements starting with new contracts issued in SFY 2011.

#### **LEVERAGING RESOURCES**

Section 576.51 of the ESGP regulations state that each grantee must match the funding provided by HUD. Match resources must be provided after the date of the ESGP grant award and must be provided in an amount equal to or greater than the ESGP grant award. Resources used to match a previous grant may not be used to match a subsequent award. Sources of match may include, but are not limited to, unrestricted funds from the grant recipient, volunteer hours, the value of donated materials or buildings, or the fair market rent or lease value of a building used to provide services to the homeless population. Each applicant must identify the source and amount of match they intend to provide if they are selected for funding and may report monthly on the amount of match provided. ESGP monitors review the match documentation during each on-site monitoring visit. A desk review is completed at the closeout of each contract to ensure, among other things, that each ESGP recipient has provided an adequate amount of match during the contract period.

#### **SPECIAL INITIATIVES AND PARTNERSHIPS**

TDHCA is the lead agency in the Texas Interagency Council for the Homeless (TICH). TICH is charged with surveying and evaluating services for the homeless in Texas, assisting in the coordination and provision of services to homeless person throughout the State, increasing the flow of information among service providers and appropriate authorities, developing guidelines to monitor services to the homeless, providing technical assistance to the housing finance division of TDHCA in assessing housing needs for persons with special needs, establishing a central resource and information center for the State's

homeless population, and developing a strategic plan to address the needs of the homeless in cooperation with TDHCA and the Health and Human Services Commission.

TDHCA also supports activities that address homelessness, including providing technical assistance to develop and strengthen homeless coalitions throughout Texas, distributing a statewide bimonthly newsletter on homelessness, maintaining an information resource center, workshops, sponsoring an annual statewide conference on homeless issues, and the provision of training and technical assistance to organizations interested in being part of the State's application for Continuum of Care funds for the balance of state areas in the State.

**CPD OUTCOME PERFORMANCE MEASUREMENT SYSTEM REPORTING**

§91.320(c)(3), §91.320(e), §91.320(g)

ESGP began reporting using the HUD CPD Outcome Performance Measurement System on September 1, 2006, with the implementation of the 2006 ESGP contracts. TDHCA will continue to utilize this reporting system in 2009. In 2007, the HUD CPD Outcome Performance Measurement System became automated whereby subrecipients began to report performance data via a Web based application. TDHCA's monthly performance reports have been amended to include changes in reporting requirements required by HUD and to gather data on persons assisted with services which are outcome oriented and have a long-term impact. ESGP activities related to renovation/rehabilitation, essential services, maintenance, operations, and furnishings will fall under HUD's Outcome 1, Availability/Accessibility, and Objective 1, Create a Suitable Living Environment (SL-1). ESGP activities related to homelessness prevention will be reported under HUD's Outcome 1, Affordability and Objective 2, Provide Decent Housing (DH-2).

**ESGP Annual Action Plan Planned Project Results**

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
<b>SL-1</b> Availability/ Accessibility and Create a Suitable Living Environment	Accessibility for the purpose of creating a suitable living environment.	26,000	Provide funding to support the provision of emergency and/or transitional shelter to homeless persons.
<b>DH-2</b> Affordability and Provide Decent Housing	Affordability for the purpose of providing decent housing.	35,000	The provision of non-residential services including homelessness prevention assistance.

**ESGP Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	70,000*
Non-homeless households	n/a
Special needs households	6,300*

\*These numbers represent homeless persons, not households or units.

ESGP only provides rental assistance and assists households who are facing foreclosure, but cannot be utilized to purchase a home. Consequently, ESGP does not impact the number of properties that are affordable. ESGP funds are utilized to assist all homeless persons and persons at-risk of homelessness.

# COMMUNITY DEVELOPMENT ACTION PLAN: TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## 2011 ACTION PLAN

### **I. PROGRAM YEAR 2011 GENERAL PROGRAM INFORMATION**

#### **A. COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM ADMINISTRATION**

The Texas Department of Rural Affairs (TDRA), administers the State of Texas Community Development Block Grant Program (CDBG), called the Texas Community Development Block Grant Program (Texas CDBG). The Texas Department of Agriculture (TDA) administers the Texas Capital Fund through an interagency agreement between TDRA and TDA. The TxCDBG will continue to fund the Colonia Self-Help Centers Fund but administration of that program will remain with the Texas Department of Housing and Community Affairs (TDHCA) Office of Colonia Initiatives through a Memorandum of Understanding between TDRA and TDHCA.

The mission of the Texas Department of Rural Affairs is to enhance the quality of life for rural Texans.

#### **B. ELIGIBLE APPLICANTS**

§91.320(k)

Eligible applicants are nonentitlement general purpose units of local government including cities and counties that are not participating or designated as eligible to participate in the entitlement portion of the federal Community Development Block Grant Program (CDBG). Nonentitlement cities that are not participating in urban county programs through existing participation agreements are eligible applicants (unless the city's population is counted towards the urban county CDBG allocation).

Nonentitlement cities are located predominately in rural areas and are cities with populations less than 50,000 thousand persons; cities that are not designated as a central city of a metropolitan statistical area; and cities that are not participating in urban county programs. Nonentitlement counties are also predominately rural in nature and are counties that generally have fewer than 200,000 persons in the nonentitlement cities and unincorporated areas located in the county.

Hidalgo County, a designated CDBG urban county, is eligible to receive assistance under the Texas Community Development Block Grant (TxCDBG) Program Colonia Fund (and each fund category included under the Colonia Fund).

Counties eligible under both the TxCDBG Colonia Fund and the Texas Water Development Board's Economically Distressed Areas Program (EDAP) are eligible under the TxCDBG Colonia Economically Distressed Areas Program Fund. Non-entitlement cities located within eligible counties that meet other eligibility criteria, including the geographic requirements of the Colonia Fund, are also eligible applicants for the TxCDBG Colonia Economically Distressed Areas Program Fund.

With the enactment of §43.907 of the Texas Local Government Code, a colonia meeting specified requirements that is annexed by a municipality remains eligible for five years after the effective date of

the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred. This only applies to a colonia annexed by a municipality on or after September 1, 1999.

### ***C. ELIGIBLE ACTIVITIES***

§91.320(d) and (e)

Eligible activities under the Texas Community Development Block Grant Program are listed in 42 U.S.C Section 5305. The TxCDBG staff reviews all proposed project activities included in applications for all fund categories, except the Texas Capital Fund, to determine their eligibility. The Texas Department of Agriculture determines the eligibility of activities included in Texas Capital Fund applications.

**All proposed activities must meet one of the following three National Program Objectives:**

1. principally benefit low- and moderate-income persons; or
2. aid in the elimination of slums or blight; or
3. meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community

Area benefit can be used to qualify street paving projects. However, for street paving projects that include multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least fifty-one percent (51%) of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the Disaster Relief/Urgent Need Fund.

### ***D. INELIGIBLE ACTIVITIES***

In general, any type of activity not described or referred to in 42 U.S.C Section 5305 is ineligible. Specific activities ineligible under the Texas Community Development Block Grant Program are:

1. construction of buildings and facilities used for the general conduct of government (e.g. city halls, courthouses, etc.);
2. new housing construction, except as last resort housing under 49 CFR Part 24 or affordable housing through eligible subrecipients in accordance with 24 CFR 570.204;
3. the financing of political activities;
4. purchases of construction equipment (except in limited circumstances under the STEP Program);
5. income payments, such as housing allowances; and
6. most operation and maintenance expenses (including smoke testing, televising/videotaping line work, or any other investigative method to determine the overall scope and location of the project work activities)

The Texas Capital Fund (TCF) will not accept applications in support of public or private prisons, racetracks and projects that address job creation/retention through a government supported facility. The Texas Capital Fund Program may be used to financially assist/facilitate the relocation of a business when certain requirements, as defined in the application guidelines, are met.

### ***E. PRIMARY BENEFICIARIES***

The primary beneficiaries of the Texas Community Development Block Grant Program are low to moderate income persons as defined under the U.S. Department of Housing and Urban Development (HUD) Section 8 Assisted Housing Program (Section 102(c)). Low income families are defined as those

earning less than 50 percent of the area median family income. Moderate income families are defined as those earning less than 80 percent of the area median family income. The area median family can be based on a metropolitan statistical area, a non-metropolitan county, or the statewide non-metropolitan median family income figure.

***F. DISPLACEMENT OF PERSONS ASSISTED***

Applicant localities must certify that they will minimize the displacement of persons as a result of activities assisted with Texas Community Development Block Grant Program grant funds.

**II. ALLOCATION OF CDBG FUNDS**

91.320(d) and (f)

***A. AVAILABLE FUND CATEGORIES***

Assistance is available in six funding categories and one pilot program under the Texas Community Development Block Grant Program as indicated below:

Funds:

1. Community Development Fund
2. Texas Capital Fund
3. Colonia Fund
  - 3a. Colonia Planning and Construction Fund
  - 3b. Colonia Economically Distressed Areas Program Legislative Set-Aside
  - 3c. Colonia Self-Help Centers Legislative Set-Aside
4. Planning and Capacity Building Fund
5. Disaster Relief/Urgent Need Fund
6. TxCDBG STEP Fund

***PILOT PROGRAMS:***

RENEWABLE ENERGY DEMONSTRATION PILOT PROGRAM

COMMUNITY FACILITIES FUND

***B. DESCRIPTION OF FUNDS***

***1. Community Development Fund***

This fund is available on a biennial basis for funding from program years 2011 and 2012 through a 2011 annual competition in each of the 24 state planning regions. Applications received by the 2011 program year application deadline are selected to receive grant awards from the 2011 and 2012 program year allocations. The scoring of the applications is shared between TDRA and the 24 Regional Review Committees (RRC), with the RRC having the predominate percentage of the total possible score.

Regional Priority Set-asides: Housing and Non-Border Colonia projects - Each Regional Review Committee (RRC) is encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and

minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.)

The TxCDBG encourages the use of funds not only to improve existing locations but to provide facilities in other areas to accommodate residential opportunities that will benefit low and moderate income persons. Applicants are encouraged to provide for infrastructure and housing activities that will improve opportunities for low and moderate income persons. When considering projects and designing projects, applicants must continue to consider affirmatively furthering fair housing, which includes providing basic infrastructure, such as water, sewer, and roads, that benefit residential housing and other housing activities.

Funds for projects under the Community Development Fund are allocated among the 24 state planning regions based on the following:

*REGIONAL ALLOCATION METHOD*

The original CD formula is used to allocate 40 percent of the annual state CDBG allocation; and the HUD formula is used to allocate 21.71 percent of the annual state CDBG allocation.

Original CD formula (40%) factors:

a.	Non-Entitlement Population	30%
b.	Number of Persons in Poverty	25%
c.	Percentage of Poverty Persons	25%
d.	Number of Unemployed Persons	10%
e.	Percentage of Unemployed Persons	10%

To the extent possible, the information used to calculate the regional allocations through these factors will be based on the eligible nonentitlement applicants within each region. The population and poverty information used is from the current available decennial census data. The unemployment information used is the current available annual average information.

HUD formula (21.71%) - the formula is the same methodology that HUD uses to allocate CDBG funds to the non-entitlement state programs. The HUD factors, percentages, and methodology are specified in 42 U.S.C. 5306(d). The TxCDBG will use available data to calculate the allocations to each region.

Using the HUD methodology, the allocation for each region shall be the greater of an amount that bears the same ratio to the allocation for all 24 regions available as either:

(A) the average of the ratios between:

- the population of the nonentitlement areas in that region and the population of the nonentitlement areas of all 24 regions (counted one time - 25% weight);
- the extent of poverty in the nonentitlement areas in that region and the extent of poverty in the nonentitlement areas of all 24 regions (counted two times - 50% weight); and
- the extent of housing overcrowding in the nonentitlement areas in that region and the extent of housing overcrowding in the nonentitlement areas of all 24 regions (counted one time - 25% weight);

OR

(B) the average of the ratios between:

- the age of housing in the nonentitlement areas in that region and the age of housing in the nonentitlement areas in all 24 regions (counted two and one half times - 50% weight);
- the extent of poverty in the nonentitlement areas in that region and the extent of poverty in the nonentitlement areas of all 24 regions (counted one and one half times - 30% weight); and
- the population of the nonentitlement areas in that region and the population of the nonentitlement areas of all 24 regions (counted one time - 20% weight).

The TxCDBG will continue to involve the non-entitlement communities and the public in a review of the regional allocation formula through public hearings, meetings of the TDRA board, Task Forces, and input from the State Community Development Review Committee, Regional Councils of Governments, local and state government officials, and other interested parties.

Some regions in the state have a small number of eligible applicants and these regions may receive regional allocations large enough to allow each eligible applicant in that region to apply for an equal share of the regional allocations. The share available to each eligible applicant in the region may amount to an equal share based on the number of eligible applicants and the 2011 and 2012 regional allocations for that region. Or the share available to each eligible applicant in the region may be based on an allocation formula used by the region to allocate the funds available through the 2011 and 2012 regional allocations for the region. Each applicant in one of these regions must meet all state and federal eligibility requirements including but not limited to TxCDBG applicant threshold requirements, federal requirements for eligible activities, and federal requirements that each activity in an application meet one of the three national program objectives. Applicants in these regions are scored by the Regional Review Committees and the TxCDBG staff in accordance with the established Community Development Fund selection criteria. The total score received by each applicant in these regions determines if the applicant receives funding from the 2011 regional allocation or 2012 regional allocation. Depending on the State of Texas' CDBG allocations for the 2011 and 2012 program years, there could be a large variance between the 2011 and 2012 regional allocations. If the 2012 regional allocation for one of these regions decreases significantly from the 2011 regional allocation, then the total scores received by applicants in these regions could in fact prevent some of the applicants from receiving funds from the 2012 regional allocation.

A significant increase or decrease to the State's current Program Year CDBG allocation may result in corresponding increases or decreases to the current Program Year Community Development Fund allocation and correspondingly higher or lower regional allocations.

Non-border colonia projects – available to eligible county applicants for projects in severely distressed unincorporated areas located farther than 150 miles from the Texas-Mexico border and non-entitlement counties, or portions of counties, within 150 miles of the Texas-Mexico border that are not eligible for the Colonia Fund because they are located in a standard metropolitan statistical area that has a population exceeding 1,000,000, as specified the Cranston-Gonzalez National Affordable Housing Act. Non-border colonia areas would be an identifiable unincorporated community that is determined to be colonia-like on the basis of objective criteria, including lack of potable water supply, lack of adequate



sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990).

Applicants must demonstrate they are adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the application guidance.

Applications requesting funds for projects other than water and sewer must include a description of how the applicant's water and sewer needs would be met and the source of funding that would be used to meet these needs.

*2. Texas Capital Fund*

This economic development funding is used for projects that will create or retain permanent employment opportunities, primarily for low to moderate income persons, and for county economic and management development activities. Responsibility for this fund is contracted to the Texas Department of Agriculture through an interagency agreement. The funds may be used to provide financial assistance for eligible activities as cited in 42 U.S.C Section 5305, including the following activities.

- a. Infrastructure improvements to assist a for-profit entity or a non-profit entity.
- b. Acquisition of real property or to acquire, construct, reconstruct, or rehabilitate public facilities to assist a for-profit entity.
- c. Infrastructure improvements to assist Texas Main Street Program designated municipalities.
- d. Downtown Revitalization Program that is designed to foster and stimulate economic development in downtown areas by providing financial assistance for public improvements to non-entitlement cities. This program encourages the elimination of slum and blighted areas by targeting the renovation and/or construction of sidewalks, lighting, drainage and other infrastructure improvements in downtown areas. Communities eligible for the Texas Main Street Program are not eligible for the Downtown Revitalization Program.
- e. County economic and management development activities as approved by TDRA. Not more than five percent (5%) of the Texas Capital Fund allocation may be used for these activities. Section 487.3521 of the Texas Government Code requires TDRA to "allocate not more than five percent of the funds allocated to the Department of Agriculture under the Texas Capital Fund to be used for county economic and management development." TDRA will review activities proposed for this assistance and determine if the activities are consistent with the federal law governing the CDBG program.
- f. Assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that:
  - (1) creates or retains jobs for low- and moderate-income persons;
  - (2) prevents or eliminates slums or blight;
  - (3) meets urgent needs;

- (4) creates or retains businesses owned by community residents;
- (5) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or
- (6) provides technical assistance to promote any of the activities under subparagraphs (1) through (5).

The Texas Capital Fund program will require repayment for Real Estate and Infrastructure projects, as follows:

- a. Real Estate Development (including improvements to the business site) projects require full repayment with no interest accruing; and
- b. Infrastructure Program (awards for infrastructure or railroad improvements on private property require full repayment with no interest accruing).

### *3. Colonia Fund*

This fund is available to eligible county applicants for projects in severely distressed unincorporated areas which meet the definition as a "colonia" under this fund. Scoring of all the selection criteria for Colonia Fund applications is completed by TxCDBG staff. The term "colonia" means any identifiable unincorporated community that is within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1,000,000; and that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990). Except for fund categories where additional restrictions apply, a county can only submit applications on behalf of eligible colonia areas located within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding 1,000,000 is not eligible under this fund.

#### *3a. Colonia Planning and Construction Fund*

The allocation is available on a biennial basis for funding from program years 2011 and 2012 through a 2011 annual competition. Applications received by the 2011 program year application deadline are eligible to receive grant awards from the 2011 and 2012 program year allocations. Funding priority shall be given to TxCDBG applications from localities that have been funded through the Texas Water Development Board Economically Distressed Areas Program (TWDB EDAP) where the TxCDBG project will provide assistance to colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with access to the TWDB EDAP-funded water or sewer system.

An eligible county applicant may submit one (1) application for the following eligible construction activities:

- (1) Assessments for Public Improvements – The payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low- and moderate-income to recover the capital cost for a public improvement.

(2) Other Improvements – Other activities eligible under 42 U.S.C Section 5305 designed to meet the needs of colonia residents.

A colonia construction application must include an assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county and provide the colonia identification number for the colonias that would receive the project benefit.

*Colonia Planning Component*

A portion of the funds will be allocated to two separate biennial competitions for applications that include planning activities targeted to selected colonia areas – (Colonia Area Planning activities), and for applications that include countywide comprehensive planning activities (Colonia Comprehensive Planning activities). Applications received by the 2011 program year application deadline are eligible to receive a grant award from the 2011 and 2012 program year allocations.

In order to qualify for the Colonia Area Planning activities, the county applicant must have a Colonia Comprehensive Plan in place that prioritizes problems and colonias for future action. The targeted colonia must be included in the Colonia Comprehensive Plan.

A Colonia Planning activities application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum number of points allowable under this factor to be considered for funding.

(1) *Colonia Area Planning Activities*

An eligible county may submit an application for eligible planning activities that are targeted to one or more colonia areas. Eligible activities include:

- payment of the cost of planning community development (including water and sewage facilities) and housing activities;
- costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and
- costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans.

(2) *Colonia Comprehensive Planning Activities*

To be eligible for these funds, a county must be located within 150 miles of the Texas-Mexico border. The applicant's countywide comprehensive plan will provide a general assessment of the colonias in the county, but will include enough detail for accurate profiles of the county's colonia areas. The prepared comprehensive plan must include the following information and general planning elements:

- Verification of the number of dwellings, number of lots, number of occupied lots, and the number of persons residing in each county colonia
- Mapping of the locations of each county colonia
- Demographic and economic information on colonia residents

- The physical environment in each colonia including land use and conditions, soil types, and flood prone areas
- An inventory of the existing infrastructure (water, sewer, streets, drainage) in each colonia and the infrastructure needs in each colonia including projected infrastructure costs
- The condition of the existing housing stock in each colonia and projected housing costs
- A ranking system for colonias that will enable counties to prioritize colonia improvements rationally and systematically plan and implement short-range and long-range strategies to address colonia needs
- Goals and Objectives
- Five-year capital improvement program
- An assessment of the effect of the Model Subdivision Rules established pursuant to §16.343 of the Water Code and enforcement actions throughout the county
- For any colonia in close proximity to a city, a plan that if implemented could lead to annexation of the colonia by the city

Colonia Planning Component funds may be used for planning purposes under the Colonias to Cities Initiative.

*3b. Colonia Economically Distressed Areas Program (CEDAP) Legislative Set-aside*

The allocation is distributed on an as-needed basis. Eligible applicants are counties, and nonentitlement cities located in those counties, that are eligible under the TxCDBG Colonia Fund, including meeting the geographic requirements, and Texas Water Development Board's Economically Distressed Areas Program (TWDB EDAP). Eligible projects shall be located in unincorporated colonias; in colonias located in eligible nonentitlement cities that annexed the colonia and the application for improvements in the colonia is submitted within five (5) years from the effective date of the annexation; or in colonias located in eligible nonentitlement cities where the city is in the process of annexing the colonia where the improvements are to be made.

Eligible applicants may submit an application that will provide assistance to colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB EDAP-funded water and sewer system improvement project. An application cannot be submitted until the construction of the TWDB EDAP-funded water or sewer system begins.

Eligible program costs include water distribution lines and sewer collection lines providing connection to water and sewer lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG), taps and meters (when approved by the TxCDBG), yard service lines, service connections, plumbing improvements, and connection fees, and other eligible approved costs associated with connecting an income-eligible family's housing unit to the TWDB improvements.

An applicant may not have an existing CEDAP contract open in excess of 48 months and still be eligible for a new CEDAP award.

If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred as appropriate.

*3c. Colonia Self-Help Centers Legislative Set-aside*

In accordance with Subchapter Z, Chapter 2306, Government Code, and Title 10, Texas Administrative Code, Part 1, Chapter 3, TDHCA has established self-help centers in Cameron County, El Paso County, Hidalgo County, Starr County, and Webb County. If deemed necessary and appropriate, TDHCA may establish self-help centers in other counties (self-help centers have been established in Maverick County and Val Verde County) as long as the site is located in a county that is designated as an economically distressed area under the Texas Water Development Board Economically Distressed Areas Program (EDAP), the county is eligible to receive EDAP funds, and the colonias served by the center are located within 150 miles of the Texas-Mexico border.

The geographic area served by each self-help center is determined by TDHCA. Five (5) colonias located in each self-help center service area are designated to receive concentrated attention from the center. Each self-help center sets a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. TDHCA has the authority to make changes to the colonias designated for this concentrated attention.

The TDHCA grant contract for each self-help center must be executed with the county where the self-help center is located. TDHCA will enter into a Texas Community Development Block Grant Program contract with each affected county. Each county enters into a subcontract with a non-profit community action agency, a public housing authority, or a non-profit organization.

A Colonia Residents Advisory Committee was established and not fewer than five persons who are residents of colonias were selected from the candidates submitted by local nonprofit organizations and the commissioners' court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the Texas Community Development Block Grant Program. The Advisory Committee shall advise TDHCA regarding:

- (1) the needs of colonia residents;
- (2) appropriate and effective programs that are proposed or are operated through the centers;
- and
- (3) activities that may be undertaken through the centers to better serve the needs of colonia residents.

The purpose of each center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

- (1) providing assistance in obtaining loans or grants to build a home;
- (2) teaching construction skills necessary to repair or build a home;
- (3) providing model home plans;
- (4) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

---

*Community Development Block Grant Program*

- (5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;
- (6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;
- (7) providing credit and debt counseling related to home purchase and finance;
- (8) applying for grants and loans to provide housing and other needed community improvements;
- (9) providing other eligible services that the self-help center, with TDHCA approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;
- (10) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract;
- (11) monthly programs to educate individuals and families on their rights and responsibilities as property owners; and
- (12) providing access to computers, the internet, and computer training.

A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

*3d. Colonias to Cities Initiative*

If there are an insufficient number of TWDB EDAP projects ready for Colonia Economically Distressed Areas Program (CEDAP) funding, the CEDAP funds may be transferred to the Colonias to Cities Initiative. This initiative will provide funding for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city. Priority would be for colonias that have received prior TxCDBG funding. Both the county and city must submit a multi-jurisdictional pre-application for the project that includes a resolution from each jurisdiction. The city's resolution must include a firm commitment to annex the colonia upon completion of the project. Multi-jurisdictional applications from the county and city would be accepted by invitation only after a thorough review of the pre-applications. Failure to annex the colonia may result in a requirement to repay the CDBG funding to TxCDBG. The maximum amount provided would be \$500,000. (The Colonia Construction component scoring would be used to prioritize funding if needed. The TxCDBG may establish other criteria in the application guidelines.)

In addition, the initiative may involve a planning component that would use the Colonia Area Planning activities guidelines.

*4. Planning And Capacity Building Fund*

This fund is available on a biennial basis to assist eligible cities and counties in conducting planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity, or that include other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservation plans.

A significant increase or decrease to the State's 2012 CDBG allocation may result in corresponding increases or decreases to the 2012 Planning and Capacity Building Fund allocations.

*5. Disaster Relief/Urgent Need Fund*

Disaster Relief assistance is available through this fund as needed for eligible activities in relief of disaster situations where either the Governor has proclaimed a state disaster declaration or the President has issued a federal disaster declaration. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under consideration and may allocate funding throughout the program year based on assistance categories. Priority for the use of TxCDBG funds is repair and restoration activities to meet basic human needs, such as water and sewer facilities, housing, and roads.

Urgent Need assistance is contingent upon the availability of funds for activities that will restore water or sewer infrastructure whose sudden failure has resulted in death, illness, injury, or pose an imminent threat to life or health within the affected applicant's jurisdiction. The infrastructure failure must not be the result of a lack of maintenance and must be unforeseeable. As an initial step, TxCDBG undertakes an assessment of whether the situation is reasonably considered unforeseeable. An application for Urgent Need assistance will not be accepted by the TxCDBG until discussions between the potential applicant and representatives of the TxCDBG, the Texas Commission on Environmental Quality (TCEQ), and the Texas Water Development Board (TWDB) have taken place. Through these discussions, a determination shall be made whether the situation meets TxCDBG Urgent Need threshold criteria; whether shared financing is possible; whether financing for the necessary improvements is, or is not, available from the TWDB; or that the potential applicant does, or does not, qualify for TWDB assistance. If TxCDBG funds are still available, a potential applicant that meets these requirements will be invited to submit an application for Urgent Need funds.

To qualify for Disaster Relief funds:

- The situation addressed by the applicant must be both unanticipated and beyond the control of the local government.
- The problem being addressed must be of recent origin. For Disaster Relief assistance, this means that the application for assistance must be submitted no later than 12 months from the date of the Presidential or Governor's declaration.
- Under Disaster Relief, funds will not be provided under FEMA's Hazard Mitigation Grant Program for buyout projects unless TxCDBG receives satisfactory evidence that the property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area.
- Each applicant for these funds must demonstrate that adequate local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in

its balance as evidenced by the last available audit required by state statute, or funds from other state or federal sources are not available to completely address the problem.

- TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.
- The distribution of these funds will be coordinated with other state agencies.

To qualify for Urgent Need funds:

- The situation addressed by the applicant must not be related to a proclaimed state disaster declaration or a federal disaster declaration.
- The situation addressed by the applicant must be both unanticipated and beyond the control of the local government (e.g., not for facilities or equipment beyond their normal, useful life span).
- The problem being addressed must be of recent origin. For Urgent Need assistance, this means that the situation first occurred or was first discovered no more than 30 days prior to the date that the potential applicant provides a written request to the TxCDBG for Urgent Need assistance. The Urgent Need Fund will not fund projects to address a situation that has been known for more than 30 days or should have been known would occur based on the applicant's existing system facilities.
- Each applicant for these funds must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.
- The distribution of these funds will be coordinated with other state agencies.
- The infrastructure failure cannot have resulted from a lack of maintenance.
- Urgent Need funds cannot be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.
- The infrastructure failure cannot have been caused by operator error.
- The infrastructure requested by the applicant cannot include back-up or redundant systems.
- TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.
- The Urgent Need Fund will not finance temporary solutions to the problem or circumstance.

Construction on an Urgent Need fund project must begin within ninety (90) days from the start date of the TxCDBG contract. The TxCDBG reserves the right to deobligate the funds under an Urgent Need Fund contract if the grantee fails to meet this requirement.

Each applicant for Urgent Need funds must provide matching funds. If the applicant's 2000 Census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG funds requested. If the applicant's 2000 Census population is over 1,500 persons, the applicant must provide matching funds equal to 20 percent of the TxCDBG funds requested. For county applications where the beneficiaries of the water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

#### *6. TxCDBG STEP Fund*

Funds will be available for grants on a competitive award basis to cities and counties to provide grant assistance to cities and communities recognizing the need and willingness to solve water and sewer problems through the Texas Small Towns Environment Program (STEP) self-help techniques. The program will accept applications two times a year and utilize a competitive process to evaluate, score and award these projects.

Cities and counties receiving 2011 and 2012 Community Development Fund grant awards for applications that did not include water, sewer, or housing activities are not eligible to receive a 2011



STEP Fund grant award. However, the TxCDBG will give consideration to a city's or county's request to transfer funds (that are not financing basic human needs activities such as water, sewer, or housing activities) under a 2011 or 2012 Community Development Fund grant award to finance water and sewer activities that will be addressed through self-help.

The Texas STEP approach to solving water and sewer needs recognizes affordability factors related to the construction and operations/maintenance of the necessary water or sewer improvements and then initiates a local focus of control based on the capacity and readiness of the community's residents to solve the problem through self-help. By utilizing the community's own resources (human, material and financial), the necessary water or sewer construction costs, engineering costs, and related administration costs can be reduced significantly from the cost for the installation of the same improvements through conventional construction methods.

TxCDBG staff will provide guidance, assistance, and support to community leaders and residents willing to use self-help to solve their water and sewer problems.

#### *Eligible Activities*

For the TxCDBG STEP Fund eligible activities are limited to:

- the installation of facilities to provide first-time water or sewer service
- the installation of water or sewer system improvements
- ancillary repairs related to the installation of water and sewer systems or improvements
- the acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.)
- sewer or water taps and water meters
- water or sewer yard service lines (for low and moderate income persons)
- water or sewer house service connections (for low and moderate income persons)
- plumbing improvements associated with providing water or sewer service to a housing unit
- water or sewer connection fees (for low and moderate income persons)
- rental of equipment for installation of water or sewer
- reasonable associated administrative costs
- reasonable associated engineering services costs

#### *Ineligible Activities*

- any activity not described in the preceding ELIGIBLE ACTIVITIES section is ineligible under the TxCDBG STEP Fund unless the activity is approved by the Texas Community Development Block Grant Program
- temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality.

The TxCDBG will not reimburse for force account work for construction activities on the STEP project.

#### *Funding Cycle*

Applications are accepted two times a year for Texas STEP Funding as long as funds are available. Funds will be divided among the two application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards.

The TxCDBG will not accept an application for STEP Fund assistance until TxCDBG staff and representatives of the potential applicant have evaluated the self-help process and TxCDBG staff

determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

*Threshold Criteria*

The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods.

The following are threshold requirements for the Texas STEP framework. Without all these elements the project will not be considered under the Texas STEP fund:

- 1) one or more sparkplugs (preferably three)—local leaders willing to both lead and sustain the effort;
- 2) readiness—local perception of the problem and the willingness to take action to solve it;
- 3) capacity—manpower including some skills required to solve the problem and operate applicable construction equipment;
- 4) 40% Savings off of retail price; and
- 5) must be performed predominately by community volunteer workers.

To be eligible for additional STEP awards, an applicant must have demonstrated to TxCDBG management that its existing STEP contracts are currently being implemented on schedule in accordance with the applicable contracts and in accordance with any TxCDBG-approved allowances.

Upon completion of the project, the award recipient will be required to certify that work was performed predominately by community volunteer workers and a minimum of 40 percent savings off of retail prices was maintained (or the savings percentage specified in the application if greater).

Some of the key points staff will review for these thresholds include but are not limited to the following:

- 1) one or more sparkplugs (preferably three)—local leaders willing to both lead and sustain the effort; Leaders that have been identified and agreed on by the community:

- at least two of the three sparkplugs must be residents and not local officials (local officials may serve as sparkplugs)
- one should be detailed enough to maintain the paperwork needed for the project
- one should have some knowledge or skills to lead the self-help effort
- And one can have a combination of these skills or just be the motivator and problem solver of the group

These are not absolutes but the best scenario for any project.

- 2) readiness—local perception of the problem and the willingness to take action to solve it:

- a strong local perception of the problem
- community perception that local implementation is the best and maybe only solution
- community has confidence that they can do it adequately
- community has no strong competing priority
- local government is supportive and understands the urgency

- public and private willingness to pay additional costs if needed (fees, hook-ups for churches, other)
- effort and attention have already been given to local assessment of the problem
- enthusiastic, capable support by the community from the county or regional field staff of the regulatory agency

3) capacity— manpower including some skills required to solve the problem:

- Skilled workers within the community (heavy equipment operation, pipe laying, electrician, plumber, engineer, water operator, construction skills)
- List of Volunteers by task
- Possible equipment in community (not a requirement)
- Letters stating support from local businesses in form of donation of supplies or manpower
- Letter from service provider supporting project and agreeing to provide service
- CPA Letter documenting that the applying locality has financial and management capacity to compete project

4) 40% Savings off of retail price.

Documentation of the 40% savings off of the retail price:

- Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings
- Back-up documents of material quotes, pledges of equipment
- List of Volunteers by task
- Determination of appropriate technology and feasibility of project. (letter from engineer)

Pilot Programs:

Renewable Energy Demonstration Pilot Program (Using Deobligated and/or Program Income)

The TxCDBG will develop a renewable energy pilot program funded solely through deobligated funds / program income for demonstration projects that employ renewable energy for at least 20% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy).

The priority will be for projects that are connected with providing public facilities to meet basic human needs such as water or waste water. It is anticipated that the projects funded would meet the National Objective of benefiting a "target area" where at least 51 percent of the residents are low and moderate income persons, although the project would be allowed to qualify under other National Objective alternatives. The maximum amount of the project would be \$500,000 and the minimum would be \$50,000.

The projects will be selected on the following basis (which are assigned points under Section IV(C)(6) of this Action Plan):

(A) Type of Project: Primarily used in conjunction with providing public facilities to meet basic human needs such as water or waste water and/or benefit to low/moderate-income persons.

(B) Innovative Technology/Methods – A project that would demonstrate the application of innovative technology and/or methods.

(C) Duplication in Other Rural Areas – A project that could have widespread application (although it would not need to be applicable in every portion of the state.)

---

*Community Development Block Grant Program*

(D) Long-term Cost / Benefit and Texas Renewable Energy Goals – Projects that demonstrate long term cost/benefit analysis including benefits to the human environment and consistency with Texas renewable energy goals.

(E) Partnership/Collaboration – Projects that have a demonstrated partnership and collaboration with other entities focusing on promoting renewable energy including universities, funding agencies, associations, or businesses.

(F) Leveraging – projects with committed funds from other entities including funding agencies, local governments, or businesses – percent of portion of total project receiving TxCDBG funds is leveraged with other funds.

(G) Location in Rural Areas – Projects that benefit cities with populations under 10,000 or counties under 100,000.

*Community Facility Fund*

Purpose: The purpose of this community enhancement program is to provide one project to benefit a community in each of the 24 Councils of Governments (COG) regions over the PY 2011/2012 period and beyond if necessary based on available funding. This program is designed to sustain the smallest of the rural communities within Texas. The project must be a community facility project that would have the potential to benefit all citizens with the jurisdiction. It must not involve providing basic infrastructure nor be a recreational project, as determined by TxCDBG staff. The project may include connections to existing infrastructure. (A community center could hold recreational activities or events within the facility.) The community facilities must provide a benefit that will enhance the overall quality of life in the rural community. (While the project to be funded may not be considered a recreational project, the design may provide for an incidental amount of recreational facilities that would be constructed using other sources of funding in another future phase. The initial phase funded under this program may not include construction of any recreational facilities.)

Amount available for each COG region and each award: \$250,000. If a city has as part of its application a resolution in support of the project from the county where it is located, the maximum application amount, and amount available to the region, will be \$300,000. (A county that meets the LMI percentage requirement that is submitting an application on its own behalf may receive up to \$300,000.) The TxCDBG staff will select at random the initial regions that may apply in PY 2011. The remaining regions would be the eligible applicants in PY 2012 and subsequent program years, if necessary based on available funding.

Source of funding: Funding will be provided from deobligated funds, program income, or other external sources.

Eligibility requirements: The applicant must meet the Low and Moderate Income (LMI) national objective for its entire jurisdiction (at least 51 percent LMI). The TxCDBG may establish other national objective criteria. Additional requirements may be specified in the application. The applicant must demonstrate that it has the financial resources to sustain the operation and maintenance of the facility.

Pre-application: The applicant must submit a pre-application for initial eligibility determination. Application will be by invitation to those entities that meet the pre-application eligibility requirements. Additional details and requirements may be established in the pre-application and application.

**C. ALLOCATION OF AVAILABLE FUNDS BY FUND CATEGORY**

The U.S. Department of Housing and Urban Development has not yet announced the State's 2010 nor 2011 program year CDBG allocation. The State's 2011 allocation could be lower than the 2010 allocation of \$79,264,729.

The amount available for TxCDBG assistance will be the 2011 State CDBG allocation amount plus an estimated \$2,500,000 in program income. Funds will be allocated according to the following percentages of the State's 2011 allocation upon the execution of the grant agreement with HUD:

FUND	2011 PERCENT	AMOUNT AVAILABLE
Community Development Fund	61.71 <sup>4</sup>	
Texas Capital Fund (TCF)	14.51	
Program Income from TCF		\$ 2,000,000 <sup>5</sup>
Colonia Fund		
Colonia Planning and Construction Fund	7.26	
Colonia EDAP Legislative Set-aside	2.74 <sup>6</sup>	
Colonia Self-Help Centers Legislative Set-aside	2.50	
Planning And Capacity Building Fund	1.0	
Disaster Relief/Urgent Need Fund		
Disaster Relief	4.10	
Urgent Need	0 <sup>7</sup>	
TxCDBG STEP Fund	3.04	
Administration - Percentage	Up to 3 <sup>8</sup>	
Administration - \$100,000	0.1370	
Technical Assistance	3 less admin percent <sup>9</sup>	
Pilot Programs (Deobligated Funds/ Program Income):		
Renewable Energy Demonstration Pilot	0 <sup>10</sup>	

<sup>4</sup> Allocated to each region based on Section II (B).

<sup>5</sup> Used based on Section II (C) (a)

<sup>6</sup> May be transferred for other projects benefiting Colonias if there are an insufficient number of EDAP-eligible projects ready for CEDAP connection funding

<sup>7</sup> Deobligated funds and/or program income sufficient to replenish to \$1,000,000 is made available for the Urgent Need Fund on the first day of PY 2010. Based on a Tx CDBG Program determination of respective demand for financial assistance under the Urgent Need and Disaster Relief portions of the Disaster Relief/Urgent Need Fund, Urgent Need funds may be used for Disaster Relief projects.

<sup>8</sup> Fungible – May be adjusted per statutory CDBG rules.

<sup>9</sup> Fungible – May be adjusted per statutory CDBG rules.

<sup>10</sup> Deobligated funds and/or program income of \$500,000 is made available on the first day of PY 2010.

*Community Development Block Grant Program*

FUND	2011 PERCENT	AMOUNT AVAILABLE
Program		
Other Program Income:		\$ 500,000

Note: The percentages shown above are based on the State’s actual 2010 allocation percentages. Changes to the above percentages may occur if the State’s 2011 CDBG allocation is higher or lower than the 2010 allocation of \$79,264,729.

*Summary of Activities That Utilize 1% Technical Assistance Funding*

Timely Expenditure Initiative – Pilot Program for the Community Development Fund

As a pilot program, the TxCDBG will establish a program that provides an opportunity for the reimbursement of additional demonstrated costs incurred to complete the project activities earlier than the regular contract implementation schedule based on all of the following criteria.

At the 12-month point in the contract, the grant recipient must email TxCDBG a certification statement informing TxCDBG whether it has started construction on any contract activity. This certification statement must arrive prior to the end of the 12th month from the original contract start date;

All construction funded with TxCDBG funds must be completed and 90 percent of the TxCDBG budget must be requested from TxCDBG for eligible costs with acceptable supporting documentation not later than 60 days earlier than the original contract end date;

The TxCDBG will consider reimbursement of up to one percent (1%) of the TxCDBG funds budgeted for construction and acquisition/relocation for additional demonstrated costs incurred to complete the project activities 60 days earlier than the original contract end date;

The opportunity to receive any additional reimbursement under this program will automatically end without any further action being necessary by either party to the TxCDBG contract and it will no longer be possible to be considered regardless of circumstances for reimbursement of any additional costs under this program after a date 60 days prior to the end of the original contract period;

These funds cannot replace local funds already provided for activity delivery costs or local administration;

The reimbursement is contingent on available TxCDBG funds at the time; and

TxCDBG may use either annual allocation funds, deobligated funds, or program income to fund these additional costs incurred.

Examples of eligible costs include: additional contacts made with other entities involved in the TxCDBG contract activities, additional monitoring of the status of the TxCDBG-funded activities; attendance at additional meetings directly related to the TxCDBG-funded activities, and other additional activity delivery costs.

### Technical Assistance Performed Through the Community Development Program

The Texas Community Development Block Grant Program will conduct numerous on-site technical assistance visits funded with the one percent technical assistance (TA) set-aside approved by HUD. These visits will be conducted throughout the year when the TxCDBG staff recognizes that assistance is needed at the local level or when assistance is requested by the grantees.

TxCDBG Community Development staff, including TDRA field office staff, will visit localities that are preliminarily recommended for funding to verify information provided in the applications, to view the project sites, to distribute Project Implementation Manuals, and to provide technical assistance regarding the initial TxCDBG project implementation procedures.

Other technical assistance visits will be conducted with TA funds for special cases dealing with investigations, compliance issues, and to help contractor localities comply with all program requirements.

The TA funds are utilized for a portion of staff salaries which allows TxCDBG staff to provide greater one-on-one technical assistance to the small communities throughout the contract period.

The Texas Department of Agriculture is using technical assistance funds for on-site technical assistance on the Texas Capital Fund program.

The Texas Department of Housing and Community Affairs is using technical assistance funds for on-site technical assistance on the Colonia Self-Help Centers program.

The TxCDBG is utilizing the technical assistance funds to introduce, facilitate, and provide community access to the Texas Small Towns Environment Program (Texas STEP) which targets water and wastewater needs. Staff visits localities that are interested in utilizing the Texas STEP method of self-help and provides technical assistance on the development of a financial framework, managing a self-help project and building capacity within a community through self-help.

The TxCDBG may utilize the technical assistance funds to support TxCDBG activities related to TDRA's disaster relief efforts. State efforts for response to disasters and the mitigation of the consequences of disasters have required that TDRA dedicate considerable resources for disaster recovery efforts.

In 2011, the TxCDBG will use a portion of the technical assistance to provide outreach information regarding the CDBG program to local officials of non-entitlement cities and counties. The technical assistance will include information on the application process, program administration, and to improve their capacity to implement a CDBG program.

The technical assistance funds will also be used by each of the 24 State Planning Regions to provide non-project specific technical assistance to cities and counties that are eligible for TxCDBG funds in each region.

The technical assistance funds may be used to support the operations of the border colonia technical assistance field offices.

The technical assistance funds may be used to support the operations of TDRA's technical assistance field offices in West Texas, South Texas (two offices), Central Texas, and East Texas and other TDRA Community Development-related field office activities.

#### Deobligated Funds, Unobligated Funds, and Program Income

(a) Deobligated funds, unobligated funds and program income generated by Texas Capital Fund projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from Texas Capital Fund projects will be used by the TxCDBG for eligible Texas Community Development Block Grant Program activities in accordance with the Consolidated Plan.

Any deobligated funds, unobligated funds, program income, and unused funds from this year's allocation or from previous years' allocations derived from any Texas Community Development Block Grant Program Fund, including program income recovered from Texas Capital Fund local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established 2011 program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Executive Director and the TDRA Board on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority, followed by, established priority uses within existing fund categories or programs, any awards necessary to resolve appeals under fund categories covered by Texas Administrative Code at 10 T.A.C., Part 6, Chapter 255.1(g), TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Executive Director of TDRA. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories or programs by the TDRA Board.

If a portion of the State's 2011 Community Development Block Grant allocation is rescinded by the federal government, or if the State's 2011 allocation is decreased or increased significantly from the State's 2010 allocation, the TxCDBG may make corresponding changes within the fund allocation percentages as required.

(b) Re-distribution of Funds Recaptured from Withdrawn Awards. Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based, including failure to maintain compliance with application thresholds in Section III, F.(1) through F.(4), within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards). Should the applicant fail to execute the TxCDBG's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the TxCDBG. For an award that is withdrawn from an application, the TxCDBG follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.



(1) Funds recaptured under the Community Development Fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the Community Development Fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum Community Development Fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in paragraph (a) of this section.

(2) For the Community Development Fund, if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds may be used for other TxCDBG fund categories and, if unallocated to another fund, are considered as deobligated funds, subject to the procedures described in paragraph (a) of this section.

(3) Funds recaptured under the Planning and Capacity Building Fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the Planning and Capacity Building Fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in paragraph (a) of this section.

(4) Funds recaptured under the Colonia Planning and Construction Fund from the withdrawal of an award remain available to potential Colonia Program Fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures described in paragraph (a) of this section.

(5) Funds recaptured under the Colonia Economically Distressed Areas Program Legislative Set-Aside from the withdrawal of an award remain available to potential Colonia Economically Distressed Areas program set-aside applicants during that program year. Any funds remaining from the program year allocation that are not used to fund Colonia Economically Distressed Areas Program set-aside applications within twelve months after the TxCDBG receives the federal letter of credit would remain available to potential Colonia Program Fund applicants during that program year to meet the 10

percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures described in paragraph (a) of this section.

(7) Funds recaptured under the program year allocation for the Disaster Relief/Urgent Need Fund from the withdrawal of an award are subject to the procedures described in paragraph (a) of this section.

(8) Funds recaptured under the Small Towns Environment Program (STEP) Fund from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in paragraph (a) of this section.

(9) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in paragraph (a) of this section.

#### *D. PROGRAM INCOME*

Program income is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds. When program income is generated by an activity that is only partially funded with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. Any remaining program income must be used to establish an approved Revolving Loan Fund (RLF) or returned to the State.

The State may use up to the maximum allowable percentage of the amount recaptured and reportable to HUD each year for administrative expenses under the Texas Community Development Block Grant Program. This amount will be matched by the State on a dollar-for-dollar basis.

Program income includes, but is not limited to, the following:

- Payments of principal and interest on loans using CDBG funds
- Proceeds from the sale of loans made with CDBG funds
- Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient with CDBG funds
- Gross income from the use, sale, or rental of real property and/or real property improvements owned by the unit of general local government or subrecipient that was constructed or improved with CDBG funds
- Gross income from the use of infrastructure improvements constructed or improved with CDBG funds
- Funds collected through special assessments, impact fees or other additional fees from benefiting businesses, if the special assessments or fees are used to recover all or part of the CDBG portion of public improvements
- Proceeds from the disposition of equipment purchased with CDBG funds
- Interest earned on funds held in an RLF account

*1. Texas Capital Fund Program Income*

For program income generated through Texas Capital Fund projects, communities that elect to participate in the recapture of program income for use at the local level through a designated Revolving Loan Fund (RLF) will be limited to receiving one Texas Capital Fund contract award per program year. If a community elects not to participate in the recapture of program income, the community may apply for as many Texas Capital Fund awards as it has eligible projects. This determination must be made at the time of the original award and cannot be changed with subsequent awards.

A local government, electing to retain program income at the local level, must have a Revolving Loan Fund Plan (RLFP) approved in writing by the TxCDBG, prior to committing and expending any program income. The RLFP shall be approved and must be used for economic development in accordance with Title I of the United States Housing and Community Development Act of 1974, as amended. The RLFP must be submitted for approval no later than six (6) months from the commencement date of the contract. Program income generated by the award prior to the TxCDBG approval of an RLFP must be returned to the State.

Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund (RLF) may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

Communities electing to retain program income through an approved RLF are required to monitor and report to the State program income account balances reflecting amounts received and disbursed and the status of outstanding loans or leases. Such report should also include information regarding RLF loans, leases, and commitments made.

If the local government elects not to participate in program income recapture, fails to meet all requirements of this section or requirements identified in Section 6 of its TCF/TxCDBG contract or an RLFP is not submitted for approval within the first six (6) months from the commencement date of the contract, then all program income must be returned to the state. This section, "Texas Capital Fund Program Income," replaces the Texas Capital Fund Program Income Sections of the Final Statements for program years 1989, 1990, 1991, 1992, 1993, 1994, and 1995 and affects all TCF local revolving loan funds established by contracts awarded in program years 1989, 1990, 1991, 1992, 1993, 1994, and 1995. The following provisions, however, do not apply: 1) "The RLFP must be submitted for approval no later than six (6) months from the commencement date of the contract. Program income generated by the award prior to TxCDBG approval of an RLFP must be returned to the State." 2) "...every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived." 3) "...contract or an RLFP is not submitted for approval within the first six (6) months from the commencement date of the contract, then all program income must be returned to the state."

*2. Program Income Generated Through Housing Activities*

For program income generated through housing activities funded through the Housing Fund or TxCDBG fund categories other than the Texas Capital Fund, a local government, electing to retain program

income at the local level, must have a Revolving Loan Fund Plan (RLFP) approved in writing by the TxCDBG, prior to committing and expending any program income. The RLFP shall be approved and must be used for housing activities principally benefiting low to moderate income persons in accordance with Title I of the United States Housing and Community Development Act of 1974, as amended.

The RLFP must be submitted for approval at least sixty (60) days prior to the termination date of the contract award generating the program income. This requirement shall also apply to 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004 Housing Fund contract awards. Program income generated by the contract award prior to TxCDBG approval of an RLFP must be returned to the State.

Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. A local Revolving Loan Fund (RLF) may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

Communities electing to retain program income through an approved RLF are required to monitor and report the amount of program income recaptured to the state with updates concerning the status of outstanding loans or leases on a quarterly basis, including but not limited to payments received and amendments to the original loan or lease agreement, as required by the TxCDBG.

If the local government elects not to participate in program income recapture or an RLFP is not approved prior to the contract close-out, then all program income must be returned to the TxCDBG.

### **III. APPLICATION INFORMATION**

#### *A. TYPES AND NUMBER OF APPLICATIONS*

The following two types of applications are permitted under the Texas Community Development Block Grant Program:

##### *1. Single Jurisdiction Applications*

An eligible applicant may submit one application on its own behalf. When certain situations exist, which will be defined in TxCDBG application guides, an eligible city may submit an application which benefits persons residing inside of the extraterritorial jurisdiction of the city, and a county may submit a single jurisdiction application on behalf of a city. The submitting city or county is accountable to the TxCDBG for financial compliance and program performance. If a city or county submits a single jurisdiction application, or its residents are the beneficiaries of a single jurisdiction application, then the city or county cannot participate in another single jurisdiction or multi-jurisdiction application for the same funding category. Local accountability cannot be assigned to another party.

An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

**2. Multi-Jurisdiction Applications**

Multi-Jurisdiction applications will be accepted from two or more eligible units of general local government where the application clearly demonstrates that the proposed activities will mutually benefit the residents of the city(ies)/county(ies) applying for such funds. One of the participating units of general local government must be designated to act as the authorized applicant for the multi-jurisdiction application and the authorized applicant is accountable to the TxCDBG for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. A multi-jurisdiction application generally cannot be submitted solely on the basis of administrative convenience. Any city or county participating in a multi-jurisdiction application may not submit a single jurisdiction application for the same funding category.

Under the Community Development Fund regional competitions, a multi-jurisdiction application that includes participating units of general local government from more than one state planning region will compete in the regional competition where the majority of the application activity beneficiaries are located.

**B. APPLICATION CYCLES**

Based on the support from cities and counties for previous biennial funding cycles, applications for the Community Development, Colonia Planning and Construction Fund, and Planning and Capacity Building Fund will be accepted on a biennial basis. The biennial funding cycles for these fund categories will improve the timeliness of the expenditure of CDBG funds and therefore prove more cost effective.

The following table summarizes the proposed frequency of application submission for various application types. The application deadline dates are subject to change:

TYPE OF APPLICATION	SUBMISSION CYCLE	APPLICATION DEADLINE
1. Community Development Fund	<b>Biennial<sup>1</sup></b>	<b>September 30, 2010</b>
2. Texas Capital Fund		
Real Estate Program	Continuous	
Infrastructure Program	Continuous	
Main Street Program	Annually	
Downtown Revitalization Program	Annually	
3. Colonia Fund:		
Planning and Construction Fund	Biennial	<b>November 2010</b>
EDAP Set-aside	As-needed	
4. Planning/Capacity Building Fund	<b>Biennial<sup>1</sup></b>	<b>September 30, 2010</b>
5. Disaster Relief/Urgent Need Fund:		
Disaster Relief	As needed	
Urgent Need <sup>2</sup>	By notification	
6. TxCDBG STEP Fund	Two times annually	
Renewable Energy Demonstration Pilot Program	As announced, at least once annually.	

Community Development Block Grant Program

- 1 The applications submitted for the program year 2011 Community Development Fund and Planning and Capacity Building Fund as part of the 2011/2012 biennial application process will be scored and ranked. Applications will be funded to the extent that allocated 2011 funds are available. Applications submitted for the Colonia Planning and Construction Fund will be scored and ranked. The final 2011 program year rankings under the Community Development Fund, Planning and Capacity Building Fund, Colonia Planning and Construction Fund will be used to determine the 2011 applicants that are selected for funding from the 2012 program year allocations. Only one application may be submitted for the combined 2011 program year and 2012 program year period under the Community Development Fund, Colonia Construction component, Colonia Planning component, and the Planning and Capacity Building Fund.

C. CONTRACT AWARDS

With the qualified exceptions of the Texas Capital Fund, Colonia Fund, and Disaster Relief/Urgent Need Fund, an applicant is eligible to receive only one grant award per fund. Maximum and minimum contract awards for any single project allowable under the Texas Community Development Block Grant Program are:

CONTRACT AWARD		
FUND	MAXIMUM	MINIMUM
<b>Community Development Fund</b>		
Single Applicant	\$ 800,000 <sup>1</sup>	\$ 75,000 <sup>1</sup>
Multi-Jurisdiction Application	\$ 800,000 <sup>1</sup>	\$ 75,000 <sup>1</sup>
<b>Texas Capital Fund</b>		
Real Estate Program	\$ 750,000 <sup>2</sup>	\$ 50,000
Infrastructure Program	\$ 750,000 <sup>2</sup>	\$ 50,000
Main Street Program	\$ 150,000 <sup>3</sup>	\$ 50,000
Downtown Revitalization Program	\$ 150,000 <sup>3</sup>	\$ 50,000
<b>Colonia Fund</b>		
Construction Fund Component	\$ 500,000	\$ 75,000
EDAP Set-aside	\$ 500,000	None
Area Planning Component	\$ 100,000 <sup>4</sup>	None
Comprehensive Planning Component	\$ 100,000 <sup>4</sup>	None
	Or \$30,000 <sup>4</sup>	
<b>Planning/Capacity Building Fund</b>	\$ 55,000	None
<b>Disaster Relief/Urgent Need Fund</b>		
Disaster Relief Fund	\$ 350,000	\$ 50,000
Urgent Need Fund	\$ 250,000	\$ 25,000
<b>TxCDBG STEP Fund</b>		
<i>Renewable Energy Demonstration Pilot</i>	\$ 500,000	\$ 50,000

1. Regional Review Committees are authorized to establish a grant maximum for their respective regions between \$275,000 or in an amount equal to 12.5% of its combined 2009 and 2010 allocation, whichever is less, and \$800,000 for a single jurisdiction application and between \$350,000 and \$800,000 for a multi-jurisdiction application. TxCDBG may grant an exception to the minimum level if funds are distributed among all eligible applicants. In order to ensure there are sufficient funds in the CDBG award to provide a substantial benefit and to provide for construction efficiencies, RRCs should not prioritize application amounts lower than the maximum above or \$200,000, whichever is lower.

The maximum amount for a housing or non-border colonia priority activity application is the same as other Community Development Fund applications in the region.

- 2 The maximum contract award amount allows for administrative costs as outlined in the Texas Capital Fund Application Guidelines. The maximum award amount may be increased to an amount greater than \$750,000, but may not exceed \$1,000,000, if a unit of local government is applying for an award to provide infrastructure or real estate development improvements on behalf of a specific business, and that specific business will create or retain a designated number of jobs at a cost per job level that qualifies for the increased award amount. These increased award amounts are referred to as "jumbo" awards. The number of jobs, the cost per job, and the maximum percentage of Texas Capital Fund financing of the total project costs that will qualify an application for the increased award amount will be defined in Texas Capital Fund Application Guidelines. Texas Capital Funds are not specifically reserved for projects that could receive up to the \$1,000,000 increased maximum grant amount, however, projects that receive an amount greater than \$750,000 may not exceed \$2,000,000 in total awards during the program year.
- 3 Texas Capital Funds are specifically reserved for Main Street and the Downtown Revitalization infrastructure activities. The maximum award amount for a Main Street or Downtown Revitalization project is \$150,000. Main Street Program projects may not exceed \$600,000 in total awards. The Downtown Revitalization Program projects may not exceed \$1,200,000 in total awards.
- 4 The maximum grant award for the Colonia Comprehensive Planning component is set at \$100,000. However, a sliding scale may be used to establish smaller maximum grant amounts based on an amended performance statement or the eligible county's total unincorporated area population. The maximum amount for a county to update its existing Colonia Comprehensive plan is \$30,000.

Amounts shown are maximum funding levels or contract "ceilings," since the Program can fund only the actual, allowable, and reasonable costs of the proposed project, not to exceed these amounts. All grants, except Texas Capital Fund, awarded under the Texas Community Development Block Grant Program are subject to negotiation between TDRA and the applicant regarding the final grant amount. Texas Capital Fund applications are subject to negotiation between the Texas Department of Agriculture and the applicant regarding the final award amount.

*D. PROJECT LENGTH*

All funded projects, except the Texas Capital Fund and Colonia Self-Help Centers Fund projects, must be completed within two years from the start date of the contract agreement. STEP contracts for awards made in PY 2011 will continue to be for a twenty-four (24) month term with no automatic extension to 36 months, which is the same as PY 2009 and 2010 STEP awards. The Texas Capital Fund Main Street and Downtown Revitalization program awards will be made for a twenty-four (24) month term. The other Texas Capital Fund programs must be completed within three years from the start date of the contract agreement. Contract end dates for Colonia Self-Help Center contracts may be adjusted to account for each program year award. Waivers through a contract amendment of these requirements for any TxCDBG contract will only be granted when a waiver request is submitted in writing to TDRA or

TDA (for Texas Capital Fund contracts) and TDRA or TDA finds that compelling circumstances exist outside the control of the local government that justify the approval of such a waiver.

*E. REVIEW PROCESS*

*1. Regional Review Committees (RRC) - Composition*

There is a Regional Community Development Review Committee in each of the 24 state planning regions. Each committee will be comprised of 12 members appointed at the pleasure of the Governor.

The Regional Review Committees may review and comment on applications to other TxCDBG fund categories.

*2. Texas Capital Fund Review Process*

The Texas Capital Fund applications will be reviewed and evaluated by Texas Department of Agriculture staff in accordance with the established selection criteria. Recommendations will be made to the Commissioner of the Texas Department of Agriculture for final award.

*3. Clearinghouse Review*

Regional review of projects will be consistent with guidelines adopted by the Governor's Office for review and comment under the Texas Review and Comment System and Chapter 391, Texas Local Government Code.

*4. Regional Water Plans*

Water activities included in TxCDBG applications must be consistent with Regional Water Plans promulgated in accordance with Section 16.053, Water Code.

*F. APPLICANT THRESHOLD AND PAST PERFORMANCE REQUIREMENTS*

A city or county must meet the following requirements in order to submit an application or to receive funding through the Texas Community Development Block Grant Program:

1. Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application, by using the following criteria:
  - a. Provide the roles and responsibilities of local staff designated to administer or work on the proposed project. Also, include a plan of project implementation;
  - b. Indicate intention to use a third-party administrator, if applicable;
  - c. If local staff, along with a third-party administrator, will jointly administer the proposed project, the respective roles and responsibilities of the designated local staff; or
  - d. TxCDBG management may determine that an applicant has or does not have the capacity to manage and administer the proposed project based on an applicant's prior performance on a TxCDBG contract.
2. Demonstrate the financial management capacity to operate and maintain any improvements made in conjunction with the proposed project, by using the following criteria:
  - a. Evidence of a financial person on staff, or evidence of intent to contract financial oversight;



- b. Provide evidence or a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles; and/or
  - c. TxCDBG management may determine that an applicant has or does not have the financial management capacity to operate and maintain any improvements made in conjunction with the proposed project based on a review of audited financial records, current financial status, or current financial management of a TxCDBG contract.
3. Levy a local property (ad valorem) tax or local sales tax option.
  4. Demonstrate satisfactory performance on all previously awarded Texas Community Development Block Grant Program contracts, by using the following criteria:
    - a. Exhibited past responses to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in TDRA's resolution letter(s);
    - b. Evidence related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served.
    - c. No outstanding delinquent response to a written request from TxCDBG regarding a request for repayment of funds to TxCDBG; or
    - d. Not more than one outstanding delinquent response to a written request from TxCDBG regarding compliance issues such as a request for closeout documents or any other required information.
  5. Resolve any and all outstanding compliance and audit findings on previous and existing Texas Community Development Block Grant Program contracts, by using the following criteria:
    - a. Applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the TDRA resolution process.
  6. Submit any past due audit to TDRA in accordance with Title 10, Chapter 255, Subchapter A, Section 255.1 of the Texas Administrative Code.
    - a. A community with one year's delinquent audit may be eligible to submit an application for funding by the established deadline, but the Tx CDBG may withhold the award or issuance of a contract until it receives a satisfactory audit.

The Colonia Self-Help Center Fund and the Disaster Relief/Urgent Need Fund are exempt from the threshold.
    - b. A community with two years of delinquent audits may not apply for additional funding and may not receive a contract award. This applies to all funding categories under the Texas Community Development Block Grant Program.

The Colonia Self-Help Center Fund may be exempt from this threshold, since funds for the self-help center funding is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Texas Department of Housing and Community Affairs for review and recommendation.

*Community Development Block Grant Program*

- c. If an audit becomes due after the award date, the Office may withhold the issuance of a contract until it receives a satisfactory audit. If a satisfactory audit is not received by the Office within four months of the audit due date, the Office may withdraw the award and re-allocate the funds in accordance with Section II(C)(b) (excludes the colonia self-help center awards and Texas Capital Fund awards).

7. 12-Month Applicant Threshold Requirement

Obligate at least fifty percent (50%) of the total TxCDBG funds awarded under an open TxCDBG contract within twelve (12) months from the start date of the contract or prior to the application deadlines and have received all applicable environmental approvals from TxCDBG covering this obligation. This threshold is applicable to TxCDBG contracts with an original 24-month contract period.

To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold.

<b>Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>	<b>Not Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>
Community Development Fund	Texas Capital Fund
Community Development Supplemental Fund	Colonia Self-Help Centers Fund
Colonia Construction Fund	Housing Rehabilitation Fund
Colonia Fund Planning	Housing Infrastructure Fund
Disaster Relief / Urgent Need Fund	Texas STEP
Planning/Capacity Building Fund	Colonia Economically Distressed Areas
Non-Border Colonia Fund	Disaster Recovery Initiative
Texas STEP (except for STEP contracts awarded prior to PY 2010)	<i>Young vs. Martinez</i>
	Microenterprise Loan Fund
	Small Business Loan Fund
	Renewable Energy Demonstration Pilot Program

This threshold is not applicable when an applicant meets the eligibility criteria for the TxCDBG Disaster Relief Fund or for the Renewable Energy Demonstration Pilot Program

**8. 24-Month Applicant Threshold Requirement**

Submit to TDRA the Certificate of Expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the latest edition of the Texas Community Development Block Grant Program Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff.

For purposes of meeting this threshold “expended” means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines.

This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG Contractors that have reached the end of the 24-month period prior to the application deadlines as described below:

<b>Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>	<b>Not Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>
Community Development Fund	Texas Capital Fund
Community Development Supplemental Fund	Colonia Self-Help Centers Fund
Community Development – Recovery (A & B portions combined)	Housing Rehabilitation Fund
Colonia Construction Fund	Housing Infrastructure Fund
Colonia Fund Planning	Texas STEP(original 24-month contract, extended to 36-months) awarded prior to PY 2009
Disaster Relief / Urgent Need Fund	Colonia Economically Distressed Areas
Planning/Capacity Building Fund	Disaster Recovery Initiative
Non-Border Colonia Fund	<i>Young vs. Martinez</i>
Texas STEP (except for STEP contracts awarded prior to PY 2009)	Microenterprise Loan Fund
	Small Business Loan Fund
	Renewable Energy Demonstration Pilot Program

This threshold is not applicable when an applicant meets the eligibility criteria for the TxCDBG Disaster Relief Fund.

9. 36-Month Applicant Threshold Requirement

Submit to TDRA the Certificate of Expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the latest edition of the Texas Community Development Block Grant Program Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff.

For purposes of meeting this threshold “expended” means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines.

This threshold is applicable for a previously awarded TxCDBG contract with an original 36-month contract period or a STEP 24-month contract, extended to 36 months, and to TxCDBG Contractors that have reached the end of the 36-month period prior to the application deadlines as described on the next page:

<b>Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>	<b>Not Applicable to previously awarded TxCDBG contracts under the following TxCDBG fund categories</b>
Texas STEP (original 36-month contract or original 24-month contract extended to 36 months)	Texas Capital Fund (see Texas Capital Fund Section)
	Colonia Self-Help Centers Fund
	Housing Rehabilitation Fund
	Colonia Economically Distressed Areas
	Disaster Recovery Initiative
	<i>Young vs. Martinez</i>
	Microenterprise Loan Fund
	Small Business Loan Fund
	Renewable Energy Demonstration Pilot Program

This threshold is not applicable when an applicant meets the eligibility criteria for the TxCDBG Disaster Relief Fund.

10. TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to Section 16.343 of the Water Code.

11. Texas Capital Fund contractors must expend all but the reserved audit funds, or other reserved funds that are pre-approved by Texas Department of Agriculture staff, awarded under a Texas Capital Fund contract executed at least 36 months prior to the current program year application deadline and submit to the Texas Department of Agriculture the Certificate of Expenditures required

by the most recent edition of the Texas Capital Fund Implementation Manual. Texas Capital Fund contractors intending to submit a new application may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted.

12. Based on a pattern of unsatisfactory (a.) performance on previously awarded Texas Community Development Block Grant Program contracts, (b.) management and administration of TxCDBG contracts, or (c) financial management capacity based on a review of official financial records and audits, TDRA (or TDA, in the case of the Texas Capital Fund applications) may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application date it meets the threshold and past performance requirements. TDRA (or TDA, in the case of Texas Capital Fund applications) will consider the most recent 48 months before the application due date. TxCDBG may determine that an applicant would still remain eligible for funding under the Disaster Relief Fund even with a pattern of unsatisfactory performance and/or management capacity as discussed in this paragraph; however, the TxCDBG must approve the contract administrator for the Disaster Relief Fund grant. An entity or person may be determined ineligible to administer the new contract if it administered the applicant's TxCDBG contracts during the most recent 48 months before the application date and for two or more of such contracts it administered the applicant failed to meet its contract requirements, such as failure to submit complete closeouts documents on time.

#### *G. ADMINISTRATION OF TxCDBG CONTRACTS*

In order to administer a TxCDBG contract awarded in PY 2011, the administrator (contracted administrators on behalf of the client community or the city or county staff of self-administering award recipients) must attend, and retain the completion certificate, from the most recent cycle of TxCDBG Project Implementation Manual workshops. (This requirement excludes Texas Capital Fund and Colonia Self-Help Center Set-aside contracts.) The TxCDBG contract recipient (city or county) is strongly encouraged to attend the TxCDBG Project Implementation Workshops even if it anticipates using an outside firm to provide it with contract administration services.

The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

## **IV. APPLICATION SELECTION CRITERIA**

### *A. GENERAL DESCRIPTION*

The scoring criteria used in the TxCDBG are described in Section C below.

The points awarded under these criteria are combined to rank the projects in descending order. The projects in each fund are selected based on this descending order and the availability of dollars in each fund.

Texas Capital Fund Real Estate Program, and Infrastructure Program projects are evaluated based upon selection criteria that include, but are not limited to:

- (1) Jobs
- (2) Business Emphasis
- (3) Feasibility
- (4) Community Need

Texas Capital Fund Main Street Program and Downtown Revitalization Program projects are evaluated based upon selection criteria that include, but are not limited to:

- (1) Community Profile
- (2) Project Feasibility
- (3) Leverage Ratio
- (4) Aiding in the Elimination of Slum and/or Blight Conditions

Texas Capital Fund applications are reviewed and evaluated by Texas Department of Agriculture staff. Recommendations for all Texas Capital Fund applications will be made to the Commissioner of the Texas Department of Agriculture for final award.

In accordance with Section 2310.403, Government Code, preference will be given to applications from governing bodies of communities designated as defense economic readjustment zones over other eligible applications for TxCDBG grants and loans if at least fifty percent (50%) of the grant or loan will be expended for the direct benefit of the readjustment zone and the purpose of the grant or loan is to promote TxCDBG-eligible economic development in the community or for TxCDBG-eligible construction, improvement, extension, repair, or maintenance of TxCDBG-eligible public facilities in the community.

**Disaster Relief/Urgent Need applications must meet the threshold factors as discussed under the "Description of Funds" section.**

Readiness to Proceed Requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

- a. Identifies the source of matching funds and provides evidence that the applicant has applied for the non-local matching funds, and for local matching funds, evidence that local matching funds would be available.
- b. Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a Certificate of Convenience and Necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.
- c. Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purposes described in the TxCDBG contract, in accordance with 24 CFR Part 570.

***B. RESOURCES FOR DESCRIPTIONS OF SELECTION CRITERIA BY FUND CATEGORY***

Starting on the next page, the descriptions for the selection criteria for each fund category provide a basic framework of the selection criteria and selection factors used to distribute the funds under each fund category. Additional information on the selection criteria, selection factors and methods used to determine scores for these fund categories is provided in the application guide for each fund category and in the Texas Administrative Code at 10 T.A.C., Part 6, Chapter 255, Subchapter A.

The information currently available for fund categories in the Texas Administrative Code may not yet reflect changes to selection criteria contained in this 2011 Action Plan for the 2011 program year. Any changes to the selection criteria will be published in the Texas Register prior to final adoption.

The Texas Administrative Code can be found on the Texas Secretary of State website at [www.sos.state.tx.us](http://www.sos.state.tx.us). Listed below are the TxCDBG fund categories that are currently contained in the Texas Administrative Code. Certain Texas Administrative Code sections are retained for previous Fund Categories to govern existing TxCDBG contracts.

Texas Administrative Code, Title 10 T.A.C., Part 6, Chapter 255, Subchapter A

Section	Section Title
255.1	General Provisions
255.2	Community Development Fund
255.4	Planning/Capacity Building Fund
255.5	Disaster Relief Fund
255.6	Urgent Need Fund
255.7	Texas Capital Fund
255.8	Regional Review Committees
255.9	Colonia Fund
255.11	Small Towns Environment Program Fund
255.17	Renewable Energy Demonstration Pilot Program

***C. DESCRIPTION OF SELECTION CRITERIA BY FUND CATEGORY***

**1. COMMUNITY DEVELOPMENT FUND**

***a. Regional Review Committee (RRC) Objective Scoring***

**(1) Responsibilities of the RRC:**

Each Regional Review Committee is responsible for determining local project priorities and objective factors for all its scoring components based on public input in accordance with the requirements in this Action Plan.

**(2) Maximum RRC Points Possible:**

The RRC shall establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors.

(3) RRC Selection of the Scoring Factors:

The RRCs are responsible for convening public hearings to discuss and select the objective scoring factors that will be used to score applications at the regional level level in accordance with the requirements in this Action Plan. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. The final selection of the scoring factors is the responsibility of each RRC and must be consistent with the requirements in this Action Plan. Each RRC shall develop a Regional Review Committee Guidebook, in the format provided by TxCDBG staff, to notify eligible applicants of the objective scoring factors and other RRC procedures for the region.

RRCs are encouraged to establish a priority scoring factor that considers the nature and type of the project.

(4) Examples of RRC Objective Scoring Factors:

Examples of objective scoring factors are shown in Appendix A to further clarify the term objective.

The RRC must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public. After the RRC's adoption of its scoring factors, the score awarded to a particular application under any RRC scoring factor may not be dependent upon an individual RRC member's judgment or discretion. (This does not preclude collective RRC action that the state TxCDBG has approved under any appeals process.)

(5) RRC Priority Set-asides:

Housing and Non-Border Colonia projects - Each Regional Review Committee is highly encouraged to allocate a percentage or amount of its Community Development Fund allocation to housing projects and for RRCs in eligible areas, non-border colonia projects, for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a housing and/or non-border colonia set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another Community Development Fund activity during the biennial process. Housing projects/activities must conform to eligibility requirements in 42 U.S.C Section 5305 and applicable HUD regulations.) The RRC must include any set-aside in its Regional Review Committee Guidebook.

(6) RRC Designation of Staff Support:

The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support:

- (i) Regional Council of Governments (COG), or
- (ii) TxCDBG staff or TxCDBG designee, or
- (iii) A combination of COG and TxCDBG staff or TXCDBG designee.



The RRC Guidebook should be adopted by the RRC and approved by TxCDBG staff at least 90 days prior to the application deadline.

The selection of the entity responsible for calculating the RRC scores must be identified in the RRC Guidebook and must define the role of each entity selected. TDRA shall be responsible for reviewing all scores for accuracy and for determining the final ranking of applicants once the RRC and TxCDBG scores are summed. The RRC is responsible for providing to the public the RRC scores, while the TxCDBG is responsible for publishing the final ranking of the applications.

(7) Tie-breaker in a region:

If needed in the ranking of applications within a region based on available funds remaining, a tie between multiple applications shall be broken based on the per capita income ranking, with a lower per capita income level ranking higher, followed by a second tie-breaker, if needed, of the highest poverty rate ranking higher, followed by a third tie-breaker, if needed, of the highest annual unemployment rate ranking higher.

*b. State Scoring (TxCDBG Staff Scoring) - Other Considerations – Maximum Points - 10% of Maximum Possible Score for Each RRC*

(1) Past Selection – Maximum Points - 2% of Maximum Possible RRC Score for each region - are awarded to each 2009 / 2010 Community Development Fund applicant that did not receive a 2009 or 2010 Community Development Fund, Community Development Fund-Recovery, or Rural Sustainability Fund contract award.

(2) Past Performance - Maximum Points - 4% of Maximum Possible RRC Score for each region

An applicant can receive points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's most recent TxCDBG contract that has reached the end of the original contract period stipulated in the contract within the past 4 years (for CD/CDS contracts only the 2005/2006 and 2007/2008 cycle awards will be considered). The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the TxCDBG contract.) The evaluation of an applicant's past performance will include the following:

- The applicant's completion of the previous contract activities within the original contract period.
- The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports.
- The applicant's submission of the required close-out documents within the period prescribed for such submission.
- The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.
- The applicant's timely response to audit findings on previous TxCDBG contracts.

- The expenditure timeframes on the applicable TxCDBG contracts.

(3) All project activities within the application would provide basic infrastructure or housing activities - 2% of the Maximum Possible RRC Score for each region. (Basic infrastructure - the basic physical shared facilities serving a community's population consisting of water, sewage, roads, and flood drainage. Housing activities – as defined in 24 CFR Part 570.)

(4) Cost per Housing Unit (CPHU) – The total amount of TxCDBG funds requested by the applicant is divided by the total number of households benefiting from the application activities to determine the TxCDBG cost per housing unit. (Use pro rata allocation for multiple activities.) – Up to 2% of the Maximum RRC Score for each region.

- (i) Cost per housing unit is equal to or less than \$8,750 – 2%.
- (ii) Cost per housing unit is greater than \$8,750 but equal to or less than \$17,500 – 1.75%.
- (iii) Cost per housing unit is greater than \$17,500 but equal to or less than \$26,500 – 1.25%.
- (iv) Cost per housing unit is greater than \$26,500 but equal to or less than \$35,000 – 0.5%.
- (v) Cost per housing unit is greater than \$35,000 – 0%.

(When necessary, a weighted average is used to score to applications that include multiple activities with different beneficiaries. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.)

The RRC may not adopt scoring factors that directly negate or offset these state factors.

c. Statutory - Low and Moderate Income (LMI) Persons National Objective – Scoring factor

To assist in fulfilling the CDBG statutory requirement for the percentage of program year awards that must meet the LMI National Objective, applications that meet the LMI National Objective for each activity (51 percent low/moderate-income benefit for each activity within the application) will receive 2% of the Maximum Possible RRC Score for each region.

Further, to ensure the TxCDBG program meets the statutory LMI National Objective requirement, if the ranking in a region would not result in the award of at least 75 percent of the allocated funds for the LMI national objective, then the TxCDBG will make awards based on a revised ranking to achieve at least a 75 percentage level for LMI awards for the region. If there are not sufficient applications in the region to achieve the 75 percent LMI national objective level, the amount of funds in a region equal to the shortfall in meeting this requirement will be re-allocated to a pool for other LMI national objective projects. Awards from the pool of remaining LMI applications would be based the marginal competition selection criteria.

*d. Other TxCDBG State Responsibilities*

The state may establish the maximum number of regional scoring factors that may be used in order to improve review and verification efficiency. Similarly, the state may determine that certain regional scoring factors may not be used because the data is not readily available or would require excessive effort to verify the information in a timely manner. To ensure consistency, the state may determine the acceptable data source for a particular regional scoring factor (such as the unemployment rate.)

The state TxCDBG staff will review each RRC Guidebook to ensure that the scoring procedures are in compliance with 24 CFR 91.320(k)(1)(iv). The regulation states in part that "The statement of method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications." TxCDBG staff will also review the scoring factors selected to ensure that all scoring factors are objective. Each RRC must obtain written approval from TxCDBG staff before implementing the RRC scoring process. As part of the approval process of the RRC Guidebook, the TxCDBG state staff may provide further details or elaboration on the objective scoring methodology, data sources and other clarifying details without the necessity of a subsequent RRC meeting.

The state TxCDBG staff may establish:

- (i) a deadline for the RRC to adopt objective factors for all of its scoring components and submit its adopted Guidebook incorporating the objective scoring methodology to the state TxCDBG staff for approval;
- (ii) an RRC scoring review appeals process in the Guidebook Instructions and/or the Texas Administrative Code.

In the event that an RRC fails to approve an objective scoring methodology to the satisfaction of the TxCDBG consistent with the requirements in this Action Plan by the established deadline or if the RRC fails to implement the approved methodology, TxCDBG will establish for the region scoring factors as described in Appendix B for the 2011/2012 application cycle.

Only the state TxCDBG staff may disqualify an application submitted in a region. The regional scores for RRC factors and the ranking of applications are not considered final until they have been reviewed and approved by the state TxCDBG staff.

An oversubscription pool may be conducted that would use the scoring criteria specified in the marginal competition section that directly follows this section.

*(e) Forward Commitments – Pilot Program:*

*Forward Commitments to Avoid Application Threshold Issues*

As a pilot program under the Community Development Fund, the TxCDBG may designate conditional commitments, contingent upon receiving future CDBG funds from HUD, to make awards to certain eligible applications within a region using future regional Community Development Fund allocations.

A Regional Review Committee may elect to opt out of this pilot program. If the RRC elects to opt out, forward commitments will not be available to any applicant within the region. Note: if the RRC elects to opt out, projects as described below would not be eligible for awards in that region.

These forward commitments would be made under the following terms and conditions:

1. The purpose of approving a commitment is to allow an applicant to provide a source of funding in conjunction with a larger project where the use of these TxCDBG funds will not occur until several years into the project. It may not be used for other purposes, as determined by TxCDBG staff. (For example, the commitment would provide funding for the water connections associated with a project to build a new water treatment plant. The TxCDBG applicant could provide this commitment in its application to the other funding agency to demonstrate supplemental funding for this phase of the water project.)
2. The associated project must be ready to proceed within 6 months of receiving the forward commitment, including submission of an application to all other sources of supplemental funding for the complete project. The supplemental funds from other sources that will be used in conjunction with the TxCDBG funds must be committed and awarded to the applicant within 12 months from the date of the TxCDBG commitment.
3. A maximum of four commitments may be made under this pilot program.
4. The TxCDBG staff will determine eligible applicants within a region that would qualify and be offered this option. In making this decision, TxCDBG staff will consider, among other things, the anticipated number of months required to before TxCDBG funds would be expended given the magnitude and nature of the project, the regulatory approvals required, the sources of other funding to be provided to the project, and the ranking within the region. If there are more than four eligible applicants that would qualify, a tiebreaker based on the State score as described in Community Development Fund Marginal Competition would be used to determine the four commitments to be made.
5. For the year the commitment is awarded to the recipient through a contract from TxCDBG, the amount provided for the commitment would be subtracted from the total regional Community Development Fund allocation amount prior to allocation to other eligible applications in the regional Community Development Fund competition.
6. Not more than two commitments may be outstanding (without fully executed TxCDBG contracts) in any given region at any time.
7. The TxCDBG commitment would be considered an award to the applicant in the year it was awarded for purposes of scoring.
8. Termination of commitment: The commitment may be terminated if the applicant does not receive the supplemental funding for the project or fails to comply with other commitment requirements.
9. Subject to funding availability: All commitments are subject to the TxCDBG program receiving a sufficient regular annual allocation amount from HUD and consequently the Community Development Fund receiving sufficient funds. The TxCDBG may use deobligated funds/program income if available and considered appropriate. The commitment does not obligate TxCDBG or TDRA to use any other source of funds to provide the amount committed.
10. Contingency Plan: The applicant must provide TxCDBG with a contingency plan to outlines the source of replacement funds to complete the project should the TxCDBG regular annual HUD allocation or deobligated funds/program income diminish to the point that the commitment cannot be funded.

*Community Development Fund Marginal Competition*

A pooled marginal competition may be conducted for program year 2012 using available funds if the State's 2012 allocation is not decreased significantly from the State's estimated 2011 Community Development allocation.

All applicants whose marginal amount available is under \$75,000 will automatically be considered under this competition.

When the marginal amount left in a regional allocation is equal to or above the TxCDBG grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Alternatively, such marginal applicants may choose to compete under the pooled marginal fund competition for the possibility of full project funding.

This fund consists of all regional marginal amounts of less than \$75,000, any funds remaining from regional allocations where the number of fully funded eligible applicants does not utilize a region's entire allocation and the contribution of marginal amounts larger than \$75,000 from those applicants opting to compete for full funding rather than accept their marginal amount.

The scoring factors used in this competition are the percentage of the State score received to the maximum possible State score in the region, followed by the per capita income ranking, if needed, with a lower per capita income level ranking higher, followed by a second tie-breaker, if needed, of the highest poverty rate ranking higher; both based on a city's incorporated area and a county's total unincorporated area.

2a.	TEXAS CAPITAL FUND	Real Estate, And Infrastructure Programs
-----	--------------------	--

The selection criteria for the Real Estate, and Infrastructure Programs of the Texas Capital Fund will focus upon factors which may include, but which are not limited to, the following:

- a. Creation or retention of jobs primarily for low to moderate income persons
- b. Creation or retention of jobs primarily in areas of above average unemployment and poverty
- c. Generation of a greater ratio of private investment to Texas Capital Fund investment
- d. Expansion of markets through manufacturing and/or value-added processing
- e. Provision of job opportunities at the lowest possible Texas Capital Fund cost per job
- f. Benefit to areas of the state most in need by considering job impact to community
- g. Assistance for small businesses and Historically Underutilized Businesses
- h. Feasibility of project and ability to create and/or retain jobs

Following the assessment based on the selection criteria described above, projects will be reviewed and evaluated upon the following additional factors: history of the applicant community in the program; strength of business or marketing plan; management experience of the business' principals; and justification of minimum Texas Capital Fund contribution necessary to serve the project.

<b>2b.</b>	<b>TEXAS CAPITAL FUND</b>	<b>Main Street Program</b>
------------	---------------------------	----------------------------

The selection criteria for the Main Street Program of the Texas Capital Fund will focus upon factors which may include, but which are not limited to, the following:

- a. Aid in the elimination of slum or blight
- b. The applicant must have been designated by the Texas Historical Commission as a Main Street City
- c. Feasibility of project
- d. Generation of a greater ratio of private investment to Texas Capital Fund investment
- e. Community profile

Following the assessment based on the selection criteria described above, projects will be reviewed and evaluated upon the following additional factors: history of the applicant community in the program; strength of marketing plan; and justification of minimum Texas Capital Fund contribution necessary to serve the project.

<b>2c.</b>	<b>TEXAS CAPITAL FUND</b>	<b>Downtown Revitalization Program</b>
------------	---------------------------	--

The selection criteria for the Downtown Revitalization Program of the Texas Capital Fund will focus upon factors which may include, but which are not limited to, the following:

- a. Aid in the elimination of slum or blight
- b. Feasibility of project
- c. Generation of a greater ratio of private investment to Texas Capital Fund investment
- d. Community profile

Following the assessment based on the selection criteria described above, projects will be reviewed and evaluated upon the following additional factors: strength of marketing plan and justification of minimum Texas Capital Fund contribution necessary to serve the project.

<b>3a.</b>	<b>COLONIA CONSTRUCTION COMPONENT</b>	<b>430 Total Points Maximum</b>
------------	---------------------------------------	---------------------------------

**a. *Community Distress -- 35 Points (Maximum)***

- |  |           |
|--|-----------|
| • <i>Percentage of persons living in poverty</i>               | 15 points |
| • <i>Per Capita Income</i>                                     | 10 points |
| • <i>Percentage of housing units without complete plumbing</i> | 5 points  |
| • <i>Unemployment Rate</i>                                     | 5 points  |

**b. *Benefit To Low/Moderate-Income Persons -- 30 Points (Maximum)***

A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to

determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale;

100% to 90% of TxCDBG funds benefiting low to moderate income persons	30
89.99% to 80% of TxCDBG funds benefiting low to moderate income persons	25
79.99% to 70% of TxCDBG funds benefiting low to moderate income persons	20
69.99% to 60% of TxCDBG funds benefiting low to moderate income persons	15
Below 60% of TxCDBG funds benefiting low to moderate income persons	5

*c. Project Priorities -- 195 Points (Maximum)*

- *Activities (service lines, service connections, and/or plumbing improvements) providing public access to EDAP-funded water or sewer systems* 195
- *First time public Water service activities (including yard service lines)* 145
- *First time public Sewer service activities (including yard service lines)* 145
- *Installation of approved residential on-site wastewater disposal systems for providing first time service* 145
- *Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues* 140
- *Housing Activities* 140
- *First time Water and/or Sewer service through a privately-owned for-profit utility* 135
- *Expansion or improvement of existing Water and/or Sewer service* 120
- *Street Paving and Drainage activities* 75
- *All Other eligible activities* 20

A weighted average is used to assign scores to applications that include activities in the different Project Priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate Project Priorities point level. The sum of these calculations determines the composite Project Priorities score.

*d. Project Design -- 140 Points (Maximum)*

Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application to generate scores on the project design factor:

- For projects other than water and waste water, whether the applicant has already met its basic water and waste water needs.
- Whether the project has provided for future funding necessary to sustain the project.
- The severity of need within the colonia area(s) and how the proposed project resolves the identified need. Additional consideration is given to water system improvements addressing the impacts from the current drought conditions in the state.
- The applicant will use TxCDBG funds to provide water or sewer connections, yard service lines, and/or plumbing improvements associated with providing access for colonia residents to water or sewer systems funded by the Texas Water Development Board Economically Distressed Areas Program (EDAP).
- The applicant's past efforts (with emphasis on the applicant's most recent efforts) to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG Community Development Fund or through the use of CDBG entitlement funds.
- The TxCDBG cost per low/moderate income beneficiary.
- Whether the applicant has provided any local matching funds for administrative, engineering, or construction activities.

- If applicable, the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons and 10,000 gallons of usage.
- The ability of the applicant to utilize the grant funds in a timely manner.
- Whether the applicant has waived the payment of water or sewer service assessments, capital recovery fees, and any other access fees for the low and moderate income project beneficiaries.
- The availability of grant funds to the applicant for project financing from other sources.
- The applicant's past performance on previously awarded TxCDBG contracts.
- Proximity of project site to entitlement cities or metropolitan statistical areas.

*e. Matching Funds -- 20 Points (Maximum)*

Applicant(s) population equal to or less than 1,500 according to the 2000 Census:

- Match equal to or greater than 5% of grant request 20 points
- Match at least 2%, but less than 5% of grant request 10 points
- Match less than 2% of grant request 0 points

Applicant(s) population equal to or less than 3,000 but over 1,500 according to the 2000 Census:

- Match equal to or greater than 10% of grant request 20 points
- Match at least 2.5%, but less than 10% of grant request 10 points
- Match less than 2.5% of grant request 0 points

Applicant(s) population equal to or less than 5,000 but over 3,000 according to the 2000 Census:

- Match equal to or greater than 15% of grant request 20 points
- Match at least 3.5%, but less than 15% of grant request 10 points
- Match less than 3.5% of grant request 0 points

Applicant(s) population over 5,000 according to the 2000 Census:

- Match equal to or greater than 20% of grant request 20 points
- Match at least 5%, but less than 20% of grant request 10 points
- Match less than 5% of grant request 0 points

The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities.

The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census.

Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities.

Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional



activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

*Past Performance – 10 points (Maximum)*

An applicant can receive from ten (10) to zero (0) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

- The applicant's completion of the previous contract activities within the original contract period.
- The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports.
- The applicant's submission of the required close-out documents within the period prescribed for such submission.
- The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.
- The applicant's timely response to audit findings on previous TxCDBG contracts.

*Colonia Construction Component Marginal Applicant*

The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. If the marginal amount available to this applicant is equal to or more than the Colonia Construction Component grant minimum of \$75,000, the marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the Colonia Construction Component allocation is less than \$75,000, then the remaining funds will be used to either fund a Colonia Planning Fund application or will be reallocated to other established TxCDBG fund categories.

<b>3b. COLONIA ECONOMICALLY DISTRESSED AREAS PROGRAM SET-ASIDE</b>
--

The allocation is distributed on an as-needed basis to eligible counties, and nonentitlement cities located in those counties, that are eligible under the TxCDBG Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program (TWDB EDAP). Unutilized funds under this program may be redistributed among the established current program year fund categories, for otherwise eligible projects.

Eligible projects shall be located in unincorporated colonias; in colonias located in eligible nonentitlement cities that annexed the colonia and the application for improvements in the colonia is submitted within five (5) years from the effective date of the annexation; or in colonias located in eligible nonentitlement cities where the city is in the process of annexing the colonia where the improvements are to be made.

*Community Development Block Grant Program*

Eligible applicants may submit an application that will provide assistance to colonia residents that cannot afford the cost of service lines, service connections, and plumbing improvements associated with being connected to a TWDB EDAP-funded water and sewer system improvement project. An application cannot be submitted until the construction of the TWDB EDAP-funded water or sewer system begins.

Eligible program costs include water distribution lines and sewer collection lines providing connection to water and sewer lines installed through the Texas Water Development Board’s Economically Distressed Areas Program (when approved by the TxCDBG), taps and meters (when approved by the TxCDBG), yard service lines, service connections, plumbing improvements, and connection fees, and other eligible approved costs associated with connecting an income-eligible family’s housing unit to the TWDB improvements.

TxCDBG staff will evaluate the following factors prior to awarding Colonia Economically Distressed Areas Program funds:

- The proposed use of the TxCDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through EDAP.
- The ability of the applicant to utilize the grant funds in a timely manner.
- The availability of grant funds to the applicant for project financing from other sources.
- The applicant's past performance on previously awarded TxCDBG contracts.
- Cost per beneficiary.
- Proximity of project site to entitlement cities or metropolitan statistical areas.

<b>3c.</b>	<b>COLONIA AREA PLANNING COMPONENT</b>	<b>340 Total Points Maximum</b>
------------	--	---------------------------------

*a. Community Distress -- 35 Points (Maximum)*

- |   |           |
|---|-----------|
| • Percentage of persons living in poverty               | 15 points |
| • Per Capita Income                                     | 10 points |
| • Percentage of housing units without complete plumbing | 5 points  |
| • Unemployment Rate                                     | 5 points  |

*b. Benefit To Low/Moderate-Income Persons -- 30 Points (Maximum)*

Points are then awarded based on the low to moderate income percentage for all of the colonia areas where planning activities are located according to the following scale;

100% to 90% of TxCDBG funds benefiting low to moderate income persons	30
89.99% to 80% of TxCDBG funds benefiting low to moderate income persons	25
79.99% to 70% of TxCDBG funds benefiting low to moderate income persons	20
69.99% to 60% of TxCDBG funds benefiting low to moderate income persons	15
Below 60% of TxCDBG funds benefiting low to moderate income persons	5

*c. Matching Funds -- 20 Points (Maximum)*

Applicant(s) population equal to or less than 1,500 according to the 2000 Census:

- |  |           |
|--|-----------|
| • Match equal to or greater than 5% of grant request   | 20 points |
| • Match at least 2%, but less than 5% of grant request | 10 points |
| • Match less than 2% of grant request                  | 0 points  |

*Community Development Block Grant Program*

Applicant(s) population equal to or less than 3,000 but over 1,500 according to the 2000 Census:

- Match equal to or greater than 10% of grant request 20 points
- Match at least 2.5%, but less than 10% of grant request 10 points
- Match less than 2.5% of grant request 0 points

Applicant(s) population equal to or less than 5,000 but over 3,000 according to the 2000 Census:

- Match equal to or greater than 15% of grant request 20 points
- Match at least 3.5%, but less than 15% of grant request 10 points
- Match less than 3.5% of grant request 0 points

Applicant(s) population over 5,000 according to the 2000 Census:

- Match equal to or greater than 20% of grant request 20 points
- Match at least 5%, but less than 20% of grant request 10 points
- Match less than 5% of grant request 0 points

The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

*d. Project Design -- 255 Points (Maximum)*

Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application to generate scores on the project design factor:

- The severity of need within the colonia area(s), how clearly the proposed planning effort will remove barriers to the provision of public facilities to the colonia area(s) and result in the development of an implementable strategy to resolve the identified needs.
- The planning activities proposed in the application.
- Whether each proposed planning activity will be conducted on a colonia-wide basis.
- The extent to which any previous planning efforts for colonia area(s) have been accomplished.
- The TxCDBG cost per low/moderate-income beneficiary.
- The availability of grant funds to the applicant for project financing from other sources.
- The applicant's past performance on previously awarded TxCDBG contracts.

A Colonia Planning Component application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum number of points allowable under this factor to be considered for funding.

*Colonia Area Planning Component Marginal Applicant*

The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. The marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Any unobligated funds remaining in the Colonia Area Planning allocation will be reallocated to either fund additional Colonia Comprehensive Planning applications, Colonia Construction Component applications, or will be reallocated to other established TxCDBG fund categories.

<b>3d. COLONIA COMPREHENSIVE PLANNING COMPONENT 200 Total Points Maximum</b>
--

*a. Community Distress -- 25 Points (Maximum)*

- Percentage of persons living in poverty 10 points
- Per Capita Income 5 points

Community Development Block Grant Program

- Percentage of housing units without complete plumbing 5 points
- Unemployment Rate 5 points

**b. Project Design -- 175 Points (Maximum)**

Each application will be scored by a committee composed of TxCDBG staff using the following information submitted in the application to generate scores on the project design factor:

- The severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long term strategies to resolve the identified needs.
- The extent to which any previous planning efforts for colonia area(s) have been accomplished.
- Whether the applicant has provided any local matching funds for the planning or preliminary engineering activities.
- The applicant's past performance on previously awarded TxCDBG contracts.
- An applicant that has previously received a TxCDBG comprehensive planning award would receive lower priority for funding.

A Colonia Planning Component application must receive a minimum score for the Project Design selection factor of at least 70 percent of the maximum number of points allowable under this factor to be considered for funding.

*Colonia Comprehensive Planning Component Marginal Applicant*

The marginal applicant is the applicant whose score is high enough for partial funding of the applicant's original grant request. The marginal applicant may scale down the scope of the original project design, and accept the marginal amount, if the reduced project is still feasible. Any unobligated funds remaining in the Colonia Comprehensive Planning allocation will be reallocated to either fund additional Colonia Area Planning Fund applications, Colonia Construction Component applications, or will be reallocated to other established TxCDBG fund categories.

<b>4.</b>	<b>PLANNING AND CAPACITY BUILDING FUND</b>	<b>430 Total Points Maximum</b>
-----------	--	---------------------------------

**a. Community Distress -- 55 Points (Maximum)**

- Percentage of persons living in poverty 25 points
- Per Capita Income 20 points
- Unemployment rate 10 points

**b. Benefit to Low/Moderate Income Persons - 0 Points**

Applicants are required to meet the 51% low/moderate income benefit as a threshold requirement, but no score is awarded on this factor.

**c. Project Design -- 375 Points (Maximum)**

**(1) Program Priority 50 points**

Applicant chooses its own priorities here with 10 points awarded per priority as provided below.

Base studies (base mapping, housing, land use, population components) are recommended as one selected priority for applicants lacking updated studies unless they have been previously funded by TXCDBG or have been completed using other resources.

An applicant requesting TxCDBG funds for fewer than five priorities may receive point credit under this factor for planning studies completed within the last 10 years that do not need to be updated. An applicant requesting TxCDBG funds for a planning study priority that was completed within the past 10 years using TxCDBG funds would not receive scoring credit under this factor.

Applicants should not request funds to complete a water or sewer study if funds have been awarded within the last two years for these activities or funds are being requested under other TxCDBG fund categories.

*(2) Base Match* 0 points

- Five percent match required from applicants with population equal to or less than 1,500.
- Ten percent match required from applicants with population over 1,500 but equal to or less than 3,000.
- Fifteen percent match required from applicants with population over 3,000 but equal to or less than 5,000.
- Twenty percent match required from applicants with population over 5,000.

The population will be based on available information in the latest national decennial census.

*(3) Areawide Proposals* 50 points

Applicants with jurisdiction-wide proposals because the entire jurisdiction is at least 51 percent low/moderate-income qualify for these points. County applicants with identifiable, unincorporated communities may also qualify for these points provided that incorporation activities are underway. Proof of efforts to incorporate is required. County applicants with identifiable water supply corporations may apply to study water needs only and receive these points.

*(4) Planning Strategy and Products* 275 points

- New applicants receive up to 50 points while previous recipients of planning funds receive either up to 30 or 20 points depending on the level of implementation of previously funded activities. Recipients of TxCDBG planning funds prior to PY 2000 will be considered new applicants for this scoring factor
- Up to 225 points are awarded for the applicant's Proposed Planning Effort based on an evaluation of the following:
  - the extent to which any previous planning efforts have been implemented or accomplished;
  - how clearly the proposed planning effort will resolve community development needs addressed in the application;
  - whether the proposed activities will result in the development of a viable and implementable strategy and be an efficient use of grant funds; and
  - demonstration of local commitment.

<b>5. TxCDBG STEP FUND</b>	<b>120 Total Points Maximum</b>
----------------------------	---------------------------------

The following is the selection criteria to be used by TxCDBG staff for the scoring of assessments and applications under the Texas STEP Fund. The maximum score of 120 points is divided among five scoring factors:

*a. Project Impact – 60 Points (Maximum)*

Activity	Score
First time service	60-40
To address drought	60-40
To address a severe impact to a water system (imminent loss of well, transmission line, supply impact)	60-40
TCEQ relevant documentation or Texas Department of Health Imminent Threat to Health	60-40
Problems due to severe sewer issues that can be addressed through the STEP process (documented)	60-40
Problems due to severe pressure problems (documented)	50-40
Line replacement (water or sewer) other than for above	40-30
All other proposed water and sewer projects that are not reflected above	30-20

A weighted average will be used to assign scores to applications that include activities in the different Project Impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate Project Impact point level. The sum of these calculations will determine the composite Project Impact score.

Factors that are evaluated by the TxCDBG staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, the following:

1. how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and
2. projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration.

*b. STEP Characteristics, Merits of the Project, and Local Effort - 30 points (Maximum)*

The TxCDBG staff will assess the proposal for the following STEP characteristics not scored in other factors:

1. degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;
2. local leaders (sparkplugs) willing to both lead and sustain the effort;
3. readiness to proceed – the local perception of the problem and the willingness to take action to solve it;
4. capacity – the manpower required for the proposal including skills required to solve the problem and operate applicable construction equipment;
5. merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TxCDBG dollars requested per beneficiary, etc.; and
6. local efforts being made by applicants in utilizing local resources for community development.

*c. Past Participation and Performance – 15 Points (Maximum)*

An applicant would receive ten (10) points if they do not have a current Texas STEP grant.

An applicant can receive from five (5) to zero (0) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG will also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

- The applicant's completion of the previous contract activities within the original contract period.
- The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports.
- The applicant's submission of the required close-out documents within the period prescribed for such submission.
- The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.
- The applicant's timely response to audit findings on previous TxCDBG contracts.

*d. Percentage of Savings off of the retail price – 10 Points (Maximum)*

For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40 percent savings off the retail price for construction activities.

For Communities that are equal to or below 1,500 in Population

55% or more Savings	10 points
50% - 54.99% Savings	9 points
45% - 49.99% Savings	7 points
41% - 44.99% Savings	5 points

For Communities that are above 1,500 but equal to or below 3,000 in Population

55% or more Savings	10 points
50% - 54.99% Savings	8 points
45% - 49.99% Savings	6 points
41% - 44.99% Savings	3 points

For Communities that are above 3,000 but equal to or below 5,000 in Population

55% or more Savings	10 points
50% - 54.99% Savings	7 points
45% - 49.99% Savings	5 points
41% - 44.99% Savings	2 points

For Communities that are above 5,000 but equal to or below 10,000 in Population

55% or more Savings	10 points
50% - 54.99% Savings	6 points

45% - 49.99% Savings	3 points
41% - 44.99% Savings	1 points

For Communities that are 10,000 or above in Population

55% or more Savings	10 points
50% - 54.99% Savings	5 points
45% - 49.99% Savings	2 points
41% - 44.99% Savings	0 points

The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities.

The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census.

*e. Benefit To Low/Moderate-Income Persons – 5 Points (Maximum)*

Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TxCDBG funds benefit low/moderate-income persons will receive 5 points.

A project must score at least 75 points overall and 15 points under factor 12(b) to be considered for funding.

<b>6. Renewable Energy Demonstration Pilot Program 70 Total Points Maximum</b>
--

**(A) Type of Project** – Primarily used in conjunction with providing public facilities to meet basic human needs such as water or waste water and/or benefit to low/moderate-income persons – up to 15 points.

**(B) Innovative Technology/Methods** – A project that would demonstrate the application of innovative technology and/or methods – up to 10 points.

**(C) Duplication in Other Rural Areas** – A project that could have widespread application (although it would not need to be applicable in every portion of the state.) – up to 10 points

**(D) Long-term Cost / Benefit and Texas Renewable Energy Goals** – Projects that demonstrate long term cost/benefit analysis including benefits to the human environment and consistency with Texas renewable energy goals – up to 10 points

**(E) Partnership/Collaboration** – Projects that have a demonstrated partnership and collaboration with other entities focusing on promoting renewable energy including universities, funding agencies, associations, or businesses – up to 10 points.



**(F) Leveraging** – projects with committed funds from other entities including funding agencies, local governments, or businesses.

Applicant(s) population equal to or less than 2,500 according to the latest decennial Census:

- Match equal to or greater than 15% of grant request 10 points
- Match at least 8% but less than 15% of grant request 5 points
- Match at least 3%, but less than 8% of grant request 3 points
- Match at least 2%, but less than 3% of grant request 1 point
- Match less than 2% of grant request 0 points

Applicant(s) population equal to or less than 5,000 but over 2,500 according to the latest decennial Census:

- Match equal to or greater than 25% of grant request 10 points
- Match at least 13% but less than 25% of grant request 5 points
- Match at least 5%, but less than 13% of grant request 3 points
- Match at least 3%, but less than 5% of grant request 1 point
- Match less than 3% of grant request 0 points

Applicant(s) population equal to or less than 10,000 but over 5,000 according to the latest decennial Census:

- Match equal to or greater than 35% of grant request 10 points
- Match at least 18% but less than 35% of grant request 5 points
- Match at least 7%, but less than 18% of grant request 3 points
- Match at least 4%, but less than 7% of grant request 1 point
- Match less than 4% of grant request 0 points

Applicant(s) population over 10,000 according to the latest decennial Census:

- Match equal to or greater than 50% of grant request 10 points
- Match at least 25% but less than 50% of grant request 5 points
- Match at least 10%, but less than 25% of grant request 3 points
- Match at least 5%, but less than 10% of grant request 1 point
- Match less than 5% of grant request 0 points

The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county.

**(G) Location in Rural Areas** – Projects that benefit cities with populations under 10,000 or counties under 100,000 – 5 points.

Tiebreaker – If needed in the ranking of applications based on available funds, a tie between multiple applications shall be broken based on the score of (D) Long-term Cost/Benefit and Texas Renewable Energy Goals, followed by the per capita income ranking for the entire population of the city or county that applied.

<b>7.</b>	<b>COMMUNITY FACILITY FUND</b>	<b>80 Total Points Maximum</b>
-----------	--------------------------------	--------------------------------

**Selection factors:**

(1) LMI percentage of the applicant - Compare each applicant's low and moderate income percentage to all other applicants in the region – up to 20 points maximum

(A higher LMI percentage would score higher. The applicant's LMI percentage is divided by the base amount for the entire region and then multiplied by the maximum possible score of 20, provided the product may not exceed 20 points. The base amount is the average (mean) of the LMI of all the applicants in the region multiplied by a factor 1.25.)

(2) Location in the most rural areas – maximum of 20 points

a. Projects that benefit cities with populations equal to or under 1,500 or counties with populations, after excluding metropolitan cities, that are equal to or under 30,000 – 20 points.

b. Projects that benefit cities with populations equal to or under 2,500 (but over 1,500) or counties with populations, after excluding metropolitan cities, that are equal to or under 50,000 (but over 30,000) – 18 points.

c. Projects that benefit cities with populations equal to or less than 5,000 (but over 2,500) or counties with populations, after excluding metropolitan cities, that are equal to or under 75,000 (but over 50,000) – 15 points.

d. Projects that benefit cities with populations equal to or under 10,000 (but over 5,000) or counties with populations, after excluding metropolitan cities, that are equal to or under 100,000 (but over 75,000) – 10 points.

Populations will be determined by TxCDBG based on the latest Census or HUD data available.

(3) No other comparable facilities available. If there are no other comparable facilities, as determined by TxCDBG staff, within the applicant's jurisdiction – 20 points

(4) Leveraging – projects with committed funds from other entities including funding agencies, local governments, or businesses – 20 points.

Applicant(s) population equal to or less than 2,500 according to the latest decennial Census:

Match equal to or greater than 2.5% of grant request	20 points
--	-----------

Applicant(s) population equal to or less than 5,000 but over 2,500 according to the latest decennial Census:

Match equal to or greater than 5% of grant request	20 points
--	-----------

Applicant(s) population equal to or less than 10,000 but over 5,000 according to the latest decennial Census:

Match equal to or greater than 10% of grant request	20 points
---	-----------

Applicant(s) population over 10,000 according to the latest decennial Census:

Match equal to or greater than 15% of grant request

20 points

(5) Tie-breaker in a region:

A tie between multiple applications shall be broken based on the per capita income ranking, with a lower per capita income level ranking higher, followed by a second tie-breaker, if needed, of the highest poverty rate ranking higher, followed by a third tie-breaker, if needed, of the highest annual unemployment rate ranking higher.

## **V. PERFORMANCE MEASURES - GOALS, OBJECTIVES, OUTCOMES, STRATEGIES, AND OUTPUTS**

### *TxCDBG Strategic Plan Performance Measures*

The TxCDBG currently has a performance measurement system in place that is part of its strategic plan and the Texas legislative budgeting process. The TxCDBG has already implemented a performance measurement system that supports the HUD goals as stated in CPD Notice – 03-09, issued September 3, 2003, which “strongly encouraged each CPD formula grantee to develop and use a state or local performance measurement system.” In this notice, HUD asked the State CDBG programs, along with all other CDBG grantees, that currently have and use a state or local performance measurement system to “(1) describe, in their next Consolidated Plan or Annual Action Plan, the method they use to measure the outputs and outcomes of their CPD formula grant programs.”

The TxCDBG has the following Performance Measures system in place for administering and evaluating the success of the CDBG non-entitlement program.

### *GOALS, OBJECTIVES AND OUTCOMES – For FY 2011*

Goal 1: Support Community and Economic Development Housing and Health Projects

Outcome 1: Percent of the Small Communities’ Population Benefiting from Projects

Output 1: Number of New Community / Economic Development Contracts Awarded

Output 2: Number of Projected Beneficiaries from New Community / Economic Development Contracts Awarded

Output 3: Number of Programmatic Monitoring Visits Conducted

### *HUD CDBG Performance Outcome Measurement System*

The TxCDBG has implemented the HUD CDBG Performance Outcome Measurement System, which is a nationwide reporting system based on standardized Objective categories, Outcome categories, and specific Output Indicators.

The outcome performance measurement system has three objectives: (1) Creating Suitable Living Environments, (2) Providing Decent Affordable Housing, and (3) Creating Economic Opportunities. There are also three outcomes under each objective: (1) Availability/Accessibility, (2) Affordability, and (3) Sustainability. Thus, the three objectives, each having three possible outcomes, produce nine possible

outcome/objective combinations within which to categorize CDBG grant activities. Specific Output Indicators, many of which TxCDBG has used in the HUD Integrated Disbursement and Information System reporting system, will be used to provide the quantifiable information used to actually measure the outcome/objective combinations for the funded CDBG projects (such as the number of persons who have new access to water facilities).

## **VI. OTHER 2010 CDBG PROGRAM GUIDELINES**

### **A. COMMUNITY NEEDS ASSESSMENT**

Each applicant for TxCDBG funds must prepare an assessment of the applicant's housing and community development needs. The needs assessment submitted by an applicant in an application for the Community Development Fund must also include information concerning the applicant's past and future efforts to provide affordable housing opportunities in the applicant's jurisdiction and the applicant's past efforts to provide infrastructure improvements through the issuance of general obligation or revenue bonds.

### **B. LEVERAGING RESOURCES**

#### *Texas Capital Fund*

The following matching funds requirements apply under the Real Estate, Infrastructure, Main Street and Downtown Revitalization Program:

- a. The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of \$750,000 or less (except for the Main Street and Downtown Revitalization programs which both require 0.1:1, or more match), and 4:1 for awards of \$750,100 to \$1,000,000.
- b. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the Real Estate program.

Over the past five program years the ratio of matching funds to Texas Capital Fund awards is approximately 3.75:1. If this ratio continues for the 2009 program year then the estimated amount of leveraged funds for the 2010 program year is approximately \$45 million.

### **C. MINORITY HIRING/PARTICIPATION**

The TxCDBG encourages minority employment and participation among all applicants under the Community Development Block Grant Program. All applicants to the Community Development Block Grant Program shall be required to submit information documenting the level of minority participation as part of the application for funding.

#### D. CITIZEN PARTICIPATION

A grant to a locality under the Texas Community Development Block Grant Program may be awarded only if the locality certifies that it is following a detailed citizen participation plan that provides for and encourages citizen participation at all stages of the community development program. TxCDBG applicants and funded localities are required to carry out citizen participation in accordance with the Citizen Participation Plan requirements described in TxCDBG application guides.

### APPENDIX A – EXAMPLES OF OBJECTIVE SCORING FACTORS

#### 1. Per Capita Income – 20 points maximum

Compare each applicant's per capita income level to all other applicants in the region.

Method: The base amount for the entire region is divided by the applicant's per capita income level and then multiplied by the maximum possible score of 20, provided the product may not exceed 20 points. The base amount is the average (mean) of the per capita income levels of all the applicants in the region multiplied by a factor 0.75.

##### *Details*

##### *Incorporated City Applications:*

For an incorporated city, the data used to score is based on the 2000 decennial Census SF 3 information for the city's entire population.

For a new incorporated city that was not included in the 2000 decennial Census as an incorporated city, the data used to score is based on the 2000 decennial Census information for the entire county unincorporated population.

##### *County Applications:*

For a county, the data used to score is based on the 2000 decennial Census SF 3 information for:

- the county's entire population (for county-wide benefit activities);

- the county's entire unincorporated population (for activities that only benefit persons in unincorporated areas); or

- the 2000 decennial census geographic area information specific to the unincorporated areas benefiting from the county's application activities (for activities that only benefit persons in unincorporated areas) (only census tracts, or block numbering areas, and block groups are allowable census geographic areas)

Geographic area information may be substituted only for county applications where the application activities benefit no more than two separate unincorporated target areas. County applications that include application activities for unincorporated areas that are located in more than two county precincts are scored for the entire county unincorporated population or the entire county population.

If a county elects to use census geographic area information that is specific to the unincorporated areas benefiting from the application activities, the county must submit the census geographic area identification number and the associated per capita income amount for each target area.

Multi-Jurisdiction applications - For multi-jurisdiction applications, the data used for scoring is based on a simple average of the per capita income amounts for all of the participating jurisdictions.

Data Source – US Bureau of the Census - 2000 Census – SF 3, Per Capita Income

## 2. Matching Funds -- 60 Points Maximum

Applicant(s) population equal to or less than 1,500 according to the 2000 Census:

- Match equal to or greater than 5% of grant request 60 points
- Match at least 4% but less than 5% of grant request 40 points
- Match at least 3%, but less than 4% of grant request 20 points
- Match at least 2%, but less than 3% of grant request 10 points
- Match less than 2% of grant request 0 points

Applicant(s) population equal to or less than 3,000 but over 1,500 according to the 2000 Census:

- Match equal to or greater than 10% of grant request 60 points
- Match at least 7.5% but less than 10% of grant request 40 points
- Match at least 5%, but less than 7.5% of grant request 20 points
- Match at least 2.5%, but less than 5% of grant request 10 points
- Match less than 2.5% of grant request 0 points

Applicant(s) population equal to or less than 5,000 but over 3,000 according to the 2000 Census:

- Match equal to or greater than 15% of grant request 60 points
- Match at least 11.5% but less than 15% of grant request 40 points
- Match at least 7.5%, but less than 11.5% of grant request 20 points
- Match at least 3.5%, but less than 7.5% of grant request 10 points
- Match less than 3.5% of grant request 0 points

Applicant(s) population over 5,000 according to the 2000 Census:

- Match equal to or greater than 20% of grant request 60 points
- Match at least 15% but less than 20% of grant request 40 points
- Match at least 10%, but less than 15% of grant request 20 points
- Match at least 5%, but less than 10% of grant request 10 points
- Match less than 5% of grant request 0 points

The population category for an incorporated city is based on the city's 2000 Census population. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities.

The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census.

Multi-Jurisdiction Applications - The population category under which multi-jurisdiction applications will be scored will be based on the combined populations of the participating applicants according to the 2000 census. The guidelines for determining the population category for county applications will also

apply to multi-jurisdiction applications when a county or counties are participants in a multi-jurisdiction application.

Data Source - US Bureau of the Census - 2000 Census, SF 3.

### *3. Project Priorities – 30 Points Maximum*

a. Activities providing or improving water or wastewater (including yardlines on residential property) and other affordable housing activities– 30 Points

b. Street improvements - 15 Points

c. All other eligible activities – 5 Points

(When necessary, a weighted-average is used to score to applications that include multiple activities. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for administration, a percentage of the total TxCDBG construction and engineering dollars for each activity is calculated. Administration dollars requested is applied pro-rata to these amounts. The percentage of the total TxCDBG dollars for each activity is then multiplied by the appropriate score and the sum of the calculations determines the score. Related acquisition costs are applied to the associated activity.)

## **APPENDIX B –**

Scoring if a RRC for a region fails to approve an objective scoring methodology to the satisfaction of the TxCDBG consistent with the requirements in this Action Plan by the established deadline or if the RRC fails to implement the approved methodology.

The state TxCDBG staff will begin with the final RRC scoring factors for the 2009/2010 cycle and adjust them based on the following:

a. The state may establish the maximum number of regional scoring factors that may be used in order to improve review and verification efficiency and may insert factors to provide a minimum number of factors;

b. The state may determine that certain regional scoring factors may not be used because the data is not readily available or would require excessive effort to verify the information in a timely manner; and

c. To ensure consistency, the state may determine the acceptable data source for a particular regional scoring factor.

### *CPD Outcome Performance Measurement System Reporting*

91.320(c)(3), 91.320(e), 91.320(g)

The TxCDBG has implemented the HUD CPD Outcome Performance Measurement System Reporting and has added the performance measurement objectives and outcomes to its new application guides. All applicants are required to indicate the performance measures that best correspond with the activities they are proposing. TxCDBG staff enter the objectives and outcomes in its internal application review database. Upon the award of the funds, TxCDBG staff enter the performance measure

information into the IDIS database. The TxCDBG staff update the information in IDIS as needed. In addition, for existing open contracts, TxCDBG staff has entered the objectives and outcomes for these contracts into the IDIS system.

The outcome performance measurement system has three objectives: (1) Creating Suitable Living Environments, (2) Providing Decent Affordable Housing, and (3) Creating Economic Opportunities. There are also three outcomes under each objective: (1) Availability/Accessibility, (2) Affordability, and (3) Sustainability. Thus, the three objectives, each having three possible outcomes, produce nine possible outcome/objective combinations within which to categorize CDBG grant activities. Specific Output Indicators, many of which TxCDBG has used in the HUD Integrated Disbursement and Information System reporting system, are used to provide the quantifiable information used to actually measure the outcome/objective combinations for the funded CDBG projects (such as the number of persons who have new access to water facilities).

Affordable housing has been primarily provided using CDBG funds to regions located on the Texas-Mexico border. Based on performance from more recent housing rehabilitation projects, 80 percent of the households benefiting from the housing rehabilitation projects were to minority households. The Texas CDBG program anticipates assisting 32 households in the upcoming year, primarily through housing rehabilitation projects under the Community Development Fund and Colonia Fund, of which 26 are anticipated to be minority households.

During the PY 2011 time period, the anticipated objectives and outcomes for the proposed eligible activities using all CDBG funds available are shown below; however, both the actual objectives and outcomes for individual funded projects may vary within the eligible activities depending on the applicant's determination and selection. The number of activities below assumes the deobligated funds and program income available in PY 2011 will be made available for priorities as currently specified in the action plan:

<b>HUD Matrix Code</b>	<b>HUD Matrix Name</b>	<b>Objective</b>	<b>Outcome</b>	<b>PY 2010 -Expected Number of Activities</b>
03E	Neighborhood Facilities	Suitable Living Environment	Availability/ Accessibility	4
03J	Water/Sewer Improvements	Suitable Living Environment	Availability/ Accessibility	141
		Suitable Living Environment	Affordability	9
		Suitable Living Environment	Sustainability	74
03K	Street Improvements	Suitable Living Environment	Availability/ Accessibility	96
		Suitable Living Environment	Affordability	3
		Suitable Living Environment	Sustainability	2
14A	Rehabilitation; Single Unit Residential	Suitable Living Environment	Availability/ Accessibility	52
		Decent Housing	Affordability	9
		Decent Housing	Sustainability	2



Community Development Block Grant Program

HUD Matrix Code	HUD Matrix Name	Objective	Outcome	PY 2010 -Expected Number of Activities
13	Homeownership Assistance	Decent Housing	Affordability	1
03F	Parks, Playgrounds, and Other Recreational Facilities	Suitable Living Environment	Availability/ Accessibility	2
05	Public Service	Suitable Living Environment	Availability/ Accessibility	3
03	Other Public Utilities	Suitable Living Environment	Availability/ Accessibility	3
		Economic Opportunity	Sustainability	1
04	Clearance Demolition Activities	Suitable Living Environment	Availability/ Accessibility	9
		Suitable Living Environment	Sustainability	1
030	Fire Stations/ Equipment	Suitable Living Environment	Availability/ Accessibility	4
18A	ED Direct Financial Assistance for For-Profits	Economic Opportunity	Availability/ Accessibility	2
		Economic Opportunity	Affordability	32

450

**CDBG Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	0
Non-homeless households	2
Special needs households	30

## **NON-HOMELESS SPECIAL NEEDS ACTION PLAN: HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

Situated within a comprehensive network of HIV care services in Texas, the State of Texas HOPWA Formula program meets the unmet housing and supportive services needs of people living with HIV/AIDS (PLWHA) in Texas by providing housing assistance and supportive services to income-eligible individuals living with HIV/AIDS and their families. The goals of the HOPWA program are to help low-income HIV-positive clients establish or maintain affordable and stable housing, to reduce the risk of homelessness, and to improve access to health care and supportive services. As of the end of 2008, 63,019 persons were known to be living with HIV/AIDS in Texas; this does not include persons with HIV who have not been diagnosed.<sup>11</sup> The 2008-2010 Texas Statement of Coordinated Need reported oral health care and housing as the two most frequent gaps in services identified by clients in six of the seven HIV Service Delivery Areas (HSDAs) assessed in Texas.<sup>12</sup>

The State of Texas HOPWA program is administered by the TB/HIV/STD Unit - HIV/STD Prevention and Care Branch of the Department of State Health Services (DSHS) and provides the following services (91.320(d) and (e)):

### **TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAM**

The TBRA program provides tenant-based rental assistance to eligible individuals until they are able to secure other affordable and stable housing.

### **SHORT-TERM RENT, MORTGAGE, AND UTILITIES (STRMU) ASSISTANCE PROGRAM**

The STRMU program provides short-term rent, mortgage, and utility payments to eligible individuals for a maximum of 21 weeks of assistance in a 52-week period.

### **SUPPORTIVE SERVICES PROGRAM**

The Supportive Services program provides case management, basic telephone service and assistance to purchase smoke detectors to eligible individuals.

### **PERMANENT HOUSING PLACEMENT SERVICES (PHP)**

The PHP program provides assistance for housing placement costs which may include application fees, related credit checks, and reasonable security deposits necessary to move persons into permanent housing.

### **ANNUAL PROGRAM GOALS**

Based on prior-year performance and level funding from HUD, DSHS estimates that 650 households can be provided with short-term rent, mortgage, and utility payments, 550 households can be provided tenant-based rental assistance, 1,200 can be provided with supportive services and 20 households can be provided permanent housing placement during the 2011 project year.

---

<sup>11</sup> Texas Integrated Epidemiologic Profile for HIV/AIDS Prevention and Services Planning  
[http://www.dshs.state.tx.us/hivstd/planning/Epi\\_Profile\\_02012008.pdf](http://www.dshs.state.tx.us/hivstd/planning/Epi_Profile_02012008.pdf)

<sup>12</sup> 2008-2010 Texas Statewide Coordinated Statement of Need

**PROJECT SPONSOR SELECTION PROCESS**

DSHS selects seven Administrative Agencies (AAs) across the state through a combination of competitive Requests for Proposals (RFP) and intergovernmental agency contracts. The AAs act as an administrative arm for DSHS by administering the HOPWA program locally for a five year project period. This period is concurrent with the Ryan White Part B grant period, which delivers case management and other supportive services to HOPWA clients.

These AAs in turn select HOPWA Project Sponsors through local competitive processes that are open to all grassroots, faith-based, community-based organizations, and governmental agencies. Each AA contracts with one or more Project Sponsors who directly provide HOPWA services to eligible clients throughout the state’s 26 HSDAs. Some Project Sponsors may change during 2011 due to local competitive processes.

**PROGRAM BUDGET**

DSHS reserves three percent of the total award for administrative and indirect costs, including, personnel, supplies, travel, training/technical assistance, and contractual support for ARIES. Project Sponsors are allowed up to seven percent of their allocation for personnel or other administrative costs. The funding allocation is distributed geographically by HSDA and is based on a formula including HIV/AIDS morbidity, poverty level, and population distribution with annual adjustments for project sponsor funding needs.

The 2011 HOPWA Program award is based on level funding from 2010, in the award amount of \$2,818,502 and the budgeted amount is \$3,021,555, including unexpended prior year funds (\$203,053) is allocated as follows:

DSHS administration (3%)	\$84,555 (indirect costs, personnel, supplies, travel, training/technical assistance, contractual support for ARIES)
Contractual	\$2937,000
TBRA	\$1,851,410
STRMU	\$440,000
Supportive Services	\$420,000
Permanent Housing Placement	\$20,000
Project Sponsor Administration (7%)	\$205,590

**GEOGRAPHIC DISTRIBUTION**

§91.320(f) and (k)

The funding allocations are geographically distributed across the state to the 26 HSDAs and all 254 Texas counties.

**ADMINISTRATIVE AGENCIES AND PROJECT SPONSORS**

The following chart summarizes the estimated 2011 HOPWA funding allocation for the seven AAs and their 26 Project Sponsors/HSDAs. DSHS distributes funding in excess of the HUD grant award to spend down unobligated balances from previous years. The 2011 funding allocations are estimates based on 2010 funding levels, program expenditures, and waiting lists and may change as the 2011 HUD award is received and contracts are negotiated.

Administrative Agency	2010 funding allocation	Project Sponsor/HSDA	2010 funding allocation
Bexar County	211,000	Alamo Area Resource Center/San Antonio	107,000
		United Medical Centers/Uvalde	28,000
		Victoria City-County Health Department/Victoria	76,000
Brazos Valley Council of Governments P.O. Box 4128 Bryan, TX 77805-4128	262,000	Community Action, Inc./Austin	28,000
		San Angelo AIDS Foundation/Concho-Plateau	22,000
		United Way of the Greater Fort Hood Area/Temple-Killeen	37,000
		Project Unity/Bryan-College Station	70,000
		Waco/McLennan County Public Health District/Waco	105,000
Dallas County HHSD 2377 North Stemmons Frwy., Ste. 600 Dallas, TX 75207-2710	59,000	Dallas County Health and Human Services -HOPWA Program/Dallas	2,000
		Your Health Clinic/Sherman-Dennison	57,000
Houston Regional Resource Group 500 Lovett Boulevard, Ste. 100 Houston, TX 77006	812,000	AIDS Coalition of Coastal Texas/Galveston	3,000
		AIDS Foundation of Houston/Houston	20,000
		Health Horizons/Lufkin	140,800
		Special Health Resources for Texas, Inc. Longview/Tyler	448,500
		Special Health Resources for Texas, Inc. Paris/Texarkana	82,000
		Triangle AIDS Network/Beaumont-Port Arthur	117,700
Lubbock Regional MHMR Center P.O. Box 2828 1602 Tenth St. Lubbock, TX 79408-2828	588,000	Panhandle AIDS Service Organization/Amarillo	132,000
		Sun City Behavioral Health Center/EI Paso	200,000
		Permian Basin Community Center/Permian-Basin	121,000
		Project CHAMPS/Lubbock	135,000
South Texas Development Council (STDC)	824,000	City of Laredo Health Department/Laredo	88,000

Administrative Agency	2010 funding allocation	Project Sponsor/HSDA	2010 funding allocation
P.O. Box 2187 4812 North Bartlett Laredo, TX 78044-2187		Coastal Bend AIDS Foundation/Corpus Christi	358,000
		Valley AIDS Council/Brownsville	378,000
Tarrant County Health Department 1101 South Main St., Ste. 2500 Fort Worth, TX 76104-4802	181,000	AIDS Resources of Rural Texas – Abilene/Abilene	72,000
		AIDS Resources of Rural Texas – Weatherford/Fort Worth	43,000
		Wichita Falls Wichita County Health Department/Wichita Falls	66,000
Total	2,937,000		2,937,000

## CLIENT PARTICIPATION

Clients participate in shaping local approaches to meeting housing needs in three ways:

All areas conduct periodic needs assessment of client needs, and assessment of housing needs are included in such assessments. These assessments vary in methodology and depth with which housing needs are explored, which is appropriate given the varying needs for housing assistance in various areas of the state. Additionally, all Ryan White Part A councils in Texas have either completed special assessments of homeless persons or persons at risk for homelessness, or will be completing such assessments within the next year. Assessments in all EMAs are joint Ryan White Part A and Part B assessments.

All planning areas in the state must have ways for community members, including clients, to have input into local priorities, allocations, and plans. All plans include discussions of how best to deliver services to meet the needs identified in assessments, and plans that prioritize expenditures on housing or identify housing needs that would include discussions of how best to meet these needs. Plans are written on three to four year cycles, but reviewed annually.

Finally, clients shape housing services via direct interactions with service providers. Through the intake system, HIV/AIDS clients are informed about the HOPWA program, assisted with the application, or referred directly to the HOPWA Project Sponsor. Clients' housing needs are also assessed regularly with case managers as circumstances change and as determined by clients' housing plans.

## OUTCOME MEASURES

§91.320(c)(3), §91.320(e), §91.320(g)

DSHS HOPWA contractors must address the following outcomes pursuant to the new performance measurement outcome system mandated by HUD:

**Annual Action Plan - Planned Project Results**

Outcomes and Objectives	Performance Indicators	Expected Number	Activity Description
DH-2	# of households served	550	TBRA housing assistance
DH-2	# of households served	650	STRMU housing assistance
DH-2	# of households served	1,200 <sup>13</sup>	Supportive Services (restricted to case mgt., smoke detectors, and phone service)
DH-1	# of households served	20	Permanent Housing Placement (security deposits, application fees, credit checks)
Key	Availability/Accessibility	Affordability	Sustainability
Decent Housing	DH-1	DH-2	DH-3

**HOPWA Homeless and Special Needs Goals**

ANNUAL AFFORDABLE HOUSING GOALS	Expected Annual Number of Units To Be Completed
Homeless households	2
Non-homeless households	1,200
Special needs households	10

<sup>13</sup> This is based on total TBRA and STRMU households expected to be served. All HOPWA households are expected to receive case management services funded by multiple funding streams, including Ryan White, HOPWA, and other leveraged resources.

## OTHER ACTIONS

The actions listed below are Other Actions taken by the Departments to meet the requirements of §91.320(j). Other Actions include Meeting Underserved Needs; Fostering and Maintaining Affordable Housing; Lead-Based Paint Hazard Mitigation; Reducing Poverty-Level Households; Developing Institutional Structure; Coordination of Housing and Services; and Addressing Public Housing Authorities Needs.

## MEETING UNDERSERVED NEEDS

### §91.320(j)

Given the large need for affordable housing and the limited supply of funding, one major obstacle is the lack of sufficient funding to meet underserved housing needs in Texas. When compared to the demographic characteristics of Texas, there is a shortage of affordable housing stock and funding sources to assist in the development and maintenance of affordable housing.

Not only does a lack of funding limit the capacity of service providers, but service providers may also lack organizational capacity. Because of the remote nature of smaller communities in rural areas, many of these communities are not aware of public or private resources or do not know how to successfully obtain them. The service providers in these communities may not know when or where to apply for funding, have availability of qualified staff, or have experience completing a successful housing program. Since one focus of the Department is non-participating jurisdictions which are often in rural areas, this lack of organizational capacity is of particular concern for TDHCA.

Another obstacle to affordable housing can be difficulty obtaining a clear title for low-income homeowners. Clear titles are required for homeowners to meet program eligibility requirements and protect TDHCA's investment in affordable housing. Homeowners in need of housing repair or contract-for-deed conversions often have difficulty obtaining a clear title. Titles may not be in the homeowners' name because of divorce or widowhood, in which case the ex-spouse is also on the title. Titles with liens are a common occurrence when converting contract-for-deeds into traditional mortgages.

To address underserved needs, TDHCA closely monitors affordable housing trends and issues as well as conducting its own research. For example, as a result of the identification of insufficient funding, the Department requested and received an increase in Housing Trust Fund monies during the 81st Legislative Session. In addition, TDHCA makes adjustments to address community input gathered through roundtable discussions and public hearings held throughout the state. To illustrate this point, for the 2010-2011 Biennium Plan, the Housing Trust Fund is including a capacity-building component into its Rural Housing Expansion Program as a result of public input at a roundtable. To address the clear title issue, TDHCA is investigating a partnership with the Office of the Attorney General to help low-income Texans receive assistance by meeting the clear title program guideline. These efforts, combined with public outreach and education, are part of TDHCA's commitment to overcome obstacles to affordable housing.

## **HOME AND ESGP ADDRESS UNDERSERVED NEEDS**

The HOME Program provides grant funds, deferred forgivable loans and repayable loans to Units of General Local Government, nonprofit and for-profit organizations, Community Housing Development Organizations (CHDOs), and Public Housing Authorities (PHAs). These funds are primarily used to foster and maintain affordable housing by providing rental assistance, rehabilitation, or reconstruction of owner-occupied housing units, down payment and closing cost assistance with or without accessibility modifications for the acquisition of affordable single family housing, single family housing development, and funding for rental housing development including the preservation of existing affordable or subsidized rental housing.

HOME funds may also be used in conjunction with the Housing Tax Credit Program to construct or rehabilitate affordable rental housing.

ESGP funds are utilized to provide transitional housing. However, funds are awarded based on the requests for funding and the majority of funds are utilized by awardees to provide emergency shelter. These funds meet the needs of local homeless populations. Awardees have limited federal funds available to support the operations and maintenance of shelter facilities. ESGP funds have the flexibility to be utilized for up to 100% of the award for maintenance and operations costs of a shelter.

## **CDBG ADDRESSES UNDERSERVED NEEDS**

TxCDBG encourages affordable housing projects using several methods in the allocation of CDBG funds to the eligible communities that can participate in its programs, including favorable state scoring and regional prerogative to prioritize funding for housing infrastructure and rehabilitation. Each region is encouraged to set aside a percentage of the regional allocation for housing improvement projects, and housing applications are scored as high priority projects at the state level. Housing projects continue to be funded through the Colonia Self-Help Centers as well.

In addition, CDBG funding provides a cost savings for housing when CDBG funds are used to provide first-time water and wastewater services by installing water and sewer yardlines and paying impact and connection fees for qualifying residents. For PY 2011, the TxCDBG will make funds available through five different grant categories to provide water or sewer services on private property, with the vast majority being low and moderate income households.

The most commonly cited obstacle to meeting the underserved community development needs of Texas cities (aside from inadequate funding) is the limited administrative capacity of the small rural towns and counties the CDBG program serves. TxCDBG staff offers technical assistance to communities to promote successful CDBG projects.

CDBG funding also helps cities and counties study affordable housing conditions. The plans produced through a TxCDBG planning contracts provide both valuable data concerning a city's or county's affordable housing stock and planning tools for expanding their affordable housing. In PY 2011, TxCDBG will make funds available for planning through the Planning and Capacity Building Fund and the Colonia Planning and Construction Fund.



The Colonia Self-Help Centers continue to address affordable housing needs in border counties by assisting qualifying colonia residents to finance, refinance, construct, improve or maintain a safe, suitable home in suitable areas.

Another obstacle to meeting underserved needs applies to colonias projects. There have been cases when a county applies to provide water service to an area, but more than one water supply corporation or city may have a Certificate of Convenience and Necessity (CCN) in that territory (CCNs have been issued which have overlapping territories). In these cases, a dispute over which water supply corporation/city has the right to serve the territory (and therefore collect the revenues) may arise. A public hearing process may be necessary to resolve this issue, which can then delay projects for months. TxCDBG will continue to work with regulatory agencies as appropriate to resolve issues in project areas in a timely manner.

### **HOPWA ADDRESSES UNDERSERVED NEEDS**

The Texas HOPWA program continues to meet the needs of underserved populations in several ways.

As assessed regularly by Ryan White needs assessments in all HSDAs, housing needs are high among people living with HIV/AIDS. The Texas HOPWA program meets the needs of this underserved population throughout the state by providing essential housing and utilities assistance as part of a comprehensive medical and supportive services system. As a result, people living with HIV/AIDS and their families are able to maintain safe and affordable housing, reduce their risk of homelessness, and access medical care and supportive services.

In addition, DSHS is continuing to update funding allocations to address the changing needs of local communities and to maximize and target HOPWA funding to HSDAs that are in greatest need. DSHS will consider a variety of factors including but not exclusive to HIV/AIDS morbidity, poverty level, housing costs and needs, homelessness data, program waitlists, and program expenditures.

## **FOSTERING AND MAINTAINING AFFORDABLE HOUSING**

### **§91.320(j)**

The Departments provides funds for non-profit and for-profit organizations and units of local government to develop and maintain affordable housing. Funds include grants, low-interest loans, low income housing tax credits, and mortgage revenue bonds.

The Departments coordinate funding of rehabilitation or development of affordable housing with the Housing Tax Credit (HTC) program in accordance with the Qualified Allocation Plan (QAP). In addition, credits awarded through the HTC program can be layered with awarded funds from the HOME or Housing Trust Fund multifamily programs. When more than one source of funds is used in an affordable housing project, the state is able to ensure affordability to low-income renters beyond the rent and occupancy restrictions imposed by U.S. Internal Revenue Service that set the requirements of the HTC program.

### **HOME ADDRESSES AFFORDABLE HOUSING**

The HOME Program provides grant funds, deferred forgivable loans, and repayable loans to units of local government, nonprofit and for-profit organizations, community housing development organizations (CHDOs), and public housing authorities (PHAs). These funds are primarily used to foster and maintain affordable housing by providing rental assistance, rehabilitation, or reconstruction of owner-occupied housing units with or without refinancing, down payment and closing cost assistance with optional rehabilitation for the acquisition of affordable single family housing, single family development and funding for rental housing preservation of existing affordable or subsidized developments.

### **ESGP ADDRESSES AFFORDABLE HOUSING**

While TDHCA encourages the use of ESGP funds to provide affordable transitional housing, the majority of funds are utilized to provide emergency shelter. Fostering affordable housing is not an initiative for which TDHCA provides funding or that TDHCA monitors for the ESGP Program.

### **CDBG ADDRESSES AFFORDABLE HOUSING**

TxCDBG encourages affordable housing projects using several methods. First, it provides for a scoring preference under the largest fund category. Each of the 24 regions is encouraged to set aside a percentage of the regional allocation for housing improvement projects. The Community Development Fund and Colonia Fund provide for housing rehabilitation to improve affordable housing.

In addition, CDBG funding provides a cost savings that leads to affordable housing when CDBG funds are used to provide first-time water and wastewater services by installing water and sewer yardlines and paying impact and connection fees for qualifying residents. For PY 2011, the TxCDBG will make funds available through five different grant categories to provide water or sewer services on private property, with the vast majority being low and moderate income households.

CDBG funding also helps cities and counties study affordable housing conditions. The plans produced through a TxCDBG planning contracts provide both valuable data concerning a city's or county's affordable housing stock and planning tools for expanding their affordable housing. In PY 2011, TxCDBG

will make funds available for planning through the Planning and Capacity Building Fund and the Colonia Planning and Construction Fund.

The Colonia Self-Help Centers continue to address affordable housing needs in border counties by assisting qualifying colonia residents to finance, refinance, construct, improve or maintain a safe, suitable home in suitable areas.

### **HOPWA ADDRESSES AFFORDABLE HOUSING**

HOPWA addresses affordable housing by providing rental assistance for people living with HIV/AIDS and their families. Low-income people living with HIV/AIDS often struggle to make their house payments because of high costs for medical care and medications or loss of employment. HOPWA makes housing costs more affordable for those PLWHA who are income eligible so they can maintain their housing and adhere to their medical treatment.

## **LEAD-BASED PAINT HAZARD MITIGATION**

### **§91.320(j)**

HUD's final regulations for Title X (24. CFR.105) calls for a three pronged approach to target conditions that pose a hazard to households: (1) notification of occupants about the existence of hazards so they can take proper precautions, (2) identification of lead-based paint hazards before a child can be poisoned and, (3) control of these lead-based paint hazards in order to limit exposure to residents. While TDHCA monitors its properties for compliance with these regulations, at the state level, the Texas Department of State Health Services (DSHS) has been charged with oversight of the Texas Environmental Lead Reduction Rules (TELRR). These rules cover areas of lead-based paint activities in target housing (housing constructed prior to 1978) and child-occupied facilities, including the training and certification of persons conducting lead inspections, risk assessments, abatements, and project design. For all projects receiving over \$25,000 in federal assistance, contractors need to follow inspections and abatements standards overseen by DSHS. By following these standards, the state is increasing the access to housing without lead-based paint hazards. The adherence to inspection and abatement standards is related to the extent of lead-based paint in that a majority of the housing in need of rehabilitation is likely housing built before 1978.

### **HOME ADDRESSES LEAD-BASED PAINT**

The HOME Program requires lead screening in housing built before 1978 for all HOME eligible activities and in accordance with 24 CFR Part 92.355 and 24 CFR Part 35, subparts A, B, J, K, M, and R. The HOME Program increases the awareness of the hazards of lead-based paint by requiring screening for TBRA, homebuyer assistance and homeowner rehabilitation. Furthermore, single-family and multifamily development activities in HOME increase the access to lead-based-paint-free housing through the construction of new housing. The HOME Program requires an environmental site assessment and the abatement of lead-based paint if the structure being rehabilitated was constructed prior to 1978. There is significant training, technical assistance, and oversight of this requirement on each contract funded under the HOME Program.

### **ESGP ADDRESSES LEAD-BASED PAINT**

For ESGP, TDHCA requires subrecipients to evaluate and reduce lead-based paint hazards for conversion, renovation, or rehabilitation projects funded with ESGP funds, and tracks work in these efforts as required by Chapter 58 of the Environmental Protection Act. During the annual contract implementation training, the Department will provide ESGP subrecipients with information related to lead-based paint regulations and the Department's requirements related to such. The Department will require ESGP funded subrecipients to determine if a housing unit was built prior to 1978, for households seeking ESGP funded rent or rent deposit assistance whose household has a family member(s) 6 year of age or younger. If the housing unit is built prior to 1978, the ESGP subrecipient will notify the household of the hazards of lead-based paint.

ESGP subrecipients utilizing ESGP funds for renovation, rehabilitation or conversion must comply with the Lead Based Paint Poisoning and Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992. Through renovation, rehabilitation or conversion, ESGP increases access to shelter without lead-based paint hazards. TDHCA evaluates and reduces lead-based hazards for

conversion, renovation, or rehabilitation projects funded with ESGP funds and tracks work in these efforts in the ESGP Program as required by Chapter 58 of the Environmental Protection Act.

### **CDBG ADDRESSES LEAD-BASED PAINT**

The TxCDBG encourages the reduction of lead-based hazards through favorable scoring under its Community Development Funds for the replacement of lead fixtures and other lead hazards that are an imminent public health threat. The TxCDBG program encourages regional priority set-asides for housing projects such as housing rehabilitation. Under the set-aside, the highest ranked applications for a housing activity, regardless of the position in the overall ranking, would be selected to the extent available regional funding permits. These housing rehabilitation projects lead to access to housing without lead hazards. This regional prioritization is related to the extent of lead hazards and the identified need within the region. In addition, lead-based paint mitigation is a common activity eligible under housing rehabilitation that is funded under the Colonia Planning and Construction Fund and Community Development Funds. Each contract awarded requires the sub-grantee to conform to Section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and procedures established by the TxCDBG in response to the Act.

In accordance with CDBG state regulations and the Lead-Based Paint Poisoning Prevention Act, TxCDBG has adopted a policy to eliminate as far as practicable the hazards of lead poisoning due to the presence of lead-based paint in any existing housing assisted under the CDBG. In addition, this policy prohibits the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance. Abatement procedures should be included in the housing rehabilitation contract guidelines for each project and must appear in the approved work write-up documentation for all homes built prior to 1978 that will be rehabilitated, as outlined in the Housing Rehabilitation Manual.

### **HOPWA ADDRESSES LEAD-BASED PAINT**

EPA requires that Project Sponsors give all HOPWA clients utilizing homes built before 1978 the pamphlet entitled, "Protect Your Family from Lead in Your Home" during the intake process. The client's case record must include documentation that a copy of the pamphlet was given to the client.

For each HOPWA household, the case manager must certify the following:

If the structure was built prior to 1978, and there is a child under the age of six who will reside in the property, and the property has a defective paint surface inside or outside the structure, the property cannot be approved until the defective surface is repaired by at least scraping and painting the surface with two coats of non-lead based paint. Defective paint surface means: applicable surface on which paint is cracking, scaling, chipping, peeling or loose. If a child under age six residing in the HOPWA-assisted property has an Elevated Blood Lead Level, paint surfaces must be tested for lead-based paint. If lead is found present, the surface must be abated in accordance with 24 CFR Part 35.

## **REDUCING POVERTY-LEVEL HOUSEHOLDS**

§91.320(j)

TDRA, TDHCA, and DSHS have an important role in addressing Texas poverty. These agencies seek to reduce the number of Texans living in poverty, thereby providing a better future for all Texans. This means trying to provide long-term solutions to the problems facing people in poverty and targeting resources to those with the greatest need.

### **HOME AND ESG ADDRESS POVERTY-LEVEL HOUSEHOLDS**

Through the HOME Tenant-Based Rental Assistance Program, TDHCA assists households with rental subsidy and security and utility deposit assistance for a period not to exceed 24 months. As a condition to receiving rental assistance, households must participate in a self-sufficiency program, which can include job training, GED classes, or drug dependency classes. The HOME Program enables households to receive rental assistance while participating in programs that will enable them to improve employment options and increase their economic independence and self-sufficiency. Additionally, the Department allocates funding toward the rehabilitation and construction of affordable rental housing, incentivizing units to assist very low income households and assists very low income households along the international border of Texas and Mexico by promoting the conversion of contract for deed arrangements to traditional mortgages. The ESG Program funds activities that provide shelter and essential services for homeless persons, as well as intervention services for persons threatened with homelessness. Essential services for homeless persons include medical and psychological counseling, employment counseling, substance abuse treatment, transportation, and other services. While TDHCA supports the use of ESGP funds to help ESGP clients lift themselves above the poverty line, it is not a specific initiative for which TDHCA earmarks ESGP funding or that TDHCA monitors for the ESGP Program.

For individuals threatened with homelessness, homelessness prevention funds can be used for short-term subsidies to defray rent and utility arrearages for households receiving late notices, security deposits, and payments to prevent foreclosure.

### **CDBG ADDRESSES POVERTY-LEVEL HOUSEHOLDS**

A substantial majority, 86%, of TxCDBG funds are obligated to cities and counties under the funding competitions meeting the national objective to “principally benefit low and moderate income persons.” TxCDBG encourages the funding of communities with a high percentage of persons in poverty through its application scoring. The CDBG projects under this national objective are required to serve 51 percent low to moderate income persons; however, for PY2011, the scoring portion of the largest fund category, the Community Development Fund, provides for points only if it meets the national objective of benefiting low and moderate income persons. In addition, the CDBG allocation formula used to distribute Community Development funds among regions includes a variable for poverty. The percentage of persons in poverty for each region is factored into the allocation formula in order to target funding toward the greatest need.

The CDBG economic development funds have been instrumental in creating infrastructure and jobs. By creating and retaining jobs through assistance to businesses and then providing lower income people

access to these jobs, TxDBG can be a very effective anti-poverty tool. This potential will be further maximized by providing jobs that offer workplace training and education, fringe benefits, opportunities for promotion, and services such as child care. In addition, programs that improve infrastructure affords the opportunity to upgrade existing substandard housing (such as in the colonias) and build new affordable housing where none could exist before.

### **HOPWA ADDRESSES POVERTY-LEVEL HOUSEHOLDS**

The DSHS HOPWA Program serves HIV positive persons based on income eligibility criteria of no more than 80 percent of the area median income with adjustments for family and household size, as determined by HUD income limits. With varying poverty levels and housing needs in each HSDA across the state, some Project Sponsors may set stricter local income limits to maximize and target HOPWA resources to those with very low-income or poverty-level income. While many of the HOPWA clients assisted may be at poverty-level, this is not a requirement under 24 CFR 574.3.

## **DEVELOPING INSTITUTIONAL STRUCTURE**

### **§91.320(j)**

TDRA, TDHCA, and DSHS are primarily pass-through funding agencies and distribute federal funds to local entities that in turn provide assistance to households. Because of this, the agencies work with many housing and community development partners, including consumer groups, community based organizations, neighborhood associations, community development corporations, councils of governments, community housing development organizations, community action agencies, real estate developers, social service providers, local lenders, investor-owned electric utilities, local government, nonprofits, faith-based organizations, property managers, state and local elected officials, and other state and federal agencies.

There are many benefits to these partnerships: risk and commitment are shared; the principle of reciprocity requires that local communities demonstrate an awareness of their needs and a willingness to participate actively in solving problems, therefore local communities play an active role in tailoring the project to their needs; partners are able to concentrate specifically on their area of expertise; and a greater variety of resources ensure a well targeted affordable product.

## **HOME AND ESG ADDRESS INSTITUTIONAL STRUCTURE**

The HOME Program encourages partnerships in order to improve the provision of affordable housing. Organizations receiving Homebuyer Assistance funds are required to provide homebuyer education classes to households directly, or coordinate with a local organization that will provide the education. In addition, organizations receiving Tenant-Based Rental Assistance funds must provide self-sufficiency services directly, or coordinate with a local organization that will provide the services. Finally, partnerships with Community Housing Development Organizations and non profit and private-sector organizations facilitate the development of quality rental housing development and assist in the rehabilitation of owner-occupied housing.

TDHCA encourages ESGP subrecipients to coordinate services with housing and other service agencies. Collaborative applications funded with ESGP funds are required to coordinate services and to provide services as part of a local continuum of care. TDHCA reviews ESGP subrecipients' coordination efforts during on-site and desk monitoring.

## **CDBG ADDRESSES INSTITUTIONAL STRUCTURE**

CDBG funds are awarded to non-entitlement units of general local government thereby providing these communities with financial resources to respond to its community development needs. Such may include planning; constructing community facilities, infrastructure, and housing; and implementing economic development initiatives. Each applicant to the CDBG fund is required throughout its citizen participation process to inform local housing organizations of its intention to apply for CDBG funding through the CDBG and invite their input into the project selection process.

TxCDBG continues to coordinate with the Texas Department of Housing and Community Affairs, the Texas Department of Agriculture, the Texas Water Development Board, Annual State Agency Meeting on Rural Issues, and the 24 Regional Councils of Governments to further its mission and target



beneficiaries of CDBG funds through programs such as the Colonia Self-Help Centers, the Colonia Economically Distressed Areas Program, the Housing Tax Credit Program, and the Texas Capital Fund.

### **HOPWA ADDRESSES INSTITUTIONAL STRUCTURE**

DSHS contracts with eight Administrative Agencies, which contract directly with the Project Sponsors serving all 26 HSDAs in the state to administer the HOPWA program. The AAs also administer the delivery of a range of other HIV health and social services, including the Ryan White grant and State HIV Services funds. This structure ensures the coordination of all agencies serving people with HIV/AIDS, avoids duplication, saves dollars, and provides the best possible coordination of services for people with HIV/AIDS in each local community. HOPWA program information is made available to all HIV service agencies in the HSDA and a referral network is established for potential clients. DSHS HOPWA clients are linked through their case managers to a comprehensive network of medical care and supportive services for persons living with HIV/AIDS and their families, consisting of 64 local providers across the state. HOPWA Project Sponsors collaborate locally with these providers to ensure that clients receive the services they need to begin treatment and remain in care. Additionally, Project Sponsors collaborate with local housing authorities in their areas to assure that HOPWA clients are referred to the housing programs and services that best fit their needs and circumstances. Most notable is collaboration of Project Sponsors with local Housing Choice Voucher programs.

## COORDINATION OF HOUSING AND SERVICES

### §91.320(j)

The state agencies are primarily funding entities whose chief function is to distribute program funds to local conduit providers that include units of local government, nonprofit and for profit organizations, community-based organizations, private sector organizations, real estate developers and local lenders. Because the agencies do not fund individuals directly, coordination with outside entities is key to the success of its programs.

There are many benefits to these partnerships. Risk and commitment are shared. The principle of reciprocity requires that local communities demonstrate an awareness of their needs and a willingness to participate actively in solving problems, therefore local communities play an active role in tailoring the project to their needs. Partners are able to concentrate specifically on their area of expertise. Finally, a greater variety of resources insure a well targeted more affordable product.

### **FAIR HOUSING COORDINATION**

Through program requirements and compliance monitoring, TDHCA works to ensure that housing programs benefit individuals without regard to race, color, religion, sex, disability, familial status or national origin. Complaints involving all forms of housing discrimination are also referred to the Texas Workforce Commission Human Rights Division, which oversees the Texas Fair Housing Act. TDHCA addresses fair housing by complying with the Texas Fair Housing Act in TDHCA administered programs and coordinates fair housing efforts with the Human Rights Division of the Texas Workforce Commission, which was created under the Texas Fair Housing Act to directly address public grievances related to fair housing.

### **PERSONS WITH DISABILITIES COORDINATION**

The Promoting Independence Advisory Committee (PIAC) assists the Health and Human Services Commission in creating the State's response to the Olmstead decision through the biannual Promoting Independence Plan. This plan highlights the State's efforts to assist individuals who are desirous of community placement, appropriate for community placement as determined by the state's treatment professionals and do not constitute a fundamental alteration in the state's services. TDHCA participates in PIAC meetings and is a member of the Housing subcommittee.

TDHCA has found that directly involving program beneficiary representatives, community advocates and potential applicants for funding in the process of crafting its policies and rules is extremely helpful. This process is often done through a working group format. The working groups provide an opportunity for staff to interact with various program stakeholders in a more informal environment than that provided by the formal public comment process. TDHCA has actively maintained a Disability Advisory Workgroup which provides ongoing guidance to the Executive Director on how TDHCA's programs can most effectively serve persons with disabilities.

The Department has created a Housing and Health Services Coordination Council (Council) within the Housing Resource Center to increase state efforts to expand service-enriched housing through increased coordination of housing and health services. The Council has conducted research and identified funding

opportunities to create service-enriched housing for persons with disabilities and seniors. More information about the Council can be found on page 12.

### **PERSONS WITH HIV/AIDS COORDINATION**

DSHS addresses the housing needs of AIDS patients through HOPWA. In Texas, HOPWA funds provide emergency housing assistance, which funds short-term rent, mortgage and utility payments to prevent homelessness; and tenant-based rental assistance, which enables low-income individuals to pay rent and utilities until there is no longer a need. In addition to the DSHS statewide program, the cities of Austin, Dallas, Fort Worth, Houston and San Antonio receive HOPWA funds directly from HUD.

The Housing Tax Credit (HTC) Program addresses the needs of people with HIV/AIDS. According to the 2009 Housing Tax Credit Program Qualified Allocation Plan (QAP), HTC offers additional points during the award process for developments that propose to set aside 10 percent of the units for persons with special needs, such as people with AIDS/HIV.

### **HOMELESS POPULATIONS COORDINATION**

The first phase of TDHCA's Housing Support Continuum outlined in the Institutional Structure of Agencies section is (1) Poverty and Homelessness Prevention which includes the Community Services Block Grant Program, the Comprehensive Energy Assistance Program and the Emergency Shelter Grant Program, all programs that address or prevent homelessness.

While the HTC Program is well-known and primarily used for the construction, acquisition and/or rehabilitation of new, existing, at-risk and rural rental housing, the HTC Program can also be used to develop transitional housing and permanent supportive housing for homeless populations. Furthermore, according to the 2009 Housing Tax Credit Program QAP, HTC offers additional points during the award process for developments that propose to set aside 10 percent of the units for persons with special needs, such as people who are homeless.

In addition, the Housing Trust Fund may develop or rehabilitate transitional housing and permanent supportive housing for homeless populations. While acquisition, rehabilitation and new construction are eligible activities under the program's Rule, this activity may not occur each year.

#### *Texas Interagency Council for the Homeless*

The Texas Interagency Council for the Homeless (TICH) was created in 1989 to coordinate the State's homeless resources and services. TICH consists of representatives from all state agencies that serve the homeless. The council receives no funding and has no full-time staff, but receives clerical and advisory support from TDHCA. The council holds public hearings in various parts of the state to gather information useful to its members in administering programs. The Council's major mandates include:

- evaluating and helping coordinate the delivery of services for the homeless in Texas;
- increasing the flow of information among service providers and appropriate authorities;
- providing technical assistance to TDHCA in assessing the need for housing for people with special needs;
- developing, in coordination with TDHCA and the Health and Human Services Commission, a strategic plan to address the needs of the homeless; and
- maintaining a central resource and information center for the homeless.

*Within Reach: Solutions to Homelessness in Texas*

The Department anticipates the release of a publication entitled *Within Reach: Solutions to Homelessness in Texas*. The draft publication discusses the coordination of state and local resources to prevent and address homelessness.

TDHCA collaborates with the Texas Homeless Network (THN) to build the capacity of homeless coalitions across the State of Texas, enabling them to become more effective in the communities they serve.

The Department also provided funds through THN to support technical assistance workshops for the HUD Continuum of Care homeless application. The purpose of the workshops was to assist communities in creating a network of services to the homeless population.

**HOUSING AND TRANSPORTATION**

Because housing and transportation are usually the two highest percentages of a household's budget, TDHCA and the Texas Department of Transportation (TxDOT) are taking initial steps to coordinate affordable housing and public transportation. Staffs of both Departments met in July 2010 and are arranging a series of meetings to determine how best to link providers of affordable housing and public transportation.

## **ADDRESSING PUBLIC HOUSING AUTHORITIES NEEDS**

§91.320(j)

To address PHA needs, TDHCA has designated PHAs as eligible entities for its programs, such as the Housing Tax Credit (HTC) Program, HOME Program and ESG Program. PHAs have successfully administered HTC funds to rehabilitate or develop affordable rental housing.

TDHCA has worked to promote programs that will repair substandard housing and develop additional affordable housing units. TDHCA has developed a relationship with the Texas Housing Association and the Texas chapter of the National Association of Housing and Redevelopment Officials, which represent the public housing authorities of Texas. Furthermore, PHAs staff members are members of the same workgroups as TDHCA, such as the Rural Housing Workgroup, fostering a connection.

TDHCA also has contact with PHAs when PHAs request certifications of consistency with the State's Consolidated Plan. As required by 24 CFR §903.15, in 1999, TDHCA, started a certification process to ensure that the annual plans submitted by PHAs in an area without a local Consolidated Plan are consistent with the State of Texas's Consolidated Plan.

TDHCA believes that the future success of Public Housing Authorities (PHAs) will center on ingenuity in program design, emphasis on resident participation towards economic self-sufficiency, and partnerships with other organizations to address the needs of this population. While TDHCA does not have any direct or indirect jurisdiction over the management or operations of public housing authorities, it is important to maintain a relationship with these service providers.

### **HOME ADDRESSES PHA NEEDS**

Because PHAs are eligible applicants under the HOME Program, TDHCA provides notices of funding availability to all PHAs in the state. At HOME application workshops, application processes are discussed in detail, including those related to homebuyer assistance. Furthermore, staff of PHAs, especially those receiving HOME funds and those with Section 8 Homeownership programs, are targeted by TDHCA's Texas Statewide Homebuyer Education Program for training to provide homebuyer education opportunities and self-sufficiency tools for PHA residents.

In addition to PHAs that have received HOME funds to provide homebuyer assistance in their areas, PHAs have also received HOME tenant-based rental assistance funds, enabling them to provide additional households with rental assistance and services to increase self-sufficiency.

### **ESG ADDRESSES PHA NEEDS**

PHA residents are eligible to receive assistance and services from ESG grantees. Fostering public housing resident initiatives is not an initiative for which TDHCA provides funding or that TDHCA tracks for the ESGP Program.

### **CDBG ADDRESSES PHA NEEDS**

Litigation concerning CDBG funding and public housing authorities, known as *Young v. Martinez*, focused attention and funds on these areas in the past. The State provided three funding set-asides to address Court-ordered activities under the Final Order and Decree for the litigation, obligating a total of \$13,664,753.18 for 62 *Young v. Martinez* Fund projects in PHA areas. Although the litigation has been

settled, TxCDBG continues to serve public housing areas through other funding categories as residents of PHAs qualify as low to moderate income beneficiaries for CDBG projects.

### **HOPWA ADDRESSES PHA NEEDS**

The HOPWA program administered by DSHS does not provide public housing assistance. However, Project Sponsors coordinate closely with local housing authorities for client referrals and to address local housing issues.

## **PUBLIC HOUSING AUTHORITIES RESIDENT INITIATIVES**

The Texas Department of Housing and Community Affairs believes that the future success of Public Housing Authorities (PHAs) will center on ingenuity in program design, emphasis on resident participation towards economic self-sufficiency, and partnerships with other organizations to address the needs of this population. While TDHCA does not have any direct or indirect jurisdiction over the management or operations of public housing authorities, it is important to maintain a relationship with these service providers.

### **HOME ADDRESSES PUBLIC HOUSING RESIDENT INITIATIVES**

Because PHAs are eligible applicants under the HOME Program, TDHCA provides notification of published notices of funding availability to all PHAs in the state. At HOME application workshops, application processes are discussed in detail, including those related to HBA. In addition to PHAs that have received HOME funds to provide homebuyer assistance in their areas, PHAs have also received HOME Tenant-Based Rental Assistance funds, enabling them to provide additional households with rental assistance and services to increase self-sufficiency.

### **ESGP ADDRESSES PUBLIC HOUSING RESIDENT INITIATIVES**

Fostering public housing resident initiatives is not an initiative for which TDHCA provides funding or that TDHCA tracks for the ESGP Program.

### **CDBG ADDRESSES PUBLIC HOUSING RESIDENT INITIATIVES**

While CDBG does not have a specific fund for PHA residents, it does promote through its Section 3 efforts the use of residents for CDBG-funded projects.

A TxCDBG grant recipient must take steps to follow its adopted Section 3 policy and document those efforts. It must include its Section 3 Policy and Equal Opportunity Guidelines for Construction Contractors in any bid packets for contracts on TxCDBG projects.

For any new employment, training, or contracting opportunities created during the expenditure of TxCDBG funding, the TxCDBG grant recipient and their contractors or subcontractors as applicable must take the following actions "to the greatest extent feasible":

- Notify Section 3 Residents in writing about training and employment opportunities generated by the TxCDBG-funded project;
- Notify potential contractors completing work on Section 3 covered projects of their responsibilities in writing;

- Incorporate the Section 3 clause into all solicitations and contracts greater than \$100,000, as well as all subcontracts of those contracts;
- Facilitate the training and employment of Section 3 Residents;
- Refrain from entering into contracts with contractors that are in violation with the Section 3 regulations (if the Grant Recipient has been notified of such violations); and
- Document actions taken to comply with Section 3.

**HOPWA ADDRESSES PUBLIC HOUSING RESIDENT INITIATIVES**

The HOPWA program administered by DSHS does not provide public housing assistance. However, Project Sponsors coordinate closely with local public housing authorities for client referrals and to address local housing issues.

**COMMUNITY AFFAIRS DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

To expedite processing, staff requests advance authorization to release a Request for Applications (RFA) for Duval County, the area currently served by the Institute for Rural Development (IRD). IRD has struggled to meet the requirements of its existing contracts and staff is evaluating next steps for the Community Services Block Grant (CSBG), American Reinvestment and Recovery Act (ARRA) Weatherization Assistance Program (WAP), the Department of Energy (DOE) Weatherization Assistance Program, and the Low-Income Home Energy Assistance Program (LIHEAP) Comprehensive Energy Assistance Program (CEAP) funds in that area. Staff requests approval for the release of an RFA and subsequently for the Executive Director to be authorized to make a commitment to any qualified respondents to the extent needed; and to authorize submission to appropriate federal entities of the respondents to obtain any required federal approvals, and with the condition that all commitments made are subsequently presented to the Board for ratification.

**RESOLVED**, that the Executive Director is authorized to release a Request for Applications and, should one or more additional providers be needed, make future commitments of CSBG, ARRA WAP, DOE WAP, and CEAP funds to any qualified respondent(s) to the Request for Applications without specific prior Board approval and to authorize submission to appropriate federal entities of those selected respondents to obtain any required federal approvals, and with the condition that all commitments made are subsequently presented to the Board for ratification.

**Background**

Institute for Rural Development (IRD) administers CSBG and operates the WAP and CEAP in Duval County. On August 3, 2010 the Texas Department of Housing and Community Affairs (the Department) received a phone call from a former IRD employee alleging concerns with the administration of Department-funded programs. TDHCA staff visited IRD August 4-6 and again during the week of August 9-13 and, upon confirming a number of concerns, suspended funding for IRD for the CSBG, WAP and the CEAP. Funding for the CSBG, ARRA WAP, DOE WAP, and CEAP remains suspended.

In an effort to ensure that the low income households located in Duval County continue to benefit from the services provided by these programs, the Department requests authorization to release a Request for Applications to identify alternative providers to receive the funds to be used in these communities should the situation with IRD necessitate other providers to administer CSBG and operate the ARRA WAP, DOE WAP, and CEAP.

Applicants responding to this RFA must meet the qualifications of the RFA and, as provided in CSBG, ARRA, DOE, and LIHEAP regulations, must be a unit of government or non-profit organization. Upon identification of eligible respondents, the Department must still obtain any required approvals from appropriate federal entities to provide funding to those respondents. In the interest of expediting submission to those federal entities, staff requests that the Executive Director have the authority to determine final eligibility and submit an entity for approval. All such submissions will be presented to the TDHCA Board for ratification.



**COMMUNITY AFFAIRS DIVISION**

**BOARD ACTION REQUEST**

**SEPTEMBER 9, 2010**

**Recommended Action**

Approve the award of \$50,000 in FY 2011 General Revenue Funds to the Texas Homeless Network to Administer the Balance of State Continuum of Care Funds.

**RESOLVED**, that the FY 2011 General Revenue Balance of State Continuum of Care funds, in the form presented at this meeting, be and are hereby approved.

**Background**

The 81<sup>st</sup> Legislature approved General Revenue funds to support the application process to submit a competitive application to the US Department of Housing and Urban Development (HUD) for Continuum of Care (CoC) funds for the Balance of State counties in Texas. The Balance of State counties are those counties which have historically been underfunded in regards to federal CoC funding and are primarily in rural areas. CoC funds are used by communities to provide housing and supportive services to homeless individuals and families.

In July of this year, HUD announced that the Texas Homeless Network had successfully leveraged state General Revenue funds to win an award of \$5,198,918 to support CoC activities in the Balance of State. CoC funds are awarded on an annual basis and must be re-applied for every year. The funds proposed for award today will be used by the Texas Homeless Network to continue to provide technical assistance to rural homeless coalitions representing approximately 180 Texas counties and will support the State's effort to assist rural communities in their efforts to access federal CoC funds. These activities include, but are not limited to, homeless counts/surveys, compilation of housing and services inventories, identification of housing gaps, and development of homeless discharge planning and strategies, all required as part of the annual CoC application submission.

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Requested Action**

Deny the appeal to reinstate Application #10270, Gateway to Eden.

WHEREAS, an application for tax credits was submitted for Gateway to Eden on March 1, 2010; and

WHEREAS, the documentation required in order to obtain the Experience Pre-Certification has not, to the Department's satisfaction, been provided to the Department; therefore

BE IT RESOLVED, that the appeal of Gateway to Eden, #10270 is hereby denied.

**Background**

Gateway to Eden is a proposed 17-unit single family, new construction development in Eden, Texas. The application was terminated on August 6, 2010 because Administrative Deficiencies identified during the course of the Department's review were not clarified or corrected by 5:00 p.m. on the seventh business day, pursuant to §50.9(d)(4) of the 2010 Qualified Allocation Plan and Rules ("QAP").

On July 19, 2010 the Applicant was sent an Administrative Deficiency letter identifying several omissions, clarifications or corrections. As of 5:00 p.m. on the fifth business day twenty-two of the original deficiencies remained outstanding. On the seventh business day eight of the original deficiencies remained outstanding. To date one Administrative Deficiency remains unresolved. The documentation required under §50.9(g) of the 2010 QAP for Experience Certification is incomplete and, as a result, the Department is not able to provide this certification.

The Applicant appealed the termination on August 13, 2010 indicating that since August 6<sup>th</sup> all items identified in the termination letter had been resolved. In the letter the Applicant cited no specific reason or hardship that prevented the Applicant from meeting the original deficiency deadlines, however, has since admitted that he was out of the country at the time the deficiencies were issued. There remains one item outstanding, therefore, the application is considered to be incomplete.

The experience certificate which remains in question is incomplete because the Application is for a rural development and requires a minimum of 36 units of prior experience. The Applicant contends that since they are only developing 17 units they meet the large urban development experience requirement which allows 80% of the proposed units to be developed but presumes that experience is greater than the rural

minimum of 36 units. The experience provided does not meet the minimum level for a rural development.

10270

Termination



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareño  
Tomas Cardenas, P.E.  
Tom H. Gann  
Juan S. Muñoz, Ph.D.

August 6, 2010

Ethan Horne  
Gateway to Eden, LP  
P.O. Box 600  
San Felipe, Texas 77473

Re: Application #10270, Gateway to Eden

Dear Mr. Horne:

The Texas Department of Housing and Community Affairs received an application for the above referenced development on March 1, 2010. During the Department's review of the Threshold and Selection requirements, the Department identified the following omissions, clarifications or corrections:

### Threshold

1. Volume 1, Tab 2, Part C, Utility Allowances – Complete the form ensuring that the information is consistent with the evidence.
2. Volume 1, Tab 4, Commitment Letter – The commitment letter from the Bank of Eden for construction financing does not give the term of the construction loan or a set interest rate (a range is not acceptable). Obtain a letter that includes all required information and resubmit.
3. Volume 3, Tab 2, Boundary Survey – Provide a boundary survey for the development site, including survey calls, easements, acreage and flood plain information.
4. Volume 3, Tab 6, Experience Certificate – Provide the experience certificate for your application or indicate the status of your certification process.
5. Volume 3, Tab 6, Authorization to Release Credit – Provide the form executed for the owner, developer and each member of the owner and developer.

6. Volume 3, ESA – Provide a certification from the preparer of the ESA that the flood map provided within the report is a FEMA flood map, and that the flood plain designation provided within the report is based upon FEMA data. If not, have them provide a FEMA flood map and flood plain determination based upon FEMA data and resubmit.

#### Selection

1. Volume 4, Tab 2, Financial Feasibility – Provide a statement from Eden State Bank that their analysis finds that the development will be feasible for 15 years. (Requested 28, Awarded 0)
2. Volume 4, Tab 5, LPS – The amount of in-kind contribution does not appear in full on the development cost schedule. \$450 of the total \$77,000 was not found. Revise the development cost schedule to include all of the in-kind contribution from the City of Eden and/or identify it on the development cost schedule. (Requested 18, Awarded 0)

§50.9(d)(4) of the 2010 Qualified Allocation Plan and Rules (“QAP”) states that:

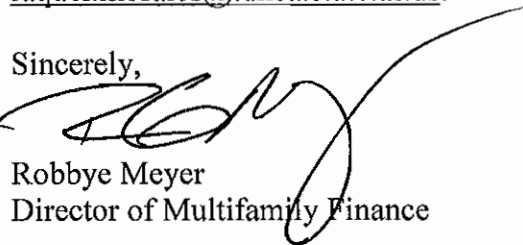
“If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated.”

The omissions stated above were not clarified or corrected by 5:00 p.m. on the seventh business day. In accordance with §50.9(d)(4) of the 2010 Qualified Allocation Plan and Rules (“QAP”), the application is being terminated.

Pursuant to §50.5(a)(10) of the 2010 QAP, staff has terminated the above referenced application. You have a right to appeal this termination to the Executive Director in accordance with §50.17(b) of the 2010 QAP. If you choose to file an appeal to the Executive Director, your appeal must be received by the Department no later than **5:00 p.m. on August 13, 2010**.

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,



Robbye Meyer  
Director of Multifamily Finance

10270

Executive Director

Appeal

August 13, 2010

Ethan Horne  
Gateway to Eden, LP  
PO Box 600  
San Felipe, TX 77473

Michael Gerber  
Executive Director, TDHCA  
221 East 11th  
Austin, TX 78711

Re: Appeal to Application #10270, Gateway to Eden

Dear Mr. Gerber

On August 6, 2010, this application was terminated due to unresolved Threshold and Selection omissions, clarifications, or corrections. I am writing to appeal this decision in accordance with 50.17(b), paragraph D of the 2010 QAP.

Since August 6, we have gathered and resolved all of the items in question in the termination letter. We appeal to TDHCA to reconsider our application. The community of Eden, TX has expressed to us a need for housing, and we would like the opportunity to partner with Eden and the Department to fill that need.

We appreciate the efforts of the Department in processing this application, and the support we've received, and would like to continue moving forward.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Ethan Horne". The signature is written in a cursive, flowing style.

Ethan Horne  
Gateway to Eden



10270

Executive Director  
Appeal Response



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdbca.state.tx.us](http://www.tdbca.state.tx.us)

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareño  
Tom H. Gann  
Lowell A. Keig  
Juan S. Muñoz, Ph.D.

August 27, 2010

Ethan Horne  
Gateway to Eden, LP  
P.O. Box 600  
San Felipe, Texas 77473

Re: Appeal for Reinstatement of Application #10270, Gateway to Eden

Dear Mr. Horne,

### **Appeal Review**

I have carefully reviewed the appeal received on August 13, 2010, by the Texas Department of Housing and Community Affairs (the "Department"), regarding your request to have the application for Gateway to Eden reinstated.

The Application was terminated because several outstanding Administrative Deficiencies were not resolved by the seventh business day following the date of the deficiency notice and one of those items remains outstanding. Pursuant to §50.9(d)(4) of the 2010 Qualified Allocation Plan and Rules ("QAP"), an application shall be terminated if Administrative Deficiencies are not cured by the seventh day. The remaining outstanding deficiency is

- Experience Certificate – you have not provided sufficient information in order for the Department to issue a certificate experience.

Your appeal does not cite any specific reason or hardship that prevented the Applicant from resolving all Administrative Deficiencies within the original timeframe provided. Further, your appeal states that since the date of the termination of this application (August 6, 2010), all items in question have been resolved. However, a certification from the Department reflecting previous experience from a participant in this development has not been provided. You were notified of immediately of the additional deficiencies which were not resolved in a timely manner.

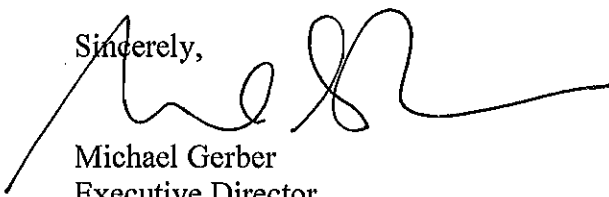
### **Appeal Determination**

Your appeal is denied.

You may appeal in writing to the Board, provided that an appeal filed with the Board is received by **September 1, 2010.**

If you have any questions, please do not hesitate to contact Raquel Morales at 512-475-1676 or [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Gerber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Gerber  
Executive Director

MFF:/rbm

10270

Board Appeal

August 31, 2010

Ethan Horne  
Gateway to Eden, LP  
PO Box 600  
San Felipe, TX 77473

Governing Board  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup>  
Austin, TX 78711

Re: Appeal to HTC Application #10270, Gateway to Eden

Members of the Board,

On August 27, 2010, this appeal to the Executive Director was denied based on two reasons. The first was that 7 days from being issued 42 administrative deficiencies by TDHCA on Monday July 19<sup>th</sup>, there were items still unresolved. The second was that Gateway to Eden did not have an experience certificate to move forward as a builder.

Our first reason for appealing is to state that at the time the deficiencies were issued, I was out of the country, and was not able to begin working on these 42 deficiencies until the Friday before the Monday they were due. We completed all but 8 items, and at the time of the first appeal, had resolved all but the issue of the experience certificate.

The second reason goes briefly into the experience certificate requirements. I've attached 50.9(g) of the 2010 QAP which outlines the requirements necessary for an experience certificate. Back in February of this year, when we were filing the original application, we read paragraph 1 of this section to mean anyone meeting A or B or C would be a successful developer. We confirmed this with Robbye Myer, who interpreted it the same way. As the Developer Ron Horne met the requirements for A: "At least 200 residential units or, if less than 200 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 units)", we were confident of our qualification. We are applying to build 17 units, and Ron Horne the Developer has successfully completed 14 previous units.

Not knowing there was a discrepancy in interpretation, when told we did not meet the requirements, we submitted documentation for another experienced builder to apply for a certificate. It is now apparent there are other interpretations that would like us to also meet requirement B: "At least 36 residential units if the Development is a Rural Development. We ask that the board examine the requirements, knowing that we moved forward in February in good faith, and hope our experience can be deemed sufficient.

Eden, TX is a growing community, with a growing housing need, and we hope to partner with Eden, and the Department to meet this need.

I thank the board for their review.

Sincerely,

A handwritten signature in black ink that reads "Ethan Horne". The signature is written in a cursive style with a large, prominent "H".

Ethan Horne  
Gateway to Eden, LP

Attached: (1)

**(g) Experience Pre-Certification Procedures.** No later than fourteen (14) days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Principals of the Development Owner, General Partner or the Developer have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. The individual requesting the certification must have completed the same type construction as the Application for tax credits is proposing (i.e. multifamily dwellings or single family residences). If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least \$15,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 200 residential units or, if less than 200 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, AIA Document G702 - Application and Certificate for Payment, Certificate of Occupancy, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(C) The number of units completed or substantially completed.

None at this time



None at this time

None at this time

None at this time

None at this time

**HOME PROGRAM DIVISION**

**BOARD ACTION REQUEST**

**September 9, 2010**

**Recommended Action**

Approve for publication in the *Texas Register* final orders for the repeal of the existing HOME Program Rule and adoption of the new 10 TAC, Chapter 53, Subchapters A, B, C, D, E, F, G, H, and I, regulations related to the HOME Program.

**RESOLVED**, that the repeal of the existing HOME Program Rule and adoption of the new 10 TAC, Chapter 53, Subchapters A, B, C, D, E, F, G, H, and I, regulations related to the HOME Program, is hereby ordered and it is approved, together with the preambles presented to this meeting, for publishing in the *Texas Register*.

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

**Background**

The proposed rule was published in the July 16, 2010 issue of the *Texas Register* to allow for public comment. Public comments were accepted through August 9, 2010 with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association. A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received.

Staff reviewed the comments received, as summarized in Attachment A, Preamble to adopt the new 10 TAC Chapter 53, and either recommended changes or determined that they do not warrant any change to the sections as published. Additionally, staff incorporated clarifications and non-substantive technical corrections. Attachment B, Preamble to adopt the repeal of the existing 10 TAC Chapter 53, and copies of the written public comments are also attached to this action item.

# **Attachment A: Preamble, Reasoned Response, and Rule Chapter 53**

## **SUBCHAPTER A. GENERAL**

### **10 TAC §53.1, §53.2**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter A, §53.1 and §53.2 concerning the HOME Investment Partnerships Program. Sections 53.1 and Section 53.2 are adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments were received for Section 53.1 and 53.2.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

#### ***§53.1. Purpose.***

This chapter clarifies the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (Department) by the United States Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC §§12701 - 12839) and HUD regulations at 24 CFR, Part 92. All provisions of this chapter apply to any Application received on or after the date of adoption of this chapter by the Department's Board. Existing Contracts executed within the preceding twelve (12) months from the date of adoption of this chapter or current pending Applications may be amended in writing at the request of the Contract Administrator (CA) or Applicant, and with Department approval, to subject the Contract or Application to all provisions of this chapter. Amendments proposing only partial adoption of this chapter are prohibited and no amendment adopting this chapter shall be granted if, in the discretion of the Department, any of the provisions of this chapter conflict with the Notice of Funding Availability under which the existing Contract was awarded or Application was submitted. All CAs with an active Contract may become Reservation System Participants (RSPs), at the written request of the CA without

the submission of an Application, and with Department approval, subject to all applicable provisions of this chapter. The State's HOME Program is designed to:

- (1) Focus on the areas with the greatest housing need described in the State Consolidated Plan;
- (2) Provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, and tenant-based rental assistance;
- (3) Promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and
- (4) Provide low, very low, and extremely low income families with affordable, decent, safe, and sanitary housing.

### ***§53.2.Definitions.***

Unless the context clearly indicates otherwise, the following capitalized terms, when used in this chapter, shall have the following meanings ascribed to them; provided that certain capitalized terms used and not defined in this chapter, shall have the meanings ascribed to them in or for purposes of the HOME Final Rule or Chapter 2306 of the Texas Government Code.

- (1) Activity--A single housing unit with a unique physical address. An activity may also refer to an individual Project, Development, or site.
- (2) Administrative Deficiencies--The absence of or lack of clarity in information or documentation as required in this chapter, the applicable NOFA, or in order to meet state or federal requirements in staff's determination. The Department staff may request clarification or correction of such Administrative Deficiencies during the review of an Application or at any time prior to the end of a Contract and including, but not limited to, review of performance under a Contract, processing of documentation for a Reservation or Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a contract, or resolution of any issues related to compliance.
  - (A) The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile or electronic transmittal, and a telephone call to the Applicant advising that such a request has been transmitted.
  - (B) The time period to cure an Administrative Deficiency is reflected under each applicable section of this chapter. The time period begins at the start of the business day following the deficiency notice date.
  - (C) To cure an Administrative Deficiency, an Applicant or Contract Administrator must provide a clarification, further definition or exposition of an issue, an explanation as to why an Applicant or Contract Administrator has provided certain information or resolution of a discrepancy where an Applicant or Contract Administrator has provided conflicting information.
- (3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or

subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest.

(4) Affiliated Party--A Person with a contractual relationship with the Contract Administrator on a Contract with the Department.

(5) Applicant--A Person who has submitted to the Department an Application for Department funds or other assistance.

(6) Application--A request for a Contract award or to participate in a reservation system submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(7) Application Submission Procedures Manual (ASPM)--The manual that sets forth the procedures, forms, and instructions for the completion and submission of an Application to the Department.

(8) Area Median Family Income (AMFI)--The income estimated and determined by HUD as the median family income with adjustments for family size and geographic locations.

(9) Board--The governing board of the Texas Department of Housing and Community Affairs.

(10) CFR--Code of Federal Regulations.

(11) Chapter 2306--The enabling statute for the Department found in the Texas Government Code.

(12) Commitment of Funds--Occurs when the Activity or Project is approved by the Department and set up in the disbursement and information system established by HUD.

(13) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(14) Contract--The executed written agreement between the Department and a Contract Administrator, Reservation System Participant, or Development Owner, performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(15) Contract Administrator (CA)--The Person responsible for performing under a Contract with the Department as approved under §53.22 of this chapter.

(16) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing General Partner of a limited partnership or any similar member.

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

(18) Department--The Texas Department of Housing and Community Affairs.



- (19) Developer--Any Person entering into a Contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.
- (20) Development--A Project in which an Applicant, CA, or Development Owner has or will have an ownership interest and that has a construction component, either in the form of New Construction or Rehabilitation of multi-unit or single family residential housing.
- (21) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract and is the Person responsible for performing under the Contract with the Department.
- (22) Development Site--The area, or if scattered site, areas for which the Development is proposed to be located.
- (23) General Contractor--A Person who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. The prime subcontractors will also be treated as a General Contractor if any of the following are true (in which case, contractor fees will be treated as fees to the General Contractor):
- (A) More than 50% of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor ("prime subcontractors"); or
- (B) More than 75% of the contract sum in the construction contract is subcontracted to three or less subcontractors, material suppliers, and equipment lessors ("prime subcontractors").
- (24) General Partner--A Person, or Persons, who is identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.
- (25) General Requirements--An allowance for the General Contractor's on-site overhead expenses. General Requirements shall be limited as prescribed in §1.32 of this title and must follow the standards published by the Construction Specifications Institute.
- (26) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 USC §§12701 - 12839.
- (27) Housing Contract System (HCS)--The electronic information system established by the Department to be used for tracking, funding, and reporting HOME Contracts and Activities or Projects.
- (28) HUD--The United States Department of Housing and Urban Development, or its successor.
- (29) IDIS--The electronic grants management information system named the Integrated Disbursement and Information System established by HUD to be used tracking and reporting HOME funding progress.

(30) Land Use Restriction Agreement (LURA)--An agreement between the Department and a Person related to a specific Property or Properties which is filed with the responsible recording authority.

(31) NOFA--Notice of Funding Availability, published in the *Texas Register*.

(32) Open Application Cycle--A defined period of time during which Applications may be submitted according to a published NOFA and which will be reviewed on a first-come, first-served basis until all funds available are committed, or until the NOFA is closed, whichever is earlier.

(33) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(34) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §§12701, et seq. and as provided in the Consolidated Plan and may include any Households composed of one or more persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, elderly, victims of domestic violence, persons with HIV/AIDS, homeless populations, migrant farm workers, and public housing residents.

(35) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(36) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

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

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

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

(37) Principal Residence--The primary housing unit a Person or Household inhabits.

(38) Program Activity--The specific purposes for which HOME funds are applied for and used.

(39) Reservation of Funds--Occurs when the Activity or Project is submitted to the Department by a Reservation System Participant.

(40) Reservation System Participant (RSP)--The Person responsible for performing under a Contract with the Department as approved under §53.23 of this chapter.

(41) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Contract that the CA will serve.

(42) TAC--Texas Administrative Code.

(43) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of rehabilitation, new construction, and acquisition.

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

(A) An Applicant, CA, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, CA, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

## **SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, AND REVIEW AND AWARD PROCEDURES**

### **10 TAC §§53.20 - 53.28**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter B, §53.20 and §53.28 concerning the HOME Investment Partnerships Program. Sections 53.26 and 53.28 are adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6149-6153). Sections 53.20, 53.21, 53.22, 53.23, 53.24, 53.25, and 53.27 are adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

### **REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER B.**

#### **§53.25(a)**

**Public Comment:** Commenter 2 recommends that contract award limits should either include soft cost allowances or be exclusive of soft cost allowances with said funds added to the contract as is currently done with administrative cost allowances.

**Staff Response:** As proposed, contract award limitations are exclusive of soft costs. No change is recommended.

#### **§53.25(c)**

**Public Comment:** Commenter 2 recommends the benchmark for Homebuyer Assistance Program awards be revised to 22 months for existing homes and 20 months for new construction homes.

**Staff Response:** Based upon roundtable discussions and federal commitment and expenditure deadlines, the proposed rule consolidated the previous benchmarks into one benchmark requirement at 12 months from the contract begin date. Evaluating the progress made toward

funding commitments by a Contract Administrator at the 12-month mark is crucial since it maximizes the amount of time remaining for the Contract Administrator to successfully complete the contract award requirements or for the Department to reprogram funds in order to meet federal commitment and expenditure requirements. If a Contract Administrator experiences challenges in completing funding commitments by 12 months into a contract award, the households should be targeted for assistance through the reservation system. No change is recommended at this time.

#### §53.26(b)

**Staff Recommendation:** Staff recommended clarification of the number of reservations allowed for Single Family Development as follows:

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, ~~or~~ Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

#### §53.26(c)

**Public Comment:** Commenter 2 recommends including an exception for Reservation Participation Agreements involving Homebuyer Assistance

**Staff Response:** Staff agrees and is also incorporating an exception for Single Family Development funds as follows:

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, ~~e~~Each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

#### §53.26(d)

**Public Comment:** Commenter 2 recommends credit be given to each RSP for excess match generated by the RSP from this or other contracts administered by the RSP to account for the match requirement.

**Staff Response:** Since this provision requires the proposed match be provided before approval of every fourth Household, excess Match contributions can be credited. No change is recommended at this time.

**Staff Recommendation:** Staff recommends a minor grammatical correction as follows:

(d) Match. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households.

### §53.26(f)

**Staff Recommendation:** Staff recommended clarifying that an extension will include the submission of requests for disbursement as follows:

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

### §53.28(5)

**Staff Recommendation:** Based on guidance received from recent HUD Conflict of Interest exceptions request reviews, staff recommended clarifying the requirement to publicly disclose the conflict by newspaper publication as follows:

(5) In instances where a potential conflict of interest exist, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication and a description of how the public disclosure was made. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the Conflict of Interest provisions;

### §53.28(8)(B)

**Public Comment:** Commenter 3 recommends if the Department's intention is to specifically require a concrete foundation system, 53.31(b)(2) should be revised to read, "(2) The unit is permanently installed with an engineer or architect approved concrete foundation system."

**Staff Response:** Staff agrees with the comment and recommended changes as follows:

(B) Unless not allowed by local code, provide replacement of an existing housing unitMHU with a new MHU as an available option; and

### §53.28(10)

**Staff Recommendation:** In accordance with federal requirements, staff recommended the following clarification:

(10) Except for Multifamily Development and Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and earlier of the date the HOME assistance is provided to the Household or the date the contract to purchase the housing unit is executed with the Household. For Tenant-Based Rental Assistance, in the event that a Household's

monthly gross income changes by more than \$200, the Household must be recertified and the rental subsidy recalculated;

### §53.28(11)

**Staff Recommendation:** In accordance with federal requirements, staff recommended the following clarification:

(11) For single family Program Activities involving construction, perform initial inspection and at least four (4) progress inspections. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and CA or RSP. ~~For Tenant-Based Rental Assistance, perform initial and an annual HQS inspection. The inspection must be signed and dated by the inspector and CA or RSP;~~

### §53.28(17)

**Staff Recommendation:** To clarify processing requirements for certificates of Contract Completion, staff recommended the following clarification:

(17) For Contract awards, submit certificate of Contract Completion ~~within no later than ten~~ sixty (160) business days of the Department's request from the Contract end date;

### §53.28(19)

**Staff Recommendation:** To clarify the forms of eligible match, staff recommended the following clarification:

(19) Match ~~must be~~ contributed to a Project or Activity ~~assisted with funds under this chapter and cannot be include~~ mortgage revenue bonds programs, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved by the Department.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

### *§53.20. Availability of Funds.*

The Department will make HOME funds available through Notices of Funding Availability (each a NOFA) or the procurement of a contractor. Funds made available under a NOFA may be

allocated through Contract awards to Contract Administrators (CAs) or by providing the ability to submit Reservations of Funds for Reservation System Participants (RSPs). Funds subject to regional allocation shall be made available as follows:

(1) Applicants applying in response to a Competitive Application Cycle will be ranked highest to lowest by subregion. Funding that remains available after awarding all available eligible Applications in each subregion shall collapse and be directed to the next Application in the most underserved subregion. If funding is made available to multiple Program Activities under one NOFA, the funds remaining after awarding all eligible Applications by Program Activity shall collapse and be directed to the next Application in the most underserved subregion regardless of Program Activity;

(2) Funds made available through an Open Application Cycle and subject to regional allocation shall be made available to each subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide; and

(3) In the event of a tie between two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may also receive a partial recommendation for funding.

#### ***§53.21. Application Forms and Materials and Deadlines.***

(a) The Department will develop and publish an Application, which if completed by an eligible Applicant, would satisfy the requirements for requesting funds from the Department. The Department will also issue an ASPM to provide guidance on proper completion of the Application.

(b) Applicants must submit an Application for a Contract award by the deadline date specified in the NOFA. Applications for participation in a reservation system may be submitted on an ongoing basis throughout the year. All Applications must be received during business hours on any day in which the Department is open for business.

#### ***§53.22. Contract Award Application Review Process.***

(a) An Application received by the Department in response to an Open Application Cycle NOFA will be assigned a "Received Date" based on the date it is received by the Division. An Application will be prioritized for review based on its "Received Date." An Application with outstanding Administrative Deficiencies may be held from further review until all Administrative Deficiencies have been cured. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have Administrative Deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed. Notwithstanding the foregoing, for an Applicant that has also applied under the competitive housing tax credit cycle for the same development, the following shall apply:



(1) The HOME Application shall not lose its "Received Date" priority to applicants that are not requesting housing tax credits unless the development does not receive an award of housing tax credits by July 31st of the year of the cycle (For example: A HOME-only application that is received after the start of the competitive housing tax credit cycle may not be presented to the Board for approval until HOME and housing tax credit layered applications with priority "Received Dates" are presented for approval and the layered application would maintain its "Received Date" priority); and

(2) Applications that have not submitted third party reports due to a later deadline under the housing tax credit program may be held as incomplete Applications until the housing tax credit deadline for submission of third party reports. Such Applications will not be considered complete Applications and shall not be assigned a "Received Date" until the third party reports are received.

(b) For Applications received by the Department in response to a Competitive Application Cycle NOFA, the Department will accept Applications on an ongoing basis during the Application Acceptance Period as specified in the NOFA. Applications will be prioritized for review based upon the score of the Application.

(c) Administrative Deficiencies. An Administration Deficiency may not be cured if it would require substantially changing an Application or providing any new unrequested information. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, increase the award request amount, or revise the unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in this chapter or by amendment of an Application after the Board approval of a HOME award. The curative time periods allowable for Administrative Deficiencies are: for Applications received under an Open Application Cycle NOFA, Administrative Deficiencies not cured within five (5) business days will be terminated. Applicants that have been terminated may reapply for funds; or for Applications received under a Competitive Application Cycle NOFA, if Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the selection score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated. An Applicant may not adjust the self-score without a request from the Department as a result of an Administrative Deficiency.

### ***§53.23.Reservation System Participant Review Process.***

(a) In order for an Applicant to participate in the reservation system, the Department must review and approve an Application to become a Reservation System Participant (RSP). Applications will be reviewed and presented to the Executive Director for approval in the order they are received. Any such approval will be subject to ratification by the Board prior to Commitment of Funds.

(b) Applications for recertification may be submitted ninety (90) days prior to the end of the RSP agreement term and will be required to demonstrate that all Application requirements are met.

(c) Administrative Deficiencies must be cured within ten (10) business days of the date of the deficiency notice. If Administrative Deficiencies are not clarified or corrected within ten business days from the deficiency notice date, the Application may be terminated.

***§53.24.General Threshold and Selection Criteria.***

All Applicants and Applications must submit or comply with the following:

(1) An Applicant certification of compliance with state and federal laws and state and federal rules and guidance governing the HOME Program;

(2) A resolution signed and dated within the six (6) months preceding the Application submission date from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP agreement term;

(C) Source of funds for Match obligation and Match dollar amount, if applicable;

(D) Name and title of the person authorized to represent the organization; and

(E) Signature authority to execute a contract;

(3) Any Applicant requesting \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number. Applicants requesting funds for multifamily housing development and that are "to-be-formed" are not required to submit a CCR or DUNS number until after award but prior to Contract execution. If the property will be owned by a partnership, the partnership must be the registrant. If a partnership will be receiving funds under the CHDO set-aside, the partnership and the CHDO must both be registered;

(4) An Application fee, to be defined in the NOFA, which is sufficient to discourage the submission of partial or incomplete Applications except as otherwise allowed by state statute;

(5) To be eligible for a new Contract award, an Applicant must have committed funds to at least 80% of the total number of contractually required Households or has committed at least 80% of the total Project funds on their current Contract for the same Program Activity. This provision shall not apply to Applications submitted for disaster relief funding or those with an exclusively different Service Area;

(6) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire volume of the Application is missing; has excessive omissions of documentation from the threshold or selection criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. Such Application will be terminated without being processed as an Administrative Deficiency. To the extent that a

review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application; and

(7) The Department may incentivize or provide preference to Applicants targeting very low and extremely low income Households or to Applicants that have successfully executed a previous HOME Contract with the Department. Such incentives may be established in the form of threshold or selection criteria in the NOFA and may be different for each Program Activity.

***§53.25. Contract Award Limitations.***

(a) Project Funds Limits. Project funds for Contract awards are limited to \$500,000 per Contract Administrator for Homeowner Rehabilitation and Contract for Deed Conversion Program Activity Applicants and \$300,000 per Contract Administrator for Homebuyer Assistance and Tenant-Based Rental Assistance Program Activity Applicants. The Contract award limits for Project funds for Single Family Development and Multifamily (Rental Housing) Development Program Activity Applicants may be higher and will be established in the NOFA for these activities.

(b) Contract Award Terms. With the exception of Tenant-Based Rental Assistance, all Program Activity Contract awards will have a Contract term of twenty-four (24) months exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance Program Activity Contract awards will have a Contract term of thirty-six (36) months.

(c) Contract Award Benchmarks. All Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within twelve (12) months from the effective date of the Contract. All remaining funds will be automatically deobligated and returned to the Department unless an amendment has been requested in writing prior to this date and is approved.

(d) Amendments. The Division Director may approve amendments to Contract awards except amendments to extend the Contract and benchmarks by more than six (6) months, increase Project funds, or that would have negatively impacted the priority of the Board-approved Application. The Executive Director may approve amendments except to extend the Contract and benchmarks by more than twelve (12) months, increase Project funds by more than 25% or \$50,000, whichever is greater, or that would have negatively impacted the priority of the Board approved Application in the Executive Director's estimation. The Board may, on a case by case basis, approve amendments provided such approval would not cause a violation of the Department's rules or federal requirements.

(e) Voluntary deobligation. The Contract Administrator may fully deobligate funds in the form of a written request signed by the executor of the Contract. The Contract Administrator may

partially deobligate funds under a Contract in the form of a written request from the executor if the letter also deobligates the associated number of targeted Households, funds for Administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract.

(f) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Contract Administrator must respond in a timely manner to such requests from the Department. Prolonged or repeated failure to respond may result an Administrative Deficiency and ultimately in termination of the Contract by the Department.

(g) The Department reserves the right to reduce the amount requested in an Application, condition the award recommendation, or terminate the Application based on Program Activity or Project feasibility, past performance, underwriting analysis, or availability of funds. The recommendation with amendments, if any, approved by the Board, will supersede any conflicting Application information.

(h) Pre-Award Costs. Before the effective date of the HOME Contract, the Contract Administrator may incur and be reimbursed for travel costs, as provided for with Administrative funds, related to mandatory training required by the Department as a condition of receiving a HOME award and Contract. Department authorized pre-award costs for predevelopment costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred before the effective date of the Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

#### ***§53.26.Reservation System Participant (RSP) Agreements.***

(a) Terms of agreement. RSP agreements will have a twenty-four (24) month term for all Program Activities. Execution of an RSP agreement does not guarantee the availability of funds under a reservation system.

(b) Limits on Number of Reservations. The number of Homeowner Rehabilitation, Homebuyer Assistance or Single Family Development reservations for an RSP is limited to five (5) per county within the RSP's Service Area at any given time. The number of Tenant-Based Rental Assistance reservations for an RSP is limited to thirty (30) at any given time.

(c) Extremely Low-Income Households. Except for Households served with HBA or SFD funds, each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

(d) Match. An RSP must meet the tiered Match requirements per Program Activity for at least every fourth Household submitted and approved for assistance. For example, if Match is not provided for the first three (3) Households assisted by an RSP, the Match provided to the fourth Household must meet the Match requirement for all four (4) Households.

(e) Completion of Construction. For Activities involving construction, an RSP must complete construction and submit all requests for disbursement within nine (9) months from the Commitment of Funds for the Activity.

(f) Extensions. The Division Director may approve one three (3) month time extension to the Commitment of Funds to allow for the completion of construction and submission of requests for disbursement.

(g) An RSP must remain in good standing with the Department, the State of Texas, and HUD. If an RSP is not in good standing, participation in the reservation system will be suspended and may result in termination of the RSP agreement.

***§53.27. Procurement of Contractor.***

The Department may procure a contractor or contractors to provide services for the administration of the HOME Program through a Request for Proposals. A contractor must provide services and/or administer HOME funds in accordance with state and federal rules and the program requirements of this chapter for the applicable Program Activity.

***§53.28. General Administrative Requirements.***

Unless otherwise provided in this chapter, the CA, RSP, or Development Owner, must comply with the following requirements for the administration and use of HOME funds:

- (1) Complete training, as applicable;
- (2) Provide all applicable Department Housing Contract System access request information and documentation requirements;
- (3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the Auditor of the State of Texas, the United States General Accounting Office, the Comptroller of the State of Texas, and the Comptroller of the United States, or any of their duly authorized representatives;
- (4) For non-development Program Activities, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including the following:
  - (A) Develop and comply with written procurement selection criteria and committees;

- (B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds and appoint a Procurement Officer to manage any bid process;
- (C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for professional service. In other words, a consultant cannot assist in their own procurement before or after an award is made;
- (D) Procedures established for procurement of building construction contractors may not include requirements for the provision of general liability insurance coverage for an amount to exceed the value of the contract;
- (E) Building construction contractors must be procured using a formal sealed bid procedure for single family New Construction, Reconstruction or Rehabilitation Activities or Projects;
- (F) Professional service providers (consultants) must be procured using an open competitive procedure and may not be procured based solely on the lowest priced bid; and
- (G) Any Request for Proposals or Invitation for Bid must include:
- (i) An equal opportunity disclosure and that bidders are subject to search for listing on the Excluded Parties List;
  - (ii) Bidders' protest rights and outline the procedures bidders must take to address procurement related disputes;
  - (iii) A Conflict of Interest disclosure;
  - (iv) A clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;
  - (v) For sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract; and
  - (vi) For competitive proposal specific, disclose the selection/evaluation criteria;
- (5) In instances where a potential conflict of interest exist, follow procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict by newspaper publication and a description of how the public disclosure was made. No HOME funds will be committed to or reserved to assist a Household until HUD has granted an exception to the Conflict of Interest provisions;
- (6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or the occurrence of the loan closing, if applicable;
- (7) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility (except for Multifamily Development) and promote and comply with Fair Housing requirements;

(8) Except for Multifamily Development, complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application. For Homeowner Rehabilitation Assistance and Contract for Deed Conversion the CA or RSP must:

(A) Provide Rehabilitation as an available option to Households, provide Households with a general cost estimate, and to the extent that Rehabilitation would not meet the program requirements, explain these program requirements;

(B) Unless not allowed by local code, provide replacement of an existing housing unit with a new MHU as an available option; and

(C) Explain relocation as an available option to any Households located within the 100-year floodplain and present the costs associated with flood insurance;

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609;

(10) Except for Multifamily Development and Single Family Development, complete an updated income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the HOME assistance is provided to the Household. For Single Family Development, complete income eligibility determination of a Household if more than six (6) months has elapsed from the date of certification and the date the contract to purchase the housing unit is executed with the Household. For Tenant-Based Rental Assistance, in the event that a Household's monthly gross income changes by more than \$200, the Household must be recertified and the rental subsidy recalculated;

(11) For single family Program Activities involving construction, perform initial inspection and at least four (4) progress inspections. Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and CA or RSP;

(12) Submit requests for the Commitment or Reservation of Funds, loan closing preparation, and disbursements and all required information and verification documentation in the Housing Contract System. A request will not be reviewed by the Department until the CA, RSP, or Development Owner has submitted all required documentation. If, during review, the Department identifies Administrative Deficiencies, the Department will allow a cure period of ten (10) business days beginning at the start of the first business day following the date the CA, RSP or Development Owner is notified of the deficiency. If any Administrative Deficiency remains after the cure period, the Department, in its sole discretion, shall disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds;

(13) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures, preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable;

(14) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

(15) Submit any Program Income received by the CA, RSP or Development Owner to the Department within ten (10) business days of receipt. Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of CA, RSP, or Development Owner, Activity address and Activity number referenced on the check;

(16) Submit required documentation for Project completion reports no later than thirty (30) days after the completion of the Activity. For MFD, the Development Owner must periodically update completion reports to provide information on tenants until all HOME units have been occupied;

(17) For Contract awards, submit certificate of Contract Completion within ten (10) business days of the Department's request;

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department; and

(19) Match contributed to a Project or Activity cannot be mortgage revenue bonds, HOME-match eligible projects, and cannot include any other sources of Department funding unless otherwise approved by the Department.



## **SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY**

### **10 TAC §§53.30 - 53.32**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter C, §53.30 and §53.32 concerning the HOME Investment Partnerships Program. Sections 53.30 through 53.32 are adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6153-6157).

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

### **REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER C.**

#### **General Public Comment**

**Public Comment:** Commenter 1 recommends that Cities or Counties with more than one open contract should be allowed to carry match over to other contracts in accordance with the TDHCA Match Guide.

**Staff Response:** Based on previous rule provisions, a Contract Administrator typically only is allowed one active contract per Program Activity in order to ensure the performance of the contract and efficient utilization of funding. The new rule includes a reservation system as a funding distribution method and provisions to allow a Reservation System Participant to better manage proposed match among households to be served. No change is recommended at this time.

**Public Comment:** Commenter 1 recommends that the population threshold for a match requirement of 0% of Project funds for Counties should be increased from 20,000 since Counties have a more difficult time identifying match.

**Staff Response:** The new rule provision increased the population threshold to 20,000 for Counties and is a significant change. Staff will analyze the impact the new rule provision has on the Department's match requirement and explore other eligible match sources in order to make a recommendation to increase this threshold in the future, if possible. No change is recommended at this time.

#### §53.30(1)(A) and (B)

**Staff Recommendation:** The increased population threshold to 20,000 for counties is a significant change and may have an impact on the Department's match requirements, staff recommended the following clarification:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between than 20,001 and 75,000 Persons; and

#### §53.31(b)

**Public Comment:** Commenter 3 recommends removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

**Staff Response:** Staff agrees and recommended the following change:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU or Modular Home if:

#### §53.31(b)(1)

**Staff Recommendation:** Based on comments received in response to §53.31(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision as follows:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU or Modular Home if:

~~(1) The unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;~~

#### §53.31(b)(2)

**Public Comment:** Commenter 3 recommends revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code.

The commenter further recommends that if the intention is to establish clear standards for foundation "footings", the revision should cite or state details regarding footings and specifications.

**Staff Response:** It is the Department's intent to require a concrete perimeter foundation and agrees with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU ~~or Modular Home if:~~

~~(2) The unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.~~

### §53.31(b)(3) and (4)

**Public Comment:** Commenter 3 recommends the removal of these provisions because they are repetitive of both statute and existing administrative law.

**Staff Response:** Staff agrees and recommended deletion of the provisions as follows:

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU ~~or Modular Home if:~~

~~(3) The unit is permanently attached to utilities; and~~

~~(4) The ownership of the unit is recorded in the taxing authority of the county in which it is located.~~

### §53.31(g)(1) and (2)

**Public Comment:** Commenter 3 recommends Modular homes should be specifically included with site-built construction and eligible for the same maximum costs – “the lesser of \$73 per square foot or \$80,000.” Additionally, the commenter recommends the MHU replacement maximum should be increased to equal that of site-built and Modular housing replacement construction costs - “the lesser of \$73.00 per square foot or \$80,000.”

**Staff Response:** Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended at this time. Furthermore, staff has not been made aware of or experienced cost reimbursement requests for MHU units that exceed the maximum of \$65,00. It is important to note that this maximum does not include project soft costs that may be incurred with the installation of the unit.

### §53.31(i)

**Public Comment:** Commenter 3 recommends modular homes should be specifically included with the \$7,000 per housing unit Reconstruction maximum and the MHU replacement limitation of \$3,500 should be increased to equal site-built Reconstruction soft costs of \$7,000 because

restricting soft costs to half of site-built Reconstruction disproportionately devalues MHUs as an option under the HOME Program. The commenter also recommends waived fees for state-provided, non-federal sourced, services that can be attributed to direct dollar amounts per home be allowed as Match.

**Staff Response:** Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended at this time. Since Reconstruction activities include site-built housing, which by definition, includes modular housing, no change is recommended. Additional information is needed to determine if the waived fees and services are an eligible source of Match.

### §53.31(l)

**Staff Recommendation:** Staff recommended clarifying that assistance is based upon the Household's income as follows:

(l) In all other instances not described in subsection (k) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on **the Household's** AMFI as reflected in Figure: 10 TAC §53.31(l).

### §53.31(n) and (o)

**Staff Recommendation:** Staff recommended clarifying that these provisions apply only in instances in which a federal affordability is not required as follows:

(n) In the event that **a federal affordability period is not required and** the housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(o) In the event that **a federal affordability period is not required**, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

### §53.31(p)

**Public Comment:** Commenter 3 recommends this provision include language for MHUs to meet or exceed the HUD Code as 24 CFR 3280.

**Staff Response and Staff Recommendation:** Since MHU construction requirements are governed by federal law, no change is recommended. Staff recommended a clarification to include modular housing as site-built housing must meet or exceed the 2000 IRC as follows:

(p) For Reconstruction and New Construction, **site-built** housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

#### §53.32(a)(2)

**Staff Recommendation:** To provide clarification, staff recommended inserting the word costs after the word acquisition and based on public comment received for §53.41(g), staff recommended inserting the word proposed before the word Match as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition **costs**, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, **proposed** Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

#### §53.32(a)(4)(A) through (P) and (9)

**Public Comment:** Commenter 1 recommends that the requirements in (A) through (P) be removed. Commenter suggests that the requirements should be in a procedure manual not the rules.

**Staff Response:** Including the administrative requirements was done to formalize existing policy and guidelines. However, based on public comment received on §53.42(4)(E), staff recommended eliminating item (E) and clarifying the requirement in §53.32(9) as follows:

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

~~(E) Identification that the housing unit is located or proposed to be located outside of the 100-year floodplain;~~

~~(EF) Identification of head of Household's race and ethnicity;~~

~~(EG) Household special needs status, if applicable;~~

~~(GH)~~ Names of Household members who are temporarily absent and reason for absence, if applicable;

~~(HI)~~ Future Household members and explanation, if applicable;

~~(IJ)~~ Income sources and gross amounts for all Household members;

~~(JK)~~ Full-time student status of Household members over age 18, if applicable;

~~(KL)~~ Type and source of all assets owned by Household members including cash value and annual asset income;

~~(LM)~~ Year in which property to be assisted was built;

~~(MN)~~ Household's occupancy requirements including number of bedrooms being requested;

~~(NO)~~ Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

~~(OP)~~ Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction activities;

(7) In the instance of relocation in accordance with §53.31(a)(3) of this chapter, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for an Activity under this paragraph, the CA or RSP Match obligation may be reduced by the cost of such demolition without any Contract amendment in order to facilitate relocation;

(8) Identification of any Lead-Based Paint (LBP);

(9) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

### §53.32(a)(13), (14) and (15)

**Staff Recommendation:** Since the executed grant agreement will be prepared by the Department and the executed agreement must be provided before the disbursement of funds and is included in §53.32(c)(5), staff recommended deleting this requirement as follows:

(13) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current; and

~~(14) A copy of the completed grant agreement, if applicable; and~~

**(14)** Any other documentation necessary to evidence that the Activity meets the program requirements.

### §53.32(c)(9)

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 7 to this section as follows:

(9) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

### ***§53.30. Homeowner Rehabilitation Assistance (HRA) Program Threshold and Selection Criteria.***

All Applicants and Applications must submit or comply with the following:

(1) An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. For Applications submitted to become an RSP, the Department may withhold disbursements if after every four reservations sufficient Match documentation has not been provided. The Department shall use population figures from the most recently available U.S. Census to determine the applicable tier for an Application. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity. Except for Applications for disaster relief, Match shall be required based on the following tiers:

(A) zero percent of Project funds if serving a city of less than 3,000 Persons or an unincorporated area of a county with less than 20,000 Persons;

(B) ten percent of Project funds if serving a city of between 3,001 and 5,000 Persons or an unincorporated area of a county of between 20,001 and 75,000 Persons; and

(C) twelve and one-half percent of Project funds for all other applications.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award 80% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(3) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

***§53.31.Homeowner Rehabilitation Assistance (HRA) Program Requirements.***

(a) Eligible activities are limited to:

(1) The Rehabilitation or Reconstruction of existing owner-occupied housing on the same site. The Rehabilitation of an MHU is not an eligible activity;

(2) The New Construction of site-built housing on the same site to replace an existing owner-occupied Manufactured Housing Unit (MHU);

(3) For only the purposes of relocating the existing housing out of the floodplain, the replacement of existing owner-occupied housing with an MHU or New Construction of site-built housing on another site;

(4) If housing unit is uninhabitable as a result of disaster or condemnation by local government, the Household is eligible for the New Construction of site-built housing or an MHU under this section provided the assisted Household documents that the housing unit was previously their



Principal Residence through evidence of a homestead exemption from the local taxing jurisdiction and Household certification; or

(5) If allowable under the NOFA, the refinance of an existing mortgage meeting the federal requirements at 24 CFR §92.206(b) and any additional requirements in the NOFA.

(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.

(c) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(d) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien if the loan has an outstanding balance that is less than the investment of HOME funds and any of the following are true:

(1) A federal affordability period is required; or

(2) Any existing mortgage has been in place for less three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(f) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(g) The total Project costs are inclusive of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), and Match funds for Project costs, and are limited to:

(1) Reconstruction and New Construction of site-built housing: The lesser of \$73.00 per square foot or \$80,000 or for Households of 6 or more Persons the lesser of \$73.00 per square foot or \$85,000;

(2) Replacement with an MHU: \$65,000;

(3) Rehabilitation that is not Reconstruction: \$30,000; and

(4) Refinancing of existing mortgages: in addition to the costs limited under paragraphs (1) - (3) of this subsection, the cost to refinance an existing mortgage is limited to the amount determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than 25% and no greater than 30% of the Household's gross monthly income based on a thirty (30) year amortization schedule. Refinancing is not eligible for an Activity involving relocation under subsection (a)(3) of this section.

(h) In addition to the Project costs allowable under subsection (g) of this section, up to \$5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(i) Project soft costs are limited to:

(1) Reconstruction or New Construction: no more than \$7,000 per housing unit;

(2) Replacement with an MHU: no more than \$3,500 per housing unit;

(3) Rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based paint remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977; and

(4) Third-party Project soft costs related to loan closing requirements, such as appraisals, title reports or insurance, tax certificates, recording fees, and surveys are not subject to a maximum per Activity or Project.

(j) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(k) In the following instances, the assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(1) An MHU being replaced with newly constructed housing (site-built) on the same site;

(2) Any housing unit being replaced on an another site;

(3) Any housing unit that is being relocated out of the floodplain or replaced due to uninhabitability as allowed under subsection (b) of this section;

(4) Any Project Activity that includes any amount of refinancing of existing debt; and

(5) Any Project Activity that requires a federal affordability period.

(l) In all other instances not described in subsection (k) of this section, the assistance to an eligible Household may be in the form of a loan or grant agreement with an affordability term for the amount of the total Project costs excluding Match funds and based on the Household's AMFI as reflected in Figure: 10 TAC §53.31(l).

<b>AMFI</b>	<b>Form of Assistance</b>
≤30% AMFI	0% interest, 5-year deferred, forgivable loan, or grant agreement.
>30% and ≤50% AMFI	0% interest, 10- year deferred, forgivable loan, or grant agreement.
>50% and ≤60% AMFI	0% interest, 15-year deferred, forgivable loan, or grant agreement.
>60% and ≤80% AMFI	0% interest, 15-year term repayable loan.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan or grant agreement will cease and the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(n) In the event that a federal affordability period is not required and the housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the heir or remainderman Household or if sold by the decedent's estate, the purchasing Household must qualify for assistance in accordance with this chapter in order for the forgiveness of the loan or grant agreement to continue until maturity.

(o) In the event that a federal affordability period is not required, the housing unit is sold and the purchasing Household does not provide documentation evidencing their income eligibility, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the entire balance on the loan or grant agreement will be paid at closing.

(p) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.

**§53.32.Homeowner Rehabilitation Assistance (HRA) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(P) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Provide written consent from all Persons who have a valid lien or ownership interest in the Property for the rehabilitation or reconstruction activities;

(7) In the instance of relocation in accordance with §53.31(a)(3) of this chapter, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Project funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for an Activity under this paragraph, the CA or RSP Match obligation may be reduced by the cost of such demolition without any Contract amendment in order to facilitate relocation;

(8) Identification of any Lead-Based Paint (LBP);

(9) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(10) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;

(11) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation;

(12) A title commitment or policy or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or 99-year leasehold. In instances of an MHU, a Statement of Ownership and Location (SOL). Together, these documents must evidence the definition of Homeownership is met. The title commitment or down date endorsement must not be older than ninety (90) days on the date submitted to the Department for a Commitment of Funds;

(13) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current; and

(14) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must comply with or submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment that expires prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue SOL; and

(3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship.

(c) Disbursement of funds. The CA or RSP must comply with all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) The executed grant agreement or original, executed, legally enforceable loan documents and SOL, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all Program Requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(9) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house,

whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER D. HOMEBUYER ASSISTANCE (HBA) PROGRAM ACTIVITY**

### **10 TAC §§53.40 - 53.42**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter D, §53.40 through §53.42 concerning the HOME Investment Partnerships Program. Sections 53.41 and 53.42 are adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6157-6160). Section 53.40 is adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

### **REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER D.**

#### **§53.41(b)**

**Public Comment:** Commenter 3 recommends removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

**Staff Response:** Staff agrees and recommended the following change:

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU ~~or Modular Home if:~~

#### **§53.41(b)(1)**

**Staff Recommendation:** Based on comments received in response to §53.41(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision as follows:



(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU ~~or Modular Home if:~~

~~(1) The unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;~~

#### §53.41(b)(2)

**Public Comment:** Commenter 3 recommends revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code. The commenter further recommends that if the intention is to establish clear standards for foundation "footings", the revision should cite or state details regarding footings and specifications.

**Staff Response:** It is the Department's intent to require a concrete perimeter foundation and agrees with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU ~~or Modular Home if:~~

~~(2) The unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.~~

#### §53.41(b)(3) and (4)

**Public Comment:** Commenter 3 recommends the removal of these provisions because they are repetitive of both statute and existing administrative law.

**Staff Response:** Staff agrees and recommended deletion of the provisions as follows:

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU ~~or Modular Home if:~~

~~(3) The unit is permanently attached to utilities; and~~

~~(4) The ownership of the unit is recorded in the taxing authority of the county in which it is located.~~

#### §53.41(d)(3)

**Public Comment:** Commenter 2 recommends revisions to limit the interest rate for first lien mortgages based on the average rate published by Freddie Mac instead of prohibiting adjustable rate mortgage loans and temporary interest rate buy-down loans.

**Staff Response:** Upon guidance from HUD, this provision was included in the rule in 2009. Additionally, staff is not aware of challenges created by this provision for households received HBA assistance. No change recommended at this time.

#### §53.41(d)(4)

**Public Comment:** Commenter 2 recommends adding legal document preparation, credit report and flood certifications to the list of exceptions to the 2% cap.

**Staff Response:** Since there is great variation on whether a lender pays these fees as a pass-through or provides the actual service with a markup, no change is recommended. However, staff clarified this provision in order to be able to include these fees as allowable and set an overall cap on lender fees at \$2,500 as follows:

(d) The first lien purchase loans must comply with the following requirements:

(1) No adjustable rate mortgage loans (ARMs) or temporary interest rate buy-down loans are allowed;

(2) No mortgage loans with a total loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed **2% of the loan amount or \$2,500, whichever is greater;**

#### §53.41(d)(6)

**Public Comment:** Commenter 2 recommends that identity of relationship be further defined.

**Staff Response:** Based on guidance from HUD, this provision was included and designed to prohibit seller-financed acquisitions. Specific situations can be further reviewed based on information provided in order to determine if the provision applies. No change is recommended at this time.

#### §53.41 (e)(1)

**Public Comment:** Commenter 2 recommends revisions to allow the amount of assistance not to exceed \$20,000 with no affordability analysis required.

**Staff Response and Recommendation:** Based on continued guidance from HUD regarding the Department develop first lien underwriting guidelines and ensuring costs reasonableness in accordance with Federal OMB Circulars, staff recommended eliminating the 30% maximum requirement only as follows:

(e) The total Project costs are inclusive of acquisition and closing costs, hard construction costs for accessibility modifications, and Match funds, and limited to:

(1) Acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than

25% ~~and no greater than 30%~~ of the Household's gross monthly income based on a thirty (30) year amortization schedule; and

(2) Rehabilitation for accessibility modifications: \$20,000.

#### §53.41(f)(1)

**Public Comment:** Commenter 2 recommends striking “Acquisition and closing costs” as soft costs are neither and revising “\$1,500 per housing unit” to “\$2,000 per housing unit.”

**Staff Response:** Staff agrees that acquisition and closing costs are not project soft costs. The phrase “Acquisition and closing costs” is used identify the maximum amount of soft costs per type of activity performed. No change is recommended at this time. Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended regarding the maximum amount of soft costs per housing unit.

#### §53.41(g)

**Public Comment:** Commenter 2 recommends changing the word “exclusive” to “inclusive” and inserting the words “exclusive of” in front of “Match funds.”

**Staff Response:** Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended at this time.

#### §53.42

**Public Comment:** Commenter 2 recommends eliminating all subsections of this section and replacing text with the phrase: “Commitment or reservation of funds, loan closing, and disbursement of funds must follow the published procedures manual prepared and distributed by TDHCA.”

**Staff Response:** Including the administrative requirements was done to formalize existing policy and guidelines. Staff does not expect these administrative requirements to adversely impact the flexibility of the program or the administration of the program. No change is recommended.

#### §53.42(a)(2)

**Public Comment:** Commenter 2 recommends inserting the word “proposed” before the word “Match”.

**Staff Response and Recommendation:** To provide clarification, staff recommended inserting the word costs after the word acquisition and staff agrees with recommendation to insert the word proposed before the word Match as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition costs, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project

and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

**§53.42(a)(4)(E) and (7)**

**Public Comment:** Commenter 2 state this information is unkown at the time of prospective homebuyer's application and it is a mistake to include that information on the application itself as this is information that the Contract Administrator or first lien lender should provide.

**Staff Recommendation:** Staff recommended eliminating item (E) and clarifying the requirement in §53.42(a)(7) as follows:

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

~~(E) Identification that the housing unit is located or proposed to be located outside of the 100-year floodplain;~~

~~(EF) Identification of head of Household's race and ethnicity;~~

~~(EG) Household special needs status, if applicable;~~

~~(GH) Names of Household members who are temporarily absent and reason for absence, if applicable;~~

~~(HI) Future Household members and explanation, if applicable;~~

~~(IJ) Income sources and gross amounts for all Household members;~~

~~(JK) Full-time student status of Household members over age 18, if applicable;~~

~~(KL) Type and source of all assets owned by Household members including cash value and annual asset income;~~

~~(LM) Year in which property to be assisted was built;~~

~~(MN) Household's occupancy requirements including number of bedrooms being requested;~~

~~(NO) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and~~

~~(OP) Signatures of all Household members age 18 or over;~~

(5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility

determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of any Lead-Based Paint (LBP);

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

#### §53.42(a)(4)(J)

**Public Comment:** Commenter 2 recommends inserting “over the age of 18” after members.

**Staff Response:** Since this provision is governed by federal regulations, no change is recommended at this time.

#### §53.42(a)(4)(M)

**Public Comment:** Commenter 2 recommends revisions to “Was property built prior to 1978? Yes. No.”

**Staff Response:** This provisions details the requirements of information that must be provided, however, this revision will be considered for sample application intake forms. No change is recommended at this time.

#### §53.42(a)(6)

**Public Comment:** Commenter 2 recommends revising this requirement to state “Certification of Receipt of Lead-Based Paint Booklet.”

**Staff Response:** In order approve a Commitment of Funds and ensure compliance with federal regulations, the identification of the presence of lead-based paint must be provided. No change is recommended at this time.

#### §53.42(c)(2)

**Public Comment:** Commenter 2 recommends and exception to this provision for HBA activities.

**Staff Response:** This certification is required of all Contract Administrators and Reservation System Participants, regardless of the timing of the completion of the activities, in order to ensure compliance with federal regulations for the disbursement of HOME funds. No change is recommended at this time.

#### §53.42(c)(6)

**Public Comment:** Commenter 2 recommends the provision includes a definition for “reasonable”.

**Staff Response:** The eligibility and reasonableness of costs is governed by the HOME federal regulations and OMB Circulars. No change is recommended at this time.

#### **§53.42(c)(9)**

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 7 to this section as follows:

(9) For Activities involving Rehabilitation, include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction **and until submission of documentation required for Project completion reports;** and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

#### **§53.40.Homebuyer Assistance (HBA) Threshold and Selection Criteria.**

All Applicants and Applications must submit or comply with the following:

(1) An itemized schedule of the proposed Match and evidence to support the Applicant's ability to provide the required Match. The Department may not require such support at the time an Application is submitted when the funds are made available under a reservation system. Except for Applications for disaster relief and Persons with Disabilities set-asides, the amount of Match required must be at least 5% of Project funds requested. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established in the form of a threshold or selection criteria and may be different for each Program Activity.

(2) Documentation of a commitment of at least \$80,000 or for a Contract award 100% of the award amount, whichever is less, in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or

(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

***§53.41.Homebuyer Assistance (HBA) Program Requirements.***

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation for accessibility modifications of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. HOME funds may be used to acquire a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

(c) The Household must complete a homebuyer counseling program/class.

(d) The first lien purchase loans must comply with the following requirements:

(1) No adjustable rate mortgage loans (ARMs) or temporary interest rate buy-down loans are allowed;

(2) No mortgage loans with a total loan to value equal to or greater than 100% are allowed;

(3) No Subprime Mortgage Loans are allowed;

(4) Other than surveys and appraisals reimbursed to third-parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed \$2,500;

(5) The debt to income ratio (back-end ratio) may not exceed 45%;

(6) No identity of interest relationship between the lender and the Household is allowed; and

(7) If an identity of interest exists between the Household and the seller, the Department may require additional documentation that evidences that the sales price is equal to or less than the appraised value of the property as documented by a Third-Party appraisal ordered by the first lien lender. If an identity of interest exists between the builder and CA or RSP, the CA or RSP must provide documentation that evidences that the sales price does not provide for a profit of more than 15% of the total hard construction costs and does not exceed the current appraised value as documented by a Third-Party appraisal ordered by the first lien lender.

(e) The total Project costs are inclusive of acquisition and closing costs, hard construction costs for accessibility modifications, and Match funds, and limited to:

(1) Acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance) is no less than

25% of the Household's gross monthly income based on a thirty (30) year amortization schedule; and

(2) Rehabilitation for accessibility modifications: \$20,000.

(f) Project soft costs are limited to:

(1) Acquisition and closing costs: no more than \$1,500 per housing unit; and

(2) Rehabilitation for accessibility modifications: \$5,000 per housing unit.

(g) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(h) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(i) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(j) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(k) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(l) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

(m) Housing units that will be rehabilitated with HOME funds must meet or exceed the TMCS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards



and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

**§53.42.Homebuyer Assistance (HBA) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and complete information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

(J) Full-time student status of Household members over age 18, if applicable;

(K) Type and source of all assets owned by Household members including cash value and annual asset income;

(L) Year in which property to be assisted was built;

(M) Household's occupancy requirements including number of bedrooms being requested;

(N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

(O) Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, or duplication of benefit; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

(1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) A good faith estimate that is or letter from the lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien mortgage loan requirements, and the requirements of this chapter.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;

- (4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;
- (6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;
- (7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;
- (8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;
- (9) For Activities involving Rehabilitation, include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction and until submission of documentation required for Project completion reports; and
- (10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER E. CONTRACT FOR DEED CONVERSION (CFDC) PROGRAM ACTIVITY**

### **10 TAC §§53.50 - 53.52**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter E, §53.50 through §53.52 concerning the HOME Investment Partnerships Program. Sections 53.51 and 53.52 are adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6160-6163). Section 53.50 is adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

### **REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER E.**

#### **§53.51(b)**

**Public Comment:** Commenter 3 recommends removing modular homes entirely from this section since modular housing is not governed by Chapter 1201.

**Staff Response:** Staff agrees and recommended the following change:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU **or Modular Home if:**

#### **§53.51(b)(1)**

**Staff Recommendation:** Based on comments received in response to §53.31(b) above and since there are existing laws and codes that govern MHUs, staff recommended deleting this provision as follows:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU ~~or Modular Home if:~~

~~(1) The unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;~~

#### §53.51(b)(2)

**Public Comment:** Commenter 3 recommends revising this provision to require the new installation of an MHU to be in compliance with Chapter 80 of the Texas Administrative Code. The commenter further recommends that if the intention is to establish clear standards for foundation "footings", the revision should cite or state details regarding footings and specifications.

**Staff Response:** It is the Department's intent to require a concrete perimeter foundation and agrees with clarifying the required standard by specifying that the concrete perimeter foundation be approved by an engineer as follows:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU ~~or Modular Home if:~~

~~(2) The unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.~~

#### §53.51(b)(3) and (4)

**Public Comment:** Commenter 3 recommends the removal of these provisions because they are repetitive of both statute and existing administrative law.

**Staff Response:** Staff agrees and recommended deletion of the provisions as follows:

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU ~~or Modular Home if:~~

~~(3) The unit is permanently attached to utilities; and~~

~~(4) The ownership of the unit is recorded in the taxing authority of the county in which it is located.~~

#### §53.51(f)(2) and (3)

**Public Comment:** Commenter 3 recommends Modular homes should be specifically included with site-built construction and eligible for the same maximum costs – “the lesser of \$73 per square foot or \$80,000.” Additionally, the commenter recommends the MHU replacement

maximum should be increased to equal that of site-built and Modular housing replacement construction costs - “the lesser of \$73.00 per square foot or \$80,000.”

**Staff Response:** Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended at this time. Furthermore, staff has not been made aware of or experienced cost reimbursement requests for MHU units that exceed the maximum of \$65,00. It is important to note that this maximum does not include project soft costs that may be incurred with the installation of the unit.

### §53.51(h)(2) and (3)

**Public Comment:** Commenter 3 recommends modular homes should be specifically included with the \$7,000 per housing unit Reconstruction maximum and the MHU replacement limitation of \$3,500 should be increased to equal site-built Reconstruction soft costs of \$7,000 because restricting soft costs to half of site-built Reconstruction disproportionately devalues MHUs as an option under the HOME Program. The commenter also recommends waived fees for state-provided, non-federal sourced, services that can be attributed to direct dollar amounts per home be allowed as Match.

**Staff Response:** Based on continued guidance from HUD and federal OMB circulars governing cost reasonableness, no change is recommended at this time. Since Reconstruction activities include site-built housing, which by definition, includes modular housing, no change is recommended. Additional information is needed to determine if the waived fees and services are an eligible source of Match.

### §53.51(o)

**Staff Recommendation:** Staff recommended a clarification to specify that site-built housing must meet or exceed the 2000 IRC as follows:

(o) For Reconstruction and New Construction, site-built housing units ~~Housing units that are Reconstructed~~ must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

### §53.52(a)(2)

**Staff Recommendation:** To provide clarification, staff recommended inserting the word costs after the word acquisition and based on public comment received for §53.42(a), staff recommended inserting the word proposed before the word Match as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition **costs**, and construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, **proposed** Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

#### §53.52(a)(4)(E) and (7)

**Staff Recommendation:** Based on public comment received for §53.42(4)(E), staff recommended eliminating item (E) and clarifying the requirement in §53.52(a)(7) as follows:

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

~~(E) Identification that the housing unit is located or proposed to be located outside of the 100-year floodplain;~~

~~(F)~~ Identification of head of Household's race and ethnicity;

~~(G)~~ Household special needs status, if applicable;

~~(H)~~ Names of Household members who are temporarily absent and reason for absence, if applicable;

~~(I)~~ Future Household members and explanation, if applicable;

~~(J)~~ Income sources and gross amounts for all Household members;

~~(K)~~ Full-time student status of Household members over age 18, if applicable;

~~(L)~~ Type and source of all assets owned by Household members including cash value and annual asset income;

~~(M)~~ Year in which property to be assisted was built;

~~(N)~~ Household's occupancy requirements including number of bedrooms being requested;

~~(O)~~ Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and

~~(P)~~ Signatures of all Household members age 18 or over;

(5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;

(6) Identification of any Lead-Based Paint (LBP);

(7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;

#### **§53.52(c)(10)**

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 7 to this section as follows:

(10) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot occurred for Newly Constructed or Rehabilitated housing unit, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

#### ***§53.50.Contract for Deed Conversion (CFDC) Threshold and Selection Criteria.***

All Applicants and Applications must submit or comply with the following:

(1) Documentation of a commitment of at least \$80,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(A) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(B) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or



(C) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

(2) Housing construction plans must be certified by a licensed architect. The Department may procure and make architect certified plans available.

(A) The Department will reimburse only for the first time a set of architectural plans are used unless any subsequent site specific fees are paid to a Third Party architect; and

(B) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

***§53.51.Contract for Deed Conversion (CFDC) Program Requirements.***

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units.

(b) A new MHU is an eligible property type for acquisition only. An MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an existing unit with a new MHU if the unit is permanently installed with an engineer approved concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act.

(c) The Household's income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The Department will require a first lien position.

(f) The total Project costs are inclusive of acquisition costs, closing costs, hard construction costs, demolition costs, aerobic septic systems, and Match funds, and limited to:

(1) Acquisition and closing costs: \$35,000. In the case of a contract for deed conversion housing unit that involves the acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: The lesser of \$73.00 per square foot or \$80,000 or for Households of 6 or more Persons the lesser of \$73.00 per square foot or \$85,000;

(3) Replacement with an MHU: \$65,000; and

(4) Rehabilitation that is not Reconstruction: \$30,000.

(g) In addition to the Project costs allowable under subsection (f) of this section, up to \$5,000 will be allowed in Project costs for additional sitework related to accessibility features if the house will be located more than 50 feet from the nearest paved roadway or if the house is being elevated above the floodplain.

(h) Project soft costs are limited to:

(1) Acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$7,000 per housing unit;

(3) Replacement with and MHU: no more than \$3,500 per housing unit; and

(4) Rehabilitation that is not Reconstruction: \$5,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Project soft costs for housing units that are Reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the total Project costs excluding Match funds. The loan will be at 0% interest and include deferral of payment and annual pro-rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(k) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the loan, if applicable, will cease.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the loan will be paid at closing.

(o) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only, must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

***§53.52.Contract for Deed Conversion (CFDC) Administrative Requirements.***

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following true and correct information, certified as such, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

- (J) Full-time student status of Household members over age 18, if applicable;
- (K) Type and source of all assets owned by Household members including cash value and annual asset income;
- (L) Year in which property to be assisted was built;
- (M) Household's occupancy requirements including number of bedrooms being requested;
- (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
- (O) Signatures of all Household members age 18 or over;
- (5) Certification of the income eligibility of the Household signed by the CA or RSP and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;
- (6) Identification of Lead-Based Paint (LBP);
- (7) For housing units located within the 100-year floodplain, a quote for the cost of flood insurance and certification from the Household that they understand the flood insurance requirements;
- (8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and
- (9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA or RSP must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

- (1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;
- (2) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);
- (3) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship; and
- (4) A copy of the recorded contract for deed and a current payoff statement.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of

documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA or RSP;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and SOL, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA or RSP as may be necessary or advisable for compliance with all program requirements;

(7) With the exception of up to 10% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(10) For final disbursement requests, submission of documentation required for Project completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER F. TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAM ACTIVITY**

### **10 TAC §§53.60 - 53.62**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter F, §53.60 through §53.62 concerning the HOME Investment Partnerships Program. Sections 53.60 and Section 53.61 are adopted without change and will not be republished. Section 53.62 is adopted with changes to text as published in the *Texas Register* on July 16, 2010 (35 TexReg 6163-6164).

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for Sections 53.60 through 53.62.

### **STAFF RECOMMENDATION ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER F.**

#### **§53.62(b)(6),(7), and (8)**

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 7 to this section as follows:

(6) Requests may come in up to ten (10) days in advance of the first day of the following month; and

(7) For final disbursement requests, submission of documentation required for Project completion reports; and

(87) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

***§53.60.Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.***

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. Evidence of this commitment and the amount of the commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

- (1) Financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or
- (2) Evidence of an available line of credit or equivalent in an amount equal to or exceeding the above requirement; or
- (3) The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program award.

***§53.61.Tenant-Based Rental Assistance (TBRA) Program Requirements.***

- (a) The Household must participate in a self-sufficiency program.
- (b) The amount of assistance will be determined using the Housing Choice Voucher Method.
- (c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
- (d) The Household paid portion of the monthly rent cannot exceed 40% of the Household's gross monthly income.
- (e) Project funds are limited to:
  - (1) Rental subsidy: No more than twenty-four (24) months per Household with an additional twelve (12) months extension available to Households participating in a reservation system; and
  - (2) Security deposit: No more than the amount equal to two (2) month's rent for the unit.



(f) The rent (payment) standard must be the current HUD "Fair Market Rent for the Housing Choice Voucher Program" at the time the household is income certified (or the rental coupon is executed). In instances where the area rents exceed the established Fair Market Rent, the CA or RSP may submit a written request to the Department for approval of a higher rent. The request must be evidenced by a market study. For HOME-assisted units, the payment standard must be the current HOME rent applicable for the unit.

(g) Funds for Administrative costs are limited to 8% of Project funds excluding Match funds. Funds for Administrative costs may be increased an additional 1% of Project funds, if Match is provided in an amount equal to 5% or more of Project funds.

(h) Rental units must be inspected prior to occupancy, annually upon Household recertification, and must comply with Housing Quality Standards established by HUD.

**§53.62. Tenant-Based Rental Assistance (TBRA) Administrative Requirements.**

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds and Administrative costs requested, Match to be provided, evidence that Project cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

(E) Identification of head of Household's race and ethnicity;

(F) Household special needs status, if applicable;

(G) Names of Household members who are temporarily absent and reason for absence, if applicable;

(H) Future Household members and explanation, if applicable;

(I) Income sources and gross amounts for all Household members;

- (J) Full-time student status of Household members over age 18, if applicable;
  - (K) Type and source of all assets owned by Household members including cash value and annual asset income;
  - (L) Year in which property to be assisted was built;
  - (M) Household's occupancy requirements including number of bedrooms being requested;
  - (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
  - (O) Signatures of all Household members age 18 or over;
- (5) Certification of the income eligibility of the Household signed by the CA or RSP, and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income and rental subsidy of the Household;
- (6) Identification of Lead-Based Paint (LBP);
- (7) If applicable, documentation to address or resolve any potential Conflict of Interest or duplication of benefit; and
- (8) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

- (1) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;
- (2) Property inspections. The inspection must be signed and dated by the inspector and CA or RSP;
- (3) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;
- (4) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA or RSP to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or

Development Owner as may be necessary or advisable for compliance with all Program Requirements;

(5) With the exception of up to 25% of the total funds available for Administrative costs, the request for funds for Administrative costs must be proportionate to the amount of Project costs requested or already disbursed;

(6) Requests may come in up to ten (10) days in advance of the first day of the following month;

(7) For final disbursement requests, submission of documentation required for Project completion reports; and

(8) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT (SFD) PROGRAM ACTIVITY**

### **10 TAC §§53.70 - 53.72**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter G, §53.70 through §53.72 concerning the HOME Investment Partnerships Program. Section 53.72 is adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6165-6167). Section 53.70 and 53.71 are adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email. This document provides the Department's response to all comments received. Comments and responses are presented in the order they appear in the rules.

A public hearing to receive input on the proposed rule was held on August 3, 2010 with no public input received. Public comments were accepted through August 9, 2010, with comments received from (1) Rachel Edwards, Resource Management & Consulting Co., (2) Michael Hunter, President, Hunter & Hunter Consultants, Inc., and (3) DJ Pendleton, Executive Director, Texas Manufactured Housing Association.

### **REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER G.**

#### **§53.71(c)**

**Public Comment:** Commenter 2 requested the income level for households assisted under the Single Family Development Program Activity be increased from 60% of the AMFI to 80% of the AMFI citing that new construction costs are more expensive than existing housing and that the program should be used to assist cities with their infill housing programs (building on vacant lots).

**Staff Response:** This Program Activity has evolved from the Colonia Model Subdivision Program concept and has expanded to provide communities the ability to acquire and rehabilitation existing housing stock, as well as the new construction of housing units. As designed, the program has provided 100% mortgage financing in order to provide assistance to the harder to serve populations, based on household income, when compared to those low-income households that may be able to obtain mortgage financing from conventional mortgage lenders. Since downpayment and closing costs assistance, in the form of a deferred, forgivable

loan, is available to households earning up to 80% of the AMFI through the HOME Homebuyer Assistance (HBA) Program, no change is recommended at this time.

#### §53.71(h)(1)

**Public Comment:** Commenter 2 requested a change to increase the amount of downpayment assistance available under this Program Activity from \$15,000 to \$20,000 and reduce the term from 15 years to 10 years in order to bring this program into balance with the HBA Program Activity.

**Staff Response:** Based on continued guidance from HUD regarding the Department develop first lien underwriting guidelines and ensuring costs reasonableness in accordance with Federal OMB Circulars, no change is recommended at this time.

#### §53.72(a)(2)

**Staff Recommendation:** Based on public comments received in response to Section 53.42(a)(2), staff recommended inserting the word proposed before the word Match as follows:

(2) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

#### §53.72 (a)(4)(E)

**Staff Recommendation:** Based on public comments received in response to Section 53.42(a)(4)(E), staff recommended deleting this requirement as follows:

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

(B) Identification and resolution of potential and/or existing conflicts of interest;

(C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;

(D) Identification if any Household member owes a debt to the State of Texas;

~~(E) Identification that the housing unit is located or proposed to be located outside of the 100-year floodplain;~~

~~(F) Identification of head of Household's race and ethnicity;~~

~~(G) Household special needs status, if applicable;~~

~~(H) Names of Household members who are temporarily absent and reason for absence, if applicable;~~

~~(I) Future Household members and explanation, if applicable;~~

- (J) Income sources and gross amounts for all Household members;
- (K) Full-time student status of Household members over age 18, if applicable;
- (L) Type and source of all assets owned by Household members including cash value and annual asset income;
- (M) Year in which property to be assisted was built;
- (N) Household's occupancy requirements including number of bedrooms being requested;
- (O) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
- (P) Signatures of all Household members age 18 or over;

**§53.72(b)(8),(9), and (10)**

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 9 to this section as follows:

(8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction; ~~and~~

(9) For final disbursement requests, submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

***§53.70.Single Family Development (SFD) Threshold and Selection Criteria.***

All Applicants and Applications must submit or comply with the following:

- (1) An Application for CHDO certification.
- (2) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:

(A) Evidence of a line of credit or equivalent tool equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities; or

(B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.

(3) A proposed development plan that is consistent with the requirements of §53.71 of this chapter, all other federal and state rules, and includes:

(A) A floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) A FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) Letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) Documentation of site control of each proposed lot, as follows: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least one hundred-twenty (120) days from the date of application submission; and

(E) An "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must comply with the Identity of Interest transfer requirements in §1.32 of this title.

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

***§53.71. Single Family Development (SFD) Program Requirements.***

(a) Eligible activities include the acquisition and New Construction or acquisition and Rehabilitation of single family housing. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254.

(b) This Program Activity is a CHDO-eligible activity.

(c) The Household's income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

(d) Each unit must meet the following design and quality requirements:

(1) For New Construction and Reconstruction, current applicable International Residential Code, local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR §92.251(a);

(2) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space; and

(5) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(e) The total hard construction costs are limited as follows:

(1) Reconstruction and New Construction of site-built housing: The hard construction costs are limited to \$73.00 per square foot and \$80,000 or for Households of 6 or more Persons \$85,000; and

(2) Rehabilitation that is not Reconstruction: \$30,000.

(f) Developer fees (including consulting fees) are limited to 15% of the total hard construction costs.

(g) Construction period financing for each unit shall be structured as a 0% interest loan with a six (6) month term. The maximum construction loan amount may not exceed the total sales price less developer fees/profit, homebuyer closing costs, and other ineligible Project costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(h) The HOME assistance to the homebuyer shall be structured as a first and/or second lien loan(s) as follows:



(1) The downpayment assistance is limited to \$15,000 and shall be structured as a fifteen (15) year deferred, forgivable loan with a subordinate lien; and

(2) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements applicable to §53.41(d) of this chapter. If the Department is providing the first lien mortgage with HOME financing, the loan will be fully amortizing with a thirty (30) year term and the Department will require a debt to income ratio (back-end ratio) not to exceed 45%. The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 25% and no greater than 30% of the Household's gross monthly income. Should the estimated housing payment be less than 25%, the Department shall reduce the amount of downpayment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 25% of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5%. The Department shall use to the Household's income certification to make this determination.

(i) Earnest money is limited to no more than \$500, which will be credited to the homebuyer at closing. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(j) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(k) The Division Director may approve the use of alternative floorplans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

***§53.72. Single Family Development (SFD) Administrative Requirements.***

(a) Commitment or Reservation of Funds. The CA or RSP must submit the following with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees. A maximum of 5% of hard construction costs for contingency items, proposed Match to be provided, evidence that Project and soft cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application, which must include:

(A) Household composition including name, date of birth, relationship to head of Household, gender, and social security number for each Household member;

- (B) Identification and resolution of potential and/or existing conflicts of interest;
- (C) Identification of amounts of housing assistance or insurance proceeds previously received from other sources;
- (D) Identification if any Household member owes a debt to the State of Texas;
- (E) Identification of head of Household's race and ethnicity;
- (F) Household special needs status, if applicable;
- (G) Names of Household members who are temporarily absent and reason for absence, if applicable;
- (H) Future Household members and explanation, if applicable;
- (I) Income sources and gross amounts for all Household members;
- (J) Full-time student status of Household members over age 18, if applicable;
- (K) Type and source of all assets owned by Household members including cash value and annual asset income;
- (L) Year in which property to be assisted was built;
- (M) Household's occupancy requirements including number of bedrooms being requested;
- (N) Household expense information including current rent, phone, medical expenses, credit card payments, utilities, car payments, cable television, insurance including Medicare if applicable, loan payments, child care for children under age 13, and other expenses; and
- (O) Signatures of all Household members age 18 or over;
- (P) Certification of the income eligibility of the Household signed by the CA, RSP, or Development Owner, and all Household members age 18 or over, and including the date of the income eligibility determination. For TBRA and in instances the total Household income is within \$3,000 of the 80% AMFI, all documentation used to determine the income of the Household;
- (6) Identification of Lead-Based Paint (LBP);
- (7) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;
- (8) If applicable, documentation to address or resolve any potential Conflict of Interest, identity of interest, duplication of benefit, or floodplain mitigation; and
- (9) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing. The CA, RSP or Development Owner must submit the following with a request for the preparation of loan closing with the request for the Commitment or Reservation of Funds:

- (1) A title commitment to issue a title policy not older than ninety (90) days when submitted for a Commitment of Funds that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the

good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(2) Within ninety (90) days after the loan closing date, the Contract Administrator or Development Owner must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests; and

(3) A draft settlement statement that is consistent with the executed sales contract, the first lien mortgage loan requirements (as applicable), and the terms of this Contract will be provided to Department.

(c) Disbursement of funds. The CA or RSP must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the CA's or RSP's compliance with following requirements may be required with a request for disbursement.

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) If required or applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and CA, RSP, or Development Owner;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request CA, RSP, or Development Owner to make modifications to the disbursement request and is authorized to modify the disbursement

procedures set forth herein and to establish such additional requirements for payment of HOME funds to CA, RSP, or Development Owner as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction;

(9) For final disbursement requests, submission of documentation required for Project completion reports; and

(10) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER H. MULTIFAMILY (RENTAL HOUSING) DEVELOPMENT (MFD) PROGRAM ACTIVITY**

### **10 TAC §§53.80 - 53.82**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter H, §53.80 through §53.82 concerning the HOME Investment Partnerships Program. Sections 53.80 through 53.82 are adopted with changes to text as published in the Texas Register on July 16, 2010 (35 TexReg 6167-6170).

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for Sections 53.80 through 53.82.

### **STAFF RECOMMENDATIONS ON THE PROPOSED ADOPTION OF 10 TAC CHAPTER 53, SUBCHAPTER H.**

#### **§53.80(3)**

**Staff Recommendation:** Staff clarified that match is not a requirement for applications received under the Persons with Disabilities set-aside or USDA Section 515 applications with the following change:

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications. Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

#### **§53.81(b)**

**Staff Recommendation:** Staff recommended a correction by replacing the second instance of the term Rehabilitation with the term Reconstruction as follows:

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or ReconstructionRehabilitation only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

### §53.82(b)(9),(10), and (11)

**Staff Recommendation:** Staff must ensure that required HUD reporting can be completed and therefore, recommends the clarification that documentation required for the submission of completion data to HUD must be submitted with the final disbursement request by adding number 7 to this section as follows:

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction, a final inspection is completed and clearance is issued by the Department, labor standards final wage compliance report, and receipt of certificates of occupancy for new construction or a certification of completion from the Development architect for rehabilitation; and

(10) For final disbursement requests, submission of documentation required for Project completion reports; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

### ***§53.80.Multifamily (Rental Housing) Development (MFD) Threshold and Selection Criteria.***

All Applicants and Applications must submit or comply with the following:

(1) If the total of Department loans equals more than 50% of the total development cost, except for developments also financed with USDA funds, the Applicant must provide:

(A) Evidence of a line of credit or equivalent financing equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities; or

(B) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and

(C) A letter from the developer's or owner's bank(s) confirming funds amounting to 10% of the total development cost are available.

(2) Applications must comply with all of the current Qualified Allocation Plan and Rules in effect at the time of Application's submission at §49.9 or §50.9(h) of this title, excluding paragraphs (4)(A), (4)(J), (8)(A)(ii), (11), (12), (14)(G) and (15) and the requirements of §53.81 of this chapter, and all other federal and state rules.

(3) Except for applications awarded under the Persons with Disabilities set-aside or USDA §515 applications, Match equal to 2% of the HOME award must be provided. Documentation of the Applicant's ability to meet this requirement shall be required in the Application in the form of a commitment from the organization providing the Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentive may be established in the form of a Threshold or Selection scoring criterion. Match in the form of a property tax abatement will only be accepted if a letter from the applicable appraisal district is provided and such letter documents a cash value and duration for such exemption sufficient to meet the HUD requirements for documentation of Match.

(4) The maximum HOME award may not exceed 90% of the total development costs ("TDC") unless a resolution of support for the development is made by the local unit of government in which the proposed development resides and/or the proposed development is located in an area where the HUD Fair Market Rents are equal to the respective HOME Rent Limit for a one-bedroom unit but will be limited as reflected in Figure: 10 TAC §53.80(4). The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least twenty (20) years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement.

Rent	Resolution from Local Government	Maximum Award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR equal to High Home	No	93%	7%
FMR equal to High Home	Yes	95%	5%
FMR equal to Low Home	No	96%	4%
FMR equal to Low Home	Yes	98%	2%

(5) For Applications proposing New Construction, documentation sufficient to meet the Site and Neighborhood Standards required in 24 CFR §92.202.

***§53.81.Multifamily (Rental Housing) Development (MFD) Program Requirements.***

(a) Eligible activities include the acquisition or refinancing and New Construction or Rehabilitation of multifamily housing Developments. Housing assisted with HOME funds must meet all applicable codes and standards. Additionally, the Development must meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(b) Developments involving New Construction will be limited to no more than 252 total units. This maximum unit limitation also applies to those Developments which involve a combination of Rehabilitation and New Construction. Developments that consist solely of acquisition and Rehabilitation or Reconstruction only may exceed the maximum unit restrictions. The minimum number of units shall be 8 units.

(c) This Program Activity is a CHDO-eligible activity.

(d) A Development receiving funds under this section shall have a LURA filed and recorded at the time of Loan closing and prior to any disbursement of HOME funds. The Department may require that a second LURA be filed and recorded if the restrictions to be placed on the Development exceed those of the federal requirements. Such second LURA shall include all of the requirements that exceed the federally required restrictions.

(e) In addition to the federal restrictions, Developments receiving funds under this section must meet the following rent and income restrictions:

(1) At least 20% of the total number of units in the Development must be restricted as HOME units;

(2) At least 5% of the total number of units in the Development must be set-aside for households at or below 30% of AMFI and must have rent restrictions at 30% of AMFI; and

(3) Developments receiving funds under the Persons with Disabilities set-aside are not required to meet the requirements under paragraph (1) or (2) of this subsection but must restrict all HOME units at 50% of AMFI or below and at least 5% of the HOME units at 30% of AMFI or below.



(f) Project funds awarded to Developments under this section shall be structured in the form of a loan or loans as follows:

(1) The interest rate may be as low as 2% provided all requirements of this chapter and §1.32 of this title are met. To the extent that Match in an amount of 5% or more of the HOME funds is provided, an interest rate as low as 0% may be requested;

(2) Unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than twenty (20) years and no greater than forty (40) years;

(3) The loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cashflow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in §1.32 of this title. The Board may also approve, on a case-by-case basis, a cashflow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and

(4) The loan shall have a deed of trust with a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources of financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an Identity of Interest with any member of the development team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

(g) Closing on the Loan shall be conditioned upon the occurrence of closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules, the HOME Final Rule, and to secure the interests of the Department.

(h) When Department funds have a first lien position, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(i) All HOME units required under this section shall be restricted as "floating" HOME units in accordance with the meaning ascribed by HUD except for units receiving funds for the development of units for persons with disabilities in which case such units shall be designated "fixed" HOME units. Development Owner must use its best efforts to distribute units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among unit sizes in proportion to the distribution of unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.

***§53.82.Multifamily (Rental Housing) Development (MFD) Administrative Requirements.***

(a) Loan closing. The Development Owner must submit the following with a request for the preparation of loan closing:

- (1) Owner/General Contractor and owner/architect agreements;
- (2) Survey of the property reflecting all planned improvements that includes a certification to the Department, Development Owner, title company, and other lenders;
- (3) If layered with housing tax credits, a fully executed limited partnership agreement between the general partner and the tax credit investor entity (may be provided concurrent with closing);
- (4) Documentation of acceptance of HOME loan by other lenders and financing participants;
- (5) A budget that includes the amount of Project funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development. If the budget or sources of funds reflect material changes that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of §1.32 of this title;
- (6) Verification of environmental clearance; and
- (7) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Disbursement of funds. The Development Owner must comply all of the following requirements for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with following requirements may be required with a request for disbursement.

- (1) Except disbursements for acquisition and closing costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) days, whichever is later. For release of retainage the down date endorsement must be dated at least thirty (30) days after the date of construction completion;

(2) For hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) If applicable, up to 50% of Project funds for an Activity may be drawn before providing evidence of Match. Thereafter, each CA or RSP must provide evidence of Match, including the date of provision, in accordance with the percentage of Project funds disbursed;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Development Owner's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Developer fee schedule. Disbursement of Developer fees will be conditioned as follows:

(A) For Developments in which the Loan is secured by a first lien deed of trust against the property, 75% shall be disbursed in accordance with percent of construction completed (i.e. 75% of the total allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department and 25% shall be disbursed at the time that the property reaches an occupancy of 50% or at release of retainage, whichever is later; or

(B) For Developments in which the Loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits to finance development, Developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of Developer fees and expect that Department funds shall be used to fund Developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) The Department may reasonably withhold any disbursement of developer fees if it is determined that is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request Development Owner to make modifications to the

disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(8) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(9) Include the withholding of 10% of hard construction costs for retainage. Retainage will be held until at least thirty (30) days after completion of construction, a final inspection is completed and clearance is issued by the Department, labor standards final wage compliance report, and receipt of certificates of occupancy for new construction or a certification of completion from the Development architect for rehabilitation;

(10) For final disbursement requests, submission of documentation required for Project completion reports; and

(11) The final request for disbursement must be submitted to the Department with support documentation no later than sixty (60) days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER I. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)**

### **10 TAC §53.90, §53.91**

The Texas Department of Housing and Community Affairs adopts new 10 TAC Chapter 53, Subchapter I, §53.90 and §53.91 concerning the HOME Investment Partnerships Program. Sections 53.90 and 53.91 are adopted without change and will not be republished.

The new sections ensure compliance with all statutory requirements, incorporates public input from the recent HOME Program rule roundtables, removes duplicative federal and statutory requirements, formalizes existing policy and guidelines contained in HOME Program manuals, and includes recommendations for revisions of necessary policy and administrative changes to further enhance the efficient and effective operations of the HOME Program.

The Texas Department of Housing and Community Affairs accepted comments to the proposed rule in writing and by email.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and public comments were accepted through August 9, 2010, with no public comments received for Sections 53.90 and 53.91.

The Board approved the final order adopting the new sections on September 9, 2010.

The new sections are adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

### ***§53.90. Application Procedures for Certification of Community Housing Development Organization (CHDO).***

(a) An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO Application must be submitted with an Application for HOME funding under the CHDO Set-Aside and the CHDO must be a sponsor, developer, or owner of the Development within the meaning ascribed by HUD for the Program Activity being performed. An Applicant shall not receive more than one award of CHDO operating funds during the same fiscal year of the Department regardless of the number of Applications submitted. Any such award is limited to \$50,000. The Application must include documentation evidencing the requirements of 24 CFR Part 92 and this subsection:

(1) All Applications shall include the following documents as applicable which shall be reviewed for compliance with federal and state requirements:

- (A) Bylaws with date of board approval;
- (B) Charter; and
- (C) Articles of Incorporation;

(2) The Applicant must be organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by the documents required under paragraph (1) of this subsection;

(3) The Applicant must be registered with the Office of the Secretary of State to do business in the State of Texas;

(4) The Applicant must have the following tax status:

(A) A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as a CHDO; or

(B) Classification as a subordinate of a central organization nonprofit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and a private nonprofit organization's pending application for §501(c)(3) or (4) status cannot be used to comply with the tax status requirement under this subparagraph;

(5) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by the documents required in paragraph (1) of this subsection or a business plan which outlines the CHDO's plans for developing affordable housing, providing services to each of the areas included within the service area, and internal operations;

(6) The Applicant must have a clearly defined service area that may encompass an entire "community" as defined in 24 CFR §92.2 under Community Housing Development Organization. The service area must be delineated in the entity's organizational documents;

(7) An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR §84.21, "Standards of Financial Management Systems" as evidenced by:

(i) A notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department;

(ii) A certification from a Certified Public Accountant; or

(iii) A HUD-approved audit summary; and

(iv) A written narrative describing internal controls used to create financial duties and safe guard corporate assets; and

(v) A written narrative describing the conflict of interest policy governing employees and development activities and procurement; and

(vi) A written narrative describing the current corporation's financial structure can support housing development activities; and

(vii) A written narrative describing the organization's ability to manage additional rental development activities, if applicable;

(B) Demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) Documentation that describes the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds; or

(ii) Contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization;

(C) Has a history of serving the low income residents of the city or county in which housing to be assisted with HOME funds is to be located as evidenced by:

(i) Documentation of at least one year of experience providing services; or

(ii) For newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year providing services; and

(iii) The documentation provided in clause (i) or (ii) of this subparagraph must document and describe the organization's history (or its parent organization's history) of serving the city or county, such as, developing new housing, rehabilitating existing housing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for those receiving services, such as counseling, food relief, or childcare facilities. The statement in the submission package must be signed by the president or other official of the organization;

(8) An Applicant must have an organizational structure that meets the federal requirements in 24 CFR §92.2. Compliance with this paragraph shall be evidenced by:

(A) A written provision or statement in the organizations Bylaws, Charter or Articles of Incorporation;

(B) An affidavit signed by the organization's Executive Director and notarized; and

(C) A current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such;

(9) The Applicant must provide a formal process for low-income individuals, including potential program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

(A) An organization's Bylaws; or

(B) A written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval; and

(C) A Resolution with evidence of date of board approval;

(10) If the CHDO's creation was sponsored by a for-profit organization the for-profit entity's primary purpose cannot include the development or management of housing, as evidenced in the for-profit organization's Bylaws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the CHDO must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by the documentation required in paragraph (1) of this subsection or an memorandum of understanding or similar agreement; and

(11) CHDOs that are in partnership agreements associated with the Development must maintain effective Control and decision making control over the Development. All legally binding ownership and/or partnership agreements must clearly state the CHDO's role in the Development, as evidenced by an affidavit from the CHDO and any other developer, general partner, or special limited partner (except for entities related to a tax credit investor limited partner) that the CHDO will maintain effective Control and decision making control over the Development. In addition, the CHDO or entity wholly owned by the CHDO must receive at least 50% of the cashflow from the property (for multifamily developments) or 50% of the developer fee which must also be evidenced by the affidavit.

(b) An Application for CHDO Certification will only be accepted if submitted with an Application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME funds under the CHDO Set-Aside.

***§53.91. Recertification of Community Housing Development Organization (CHDO).***

A CHDO must be recertified every twelve (12) months during the Contract Period of any Contract with a commitment of CHDO funds with the first recertification application submitted at least thirty (30) days prior to twelve (12) months from the beginning of the contract period. Failure to be recertified as a CHDO may result in the Department withholding any draws until the CHDO obtains the recertification. Such recertification application shall include:

- (1) Submission of a CHDO Application to document compliance with this section; or
- (2) An affidavit from the CHDO that it continues to meet all of the requirements of this section and that there have been no changes in the organizational structure or Board membership that would violate the federal requirements in 24 CFR Part 92; and
- (3) A legal opinion from the CHDO's legal counsel that the organization continues to meet the federal definition of a CHDO in 24 CFR §92.2.



## **Attachment B: Preamble and Rule Chapter 53**

The Texas Department of Housing and Community Affairs adopts the repeal of 10 TAC Chapter 53, Subchapters A, B, C, D, E, F, and G. This repeal is proposed in order to consolidate and simplify the existing rules for the HOME Program.

A public hearing to receive input on the proposed rule was held on August 3, 2010 and written comments on the proposed repeal were accepted by mail, e-mail, and facsimile through August 9, 2010.

No comments were received concerning the proposed repeal.

The Board approved the final order adopting this repeal on September 9, 2010.

The repealed sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

# Copies of Written Public Comment Received

---

**From:** Rachel Edwards [mailto:rachel@grant-consultant.com]  
**Sent:** Monday, August 09, 2010 4:55 PM  
**To:** tdhcarulecomments@tdhca.state.tx.us  
**Subject:** HRA HOME RULE - COMMENTS

1. Cities and Counties who have more than one open contract should be able to carry match or a majority portion of match over to other contracts. It has recently been stated that this is not allowed, only for PJs. However, according to the TDHCA Match Guide, page 8, this is allowed. My comment is that this should continue to be allowed. It is also an incentive for communities to strive for excess match.

As stated in the TDHCA Match Guide, pg 9:

"Excess match is encouraged. TDHCA is exploring ways to provide incentives to Contract Administrators to provide excess match."

2. The population for Counties should be risen for "no match." Counties have a more difficult time than Cities identifying match due to the unknown addresses of activities at the time of application relating to precincts.

3 §53.32.Homeowner Rehabilitation Assistance (HRA) Administrative Requirements. Items #4, A-P, need to be removed. This needs to be in a procedure manual, not the rules. Some items such as C and D are not verifiable. State debt can be verified only if a lien has been attached to the property. You must rely on the applicant being honest for past insurance claims etc.

Thank you,

Rachel Edwards  
Resource Management & Consulting Co.  
P.O. Box 6038  
Paris, TX 75461  
903/784-6439

# Hunter & Hunter Consultants, Inc.

220 W. Quail Run Road, Rockwall Texas 75087

(972) 771-5907; (972) 722-3966(fax)

Email: michael@hunter-hunter.com

August 9, 2010

Ms. Jeannie Arellano

Director

HOME Program Division

TDHCA

P.O. Box 13941

Austin, Texas 78701

Dear Ms. Arellano:

Please accept these comments on behalf of Hunter & Hunter Consultants, Inc. (H&HCI). H&HCI represents cities, counties, non-profit developers, for profit corporations and CHDOS across the State of Texas, all of whom are directly involved in the development of affordable housing and economic opportunities in their geographic areas. Several of my clients have asked that I provide comment to you regarding the changes TDHCA is proposing in the HOME Program and, more specifically, in the Homebuyer Assistance Program.

To make identification of rules, comments and suggestions easier, for each comment, I have identified the rule, recommended changes to the rule and provided a short justification for the recommended changes. Before these individual rule issues are identified and commented on, however, there are a couple of general comments I would like to make.

In reviewing the proposed rules, one must first ask the question is the proposed rule being made in response to a statutory requirement? In other words are we changing the rules to reflect changes in law enacted by either congress or the State Legislature? The second question is how does the proposed rule positively affect the ultimate client, the Texas families we are supposed to

be assisting? For example, does the proposed rule make it easier for potential clients to gain assistance? The third question is how does the proposed rule positively affect the contract administrators? For example, does the proposed rule reduce the cost of administering the program or provide more funds for administration if it does not? Or does it simplify the administrative process? If there is no positive affect to the ultimate client or to the contract administrators or if the proposed rule is not being made to more effectively respond to a statutory requirement, then I would suggest that the proposed rule change should not be implemented. Additionally, the proposed rules should not be reviewed in a vacuum. We currently have rules that are either working or not working in regards to the three questions addressed above. The proposed rules should be compared to the current rules to see what benefit there might be, if any, to implementing the change. Unfortunately, the format of the proposed rules makes those comparisons difficult.

That being said, the following are my comments.

#### Section 53.25 Contract Award Limitations

(a) Project Fund Limits. Project funds for Contract awards are limited to \$500,000 per Contract Administrator for Homeowner Rehabilitation and Contract for Deed Conversion Program Activity Applicants and \$300,000 per Contract Administrator for Homebuyer Assistance and Tenant-Based Rental Assistance Program Activity Applicants....

RESPONSE: Contract award limits should either include soft cost allowances or be exclusive of soft cost allowances with said funds added to the contract as is currently done with administrative cost allowances. Example: if the soft cost allowance is \$2,000 per Homebuyer Assistance activity closed, the contract limit should be \$330,000 or the additional \$30,000 should be made to the contract in the award process. This would enable all contracts to have a balance of \$0 at full completion of the contract. Under the rules now being proposed, every Contract Administrator will be requesting a voluntary deobligation of funds at contract end.

(c) Contract Award Benchmarks. All Contract Administrators must submit to the Department complete Project setup information for the Commitment of Funds of all contractually required households in accordance with the requirements herein within twelve (12) months from the effective date of the Contract.

RECOMMENDATION: add: With the exception of Homebuyer Assistance Program awards in which said Project setup information for the Commitment of Funds for all contractually required households in accordance with the requirements herein within twenty-two months for existing homes and within twenty (20) months for new construction homes.

RESPONSE: Unlike other programs offered by TDHCA, Homebuyer Assistance is a market driven program. The term of the contract should allow for market shifts and eccentricities. The major selling season for houses traditionally occurs during the summer months. Having a twelve month setup benchmark for all HBA activities might be difficult to achieve depending on when the contract from TDHCA was let. Additionally, in the Homebuyer Assistance Program the activity completion is the loan closing. The setup is made when the property is ready to close. Typically the closing occurs within 15 days or less after the set up is submitted. The proposed rule would have the effect of reducing the effective term of the HBA contract to 13 months rather than the 24 months mentioned in subsection (b). If all setups have occurred by the 22<sup>nd</sup> month for existing homes then all closings and draws should be completed by the end of the 24 month contract period. In the case of Homebuyer Assistance for new home construction, having the last set up completed by the 20<sup>th</sup> month should allow enough time to complete construction, close the loans and prepare draws within the 24 month contract term.

### Section 53.26 Reservation System Participant (RSP) Agreements

(c) Extremely Low-Income Households. Each RSP will be required to serve at least one (1) Household at or below 30% of AMFI out of every four (4) Households submitted and approved for assistance.

RECOMMENDATION: add: except for Reservation Participation Agreements involving Homebuyer Assistance.

RESPONSE: HBA requires each Household to acquire a mortgage loan for the first lien on the property being purchased. It is very unlikely that Households at or below 30% AMFI will be able to qualify for a first lien mortgage. This rule, as it currently stands, would make the RSP agreement program unworkable for HBA contracts.

(d) Match. An RSP must meet the tiered Match requirements per Program activity for at least every fourth Household submitted and approved for assistance.

RECOMMENDATION: add: Credit will be given to each RSP for excess match generated by the RSP from this or other contracts administered by the RSP to account for the match requirement.

RESPONSE: For HBA eligible match is extremely difficult to generate. If new construction is involved, the City may waive fees. However, in the case of existing housing there are no fees to waive. Other sources of funds such as FHLB downpayment assistance can generate match, however, those funds are limited and generally only available for the first six months of the year. For those Contract Administrators who have been able to generate match in excess of their HBA

contract requirement, allowing them to bank that match to future use would help resolve this program. Otherwise most of the HBA RSP contracts would be for three houses.

#### Section 53.41 Homebuyer Assistance (HBA) Program Requirements

##### (d) (3) No Subprime Loans are allowed

RECOMMENDATION: Change to read: Interest rate for first lien mortgages cannot exceed two (2) points above the weekly average rate as published by FreddieMac at the time of rate lock.

RESPONSE: Stating “No Subprime Loans are allowed” is too vague and open to interpretation and, quite frankly, with the recent changes in federal law, this statement is unnecessary in this program. For every Program Specialist employed by TDHCA there is a different definition of subprime loan. If the intent here is to limit interest rate charges allowed, then the above wording should suffice. FreddieMac publishes a national average once a week and all we would have to know is the date of the interest rate lock to determine compliance. Putting the cap at 2 points over the published average gives the program some flexibility to meet individual needs of the clients.

(d)(4) Other than surveys and appraisals reimbursed to third parties and fees allowed for the origination of single family mortgage revenue bond and mortgage credit certificate programs, fees charged by the lender in connection with mortgage loans may not exceed 2% of the loan amount of \$2,500, which ever is greater.

RECOMMENDATION: Add: Legal document preparation, credit report and flood certifications to list of exceptions to the 2% cap.

RESPONSE: It appears that this item is designed to limit profit made by the lender. If that is so, then the addition of the other items makes sense since they are pass through fees collected by the lender and paid out to others.

(d)(6) No identity of interest relationship between the lender and the Household is allowed;

RECOMMENDATION: Identity of relationship needs to be further defined.

RESPONSE: What does this section mean? Does it mean that a teller at a bank that is the lender in a loan cannot receive downpayment assistance? Does it mean a customer of the bank cannot receive assistance? Or the son or daughter of a bank employee? This section will be defined differently by every Program Specialist at TDHCA. Is this a problem? Why could not an employee of a lender go to their own company for a first lien mortgage while receiving HBA as long as they were not in the loan decision making process? Is this identity of interest relationship considered a reasonable denial of an application? Before implementation, this really needs to be further defined before Contract Administrators and the State end up spending a lot of effort and funds defending it.

(e)(1) Acquisition and closing costs: the lesser of \$20,000 or the amount necessary as determined by an affordability analysis that evidences the total estimated housing payment (including principal, interest, property taxes, insurance and any other homebuyer assistance) is no less than 25% and no greater than 30% of the Household's gross monthly income based on a thirty (30) year amortization schedule;

RECOMMENDATION: Change to read: Acquisition and closing costs to be a maximum of \$20,000.

RESPONSE: This proposed rule fails on many levels. First, does it benefit the ultimate client, the homebuyer? No. In fact it provides several disincentives to the homebuyer: it penalizes the homebuyer for selecting a more affordable home; it penalizes the homebuyer for acquiring additional downpayment assistance; it penalizes the homebuyer for match applied to the cost of the project, such as waived fees shown on the HUD 1; it penalizes the homebuyer for desiring to spend less on their monthly house payment than 25% of their gross monthly income; if the front end ratio is less than 25%, it increases the monthly payment required for the loan. Second, does it benefit the Contract Administrator? No. It adds to the Administrator's workload, the argument is made that it does not add a lot in that it is a simple formula process, however, that is just the tip of the iceberg, it also adds to the time to get the project approved, because the calculations will be reviewed by TDHCA prior to set up to insure the calculations are correct, it also can add to the time required to respond to monitoring issues in that those same calculations will be refigured during the monitoring process and will be one more item needing response; it makes the program harder to market and manage, currently first lien lenders are requesting pre-approval letters that state the award amount prior to their issuing a lending commitment for the first lien, yet we cannot calculate the front end ratio without knowing the first lien payment amount; it makes the program harder to market to the public. Prospective clients have difficulty now understanding how the program works. All they want to know is how much assistance are they going to receive. At the outset we will not be able to tell them. Further, they want to know that they are receiving the same amount of benefit as any one else applying. That will no longer be the case; because there will be difficulty in explaining why one person received an amount different than their neighbor, it may increase complaints of unfair practices made to Mayors, County Judges, City Councils and other governmental bodies in which those persons and entities will have difficulty in responding to; it will potentially have the effect of requiring the Contract



Administrator to request a voluntary deobligation of funds as the amount of awards and funds budgeted at the beginning of the process cannot be relied upon to be the funds actually spent. For example, currently if a Contract Administrator receives a contract to provide assistance to 15 households for a total amount of \$300,000, each household would receive \$20,000. If the proposed rule is implemented, it is likely that at the end of the contract term, the Contract Administrator will have some small amount of funds remaining, which would then have to be voluntarily deobligated, which means the preparation and submission of a letter that explains and defends the need to deobligate funds. Does it benefit TDHCA? No. It will increase the workload of TDHCA staffers both in the processing of the set up requests and in the review of deobligation letters, perhaps not a lot, but when combined with all the other work that needs to be done, any potential unnecessary increase should be avoided. This proposed rule does not save TDHCA any significant amount of funds or increase the number of successful new homeowners by any significant measure. Requiring a front end ratio to be no less than 25% is not cost effective, punishes the borrower by unnecessarily increasing their debt, reduces the ability to include providing match in the form of additional downpayment assistance without penalizing the client and increases the workload of both TDHCA and the Contract Administrator for no gain in clients assisted or in funds utilized.

Capping the front end ratio to 30% is also not recommended. Capping the front end ratio will have the affect of unnecessarily limiting the homebuyer's access to first lien funding sources. For instance, the typical front end ratio cap for Conventional loans is 28% and for FHA it is 31%. VA does not have a front end ratio cap requirement, rather it has a total ratio cap of 41% which the front end must meet as well. By artificially capping the front end ratio at 30%, some homebuyers may well qualify for an FHA insured loan or VA loan and be disqualified for the downpayment assistance because the front end ratio exceeded 30%. Additionally, the question should be asked, if a prospective homeowner has no debts (and, yes, we have some) other than the first lien mortgage and if the proposed monthly house payment is the same or less than the rent they are currently paying, what do we care if their front end ratio is 32% or 35%? We have provided a substantial benefit to the client. Further, if the front end ratio is less than 25%, shouldn't the client then have the option of reducing the term of the mortgage loan from 30 years to 20 or 15, thus putting them into the range suggested while and at the same time saving them thousands of dollars in interest. Finally, this rule reduces the flexibility of the Contract Administrator to find the most effective benefit to the client. For these reasons, the rule should be changed as suggested above.

(f) Project Soft Costs are limited to: (1) Acquisition and closing costs: no more than \$1,500 per housing unit;

RECOMMENDATION: Strike: "Acquisition and closing costs" as soft cost are neither. Change: \$1,500 per housing unit to \$2,000 per housing unit.

RESPONSE: Soft costs are not acquisition costs nor are they closing costs, therefore that phrase does not apply. Soft costs include such things as application intake, environmental clearance, inspections, homebuyer counseling, etc. in other words they are costs incurred by the Contract Administrator in administering the individual activities in the program to meet requirements imposed by TDHCA and HUD. In the 2009 rules, soft costs are capped individually per approved item. The total soft cost list when added together totals approximately \$2,000. In the past, soft costs were capped by 10% of the total project costs expended for each project. That formula had been around for approximately 15 years. For homebuyer assistance, the reason soft cost allowable reimbursements appear to be high is that the only way the Contract Administrator can pay for the services rendered is if the loan closes. For all those prospective buyers for whom the Contract Administrator has to provide service, there is no way to be reimbursed for those expenses. There is no explanation for how the proposed \$1,500 figure was arrived at. The \$2,000 figure is currently accepted (in another format), does not place an undue burden on the Contract Administrator and is reasonable. Where Consultants are utilized, the individual soft cost amounts could be identified in the contracts between the Contract Administrator and the Consultant. How they are identified when the Contract Administrator decides to not utilize a Consultant is unclear.

(g) Funds for Administrative costs are limited to no more than 4% of the total Project costs, exclusive of Project soft costs and Match funds.:

RECOMMENDATION: Change the word “exclusive” to “inclusive” and insert the words “exclusive of” in front of “Match funds.”

RESPONSE: Administrative costs should cover soft costs as well as project costs because there are administrative functions that occur in the deliver of the soft cost activities that are not reimbursable under the soft cost categories when soft cost activities are subcontracted out. For example: Inspections-if the Contract Administer contracts out the provision of the inspections to the local Housing Authority, for example, the person administering the contract for the Contract Administrator still has to perform some functions in order to get the house inspected. Typically, that person has to provide the inspector with the forms to fill out including the name of the buyer and seller, the address of the property to be inspected, the name and address of the Realtor listing the property or the developer building the property and, in most cases, the Contract Administrator’s representative has to arrange for the inspector to gain access to the property. Historically, the Contract Administrator was using Administrative costs to pay for these work activities. The 4% Administrative costs should be inclusive of the soft costs but exclusive of the match funds.

Section 53.42 Homebuyer Assistance (HBA) Administrative Requirements

GENERAL COMMENT: This Section is rife with problems generally because it is trying to provide administrative requirements for all TDHCA HOME Programs regardless of their specific needs and requirements. Procedures for processing a Homebuyer Assistance activity are different than for an Owner-Occupied activity which are different than a Tenant-Based Rental Assistance activity. This Section should be replaced with a statement that commitment or reservation of funds, loan closing, and disbursement of funds should follow the published procedures manual prepared and distributed by TDHCA. Different subsections of the proposed rules differ according to the activity being offered and therefore, if all the changes that need to be made in order to make the procedures for each type activity efficient, this Section would be unwieldy at best. Additionally, any changes to the procedures, since they are encapsulated in the Rules, would have to be approved by the Board as an amended Rule. That being said, following are some comments relating to specific subsections as they pertain to administration of HBA.

RECOMMENDATION 1: Eliminate all subsections of this Section and replace the description with the phrase: "Commitment or reservation of funds, loan closing, and disbursement of funds must follow the published procedures manual prepared and distributed by TDHCA."

RESPONSE: This would allow TDHCA more flexibility to adapt or change procedures, documents and requirements for commitment or reservation of funds, loan closings and disbursement of funds to make them more specific to the programs being administered and thereby more efficient.

Section 53.42(a)(2) A budget that includes the amount of Project funds specifying the acquisition, and construction costs, soft costs and administrative costs required. A maximum of 5% of hard construction costs for contingency items. Match to be provided, evidence that Project and soft costs limitations are not exceeded, and evidence that any duplication of benefits is addressed.

RECOMMENDATION: Insert: "proposed" before the word "Match".

RESPONSE: In HBA Programs the match that is proposed to be applied at the outset of an a prospective buyer's application may or may not be available at the time of closing. Example: funds are requested from the Federal Home Loan Bank for additional downpayment assistance and to be used as match. If after set up but before closing FHLB runs out of funds, then the Contract Administrator would not be able to close the loan due to match being unavailable, even if they were working on other match resources for other activities.

Section 53.42(a)(4)(E) Identification that the housing unit is located or proposed to be located outside of the 100 year flood plain.

COMMENT: This information is unknown at the time of prospective homebuyer's application. The application is generally taken before a house is located to purchase or even before the first lien loan is acquired. While this information can be provided as a result of the environmental review process, it is a mistake to include that information of the application itself as this is information that the Contract Administrator or first lien lender should provide.

Section 53.42(a)(4)(J) Income sources and gross amounts for all Household members.

RECOMMENDATION: Add: "over the age of 18" after members.

RESPONSE: Makes it in line with regulations.

Section 53.42(a)(4)(M) Year in which property to be assisted was built.

RECOMMENDATION: Change to "Was property built prior to 1978? Yes. No."

RESPONSE: Applications are taken before houses are selected for purchase. Information is unknown at that time. Additionally, in many cases for existing houses when a house is finally selected, actual build date is unknown. The important thing to know is if it was built before January 1, 1978.

Section 53.42(a)(6) Identification of Lead-Based Paint (LBP)

COMMENT: This statement needs to be defined. Is the rule talking about a certification of whether lead-based paint exists or is it talking about whether the applicant has been given the Lead in Your Home pamphlet?

RECOMMENDATION: Replace with "Certification of Receipt of Lead-Based Paint Booklet"

RESPONSE: In HBA, a house can pass a visual lead-based paint inspection whether the house actually has lead-based paint or not by having the house encapsulated.

Section 53.42(c)(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided. No Person should benefit...

RECOMMENDATION: Add: Except for HBA activities.

RESPONSE: The reason for this recommended change is that by the time the draw is being made for HBA, all expenditures have been made and everything that this subsection is referring to has already been completed.

Section 53.42(c)(6) Expenditures must be allowable and reasonable...

RECOMMENDATION: Define “reasonable”.

#### SUBCHAPTER G. SINGLE FAMILY DEVELOPMENT (SFD) PROGRAM ACTIVITY

Section 53.71(c) The Household’s income must not exceed 60% AMFI and the Household must complete a homebuyer counseling program/class.

RECOMMENDATION: Change: “60% AMFI” to “80% AMFI.”

RESPONSE: The reason for this recommended change is that new construction is more expensive than existing houses and the program should be used to assist cities with their infill housing programs (building on vacant lots), thus it makes sense to allow families with higher AMFI to participate in the program also this program would then match the requirements of the HBA program which is the closest other program it will be compared to.

Section 53.71(h)(1) The downpayment assistance is limited to \$15,000 and shall be structured as a fifteen (15) year deferred, forgivable loan with a subordinate lien;

RECOMMENDATION: Change: “\$15,000” to “\$20,000” and “fifteen (15) year” to “ten (10) year”.

RESPONSE: The reason for this recommended change is to bring this program into balance with the HBA program. Why would a client want to purchase a new constructed home with a \$15,000 benefit forgiven over 15 years when they could buy an existing house across the street with a \$20,000 downpayment benefit which would be forgiven over a 10 year period. This program should model the HBA program.

Thank you for allowing me the opportunity to comment on the rules and application process proposed changes. If you have any questions or desire further comment on any of the above, please feel free to contact me.

Sincerely,

*Michael B. Hunter*

Michael B. Hunter  
President

Cc: Mike Swan  
Affordable Housing of Parker County

Nick Mitchell  
Community Development Corporation of Brownsville

Kevin Carruth  
City Manager  
City of Paris

Paul Stevens  
City Manager  
City of Waxahachie

Jack Harper  
City Manager  
City of Hillsboro

Gwen Evans, Mayor  
City of Whitney  
Beaumont

## Paris Living Board of Directors

Texas Manufactured Housing Association – Public Comments on Proposed HOME Program  
Administrative Rules

Title 10. Community Development

Part 1. Texas Department of Housing and Community Affairs

Chapter 53. Home Program Rule

GENERAL ADMINISTRATIVE REQUIREMENTS

53.28(8)(B) Unless not allowed by local code, provide replacement of an existing MHU with a new MHU as an available option;

TMHA Comment:

Proposed 53.28(8)(B) requires a MHU option is provided to replace an existing MHU. In order to provide a homeowner with the most available options it is recommended the proposed rule be changed to require a MHU option whenever any form of previous housing is being replaced.

53.28(8)(B) should be revised to read, “53.28(8)(B) Unless not allowed by local code, provide replacement of any existing housing with a new MHU as an available option.”

HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM 10 TAC §§53.30 - 53.32

53.31(b) HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a new MHU or Modular Home if:

(1) The unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act under Chapter 1201 of the Texas Occupation Code;

(2) The unit is permanently installed with a concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code;

(3) The unit is permanently attached to utilities; and

(4) The ownership of the unit is recorded in the taxing authority of the county in which it is located.

TMHA COMMENT:

Under the proposed 53.31(b) the requirements for MHUs and Modulares should be revised to comport with existing laws and standards. Specifically, 53.31(b)(2) requires, “ [t]he unit [be] permanently installed with a concrete perimeter foundation and in accordance with the Texas Manufactured Housing Standards Act, Chapter 1201 of the Texas Occupations Code.” However, there are no such permanent “concrete perimeter foundation” parameters in any section of Chapter 1201. Additionally, there are no permanent “concrete perimeter foundation” parameters in Chapter 80, Texas Administrative Code. Under Chapter 80, Texas Administrative Code, new MHU’s are installed to “manufacturer specifications.” (See 80.21(a)). This requirement ensures



compliance with the national installation standards of 24 CFR 3285, “HUD Code – Model Manufactured Home Installation Standards.”

The HOME proposed rule in 53.31(b)(2) should be revised to read, “(2) The unit is installed in conformance with new home installation requirements under Chapter 80 of the Texas Administrative Code.”

In the alternative, if the intention is to establish clear standards for foundational “footings” then the rule should be revised to cite to the applicable section detailing footing requirements and specifications for concrete footings from the federal Model Manufactured Home Installation Standards found at 24 CFR 3285.312(a)(1) – Subpart D Foundations - Footings.

For Department reference:

Sec. 3285.312 Footings.

(a) Materials approved for footings must provide equal load-bearing capacity and resistance to decay, as required by this section. Footings must be placed on undisturbed soil or fill compacted to 90 percent of maximum relative density. A footing must support every pier. Footings are to be:

(1) Concrete.

(i) Four inch nominal precast concrete pads meeting or exceeding ASTM C 90-02a, Standard Specification for Loadbearing Concrete Masonry Units (incorporated by reference, see Sec. 3285.4), without reinforcement, with at least a 28-day compressive strength of 1,200 pounds per square inch (psi); or

(ii) Six inch minimum poured-in-place concrete pads, slabs, or ribbons with at least a 28-day compressive strength of 3,000 pounds per square inch (psi). Site-specific soil conditions or design load requirements may also require the use of reinforcing steel in cast-in-place concrete footings.

In the further alternative, if the Department’s intention is to specifically require a concrete foundation system, 53.31(b)(2) should be revised to read, “(2) The unit is permanently installed with an engineer or architect approved concrete foundation system.”

These three above recommendations and content revisions would apply to the other sections of the proposed rule where this condition currently exists (53.41(b)(2) and 53.51(b)(2)).

The proposed 53.31(b)(3) requires, “(3) [t]he unit is permanently attached to utilities.” However, this requirement already exists in Chapter 1201, Texas Occupations Code and Chapter 80, Texas Administrative Code. For a home to be fully installed and deemed “habitable” under Chapter 1201, it must be installed to utilities. Additionally, this statutory requirement is further elaborated on in Chapter 80, which details various utility testing requirements that must be conducted when a home is installed (See 80.21(j)(5 and 6)). Therefore, 53.31(b)(3) is repetitive of both statute and existing administrative law and should be removed. This same recommendation would apply to the other sections of the proposed rule where this condition currently exists (53.41(b)(3) and 53.51(b)(3)).

The proposed 53.31(b)(4) requires, “[t]he ownership of the unit is recorded in the taxing authority of the county in which it is located.” However, MHU ownership records are recorded with the Manufactured Housing Division of TDHCA, not “the taxing authority of the county in

which [the unit] is located.” The requirement should be clarified or removed due to unnecessary repetition for existing requirements in other state law.

Under Chapter 1201, Texas Occupations Code, ownership must be properly recoded with the Manufactured Housing Division of TDHCA. Failure to properly record ownership results in fines, administrative action and, potentially, operational license suspension or revocation. As this is already a requirement under state law it is unnecessarily duplicative and, as written, contrary to existing provisions of state law.

For simplicity and clarity, it is recommended 53.31(b)(4) be deleted. This same recommendation would apply to the other sections of the proposed rule where this condition currently exists (53.41(b)(4) and 53.51(b)(4)).

Finally, Modular homes should be entirely removed from 53.31(b). Modular homes are not governed by Chapter 1201 of the Texas Occupations Code. They are governed by Chapter 1202 of the Texas Occupations Code. Therefore, any inclusion or reference of necessary compliance for Modular homes to Chapter 1201 is, as written, impossible to satisfy. Modular homes, just as site-built homes, are built to the International Residential Code. Texas Department of Licensing and Regulation regulates Modular home construction, installation and inspection to ensure compliance with the IRC and the other provisions of Chapter 1202 of the Texas Occupations Code and Chapter 70 of the Texas Administrative Code. This same recommendation would apply to the other sections of the proposed rule where this condition currently exists (53.41(b) and 53.51(b)).

53.31(g) addresses eligible maximum costs. 53.31(g)(1) allows for the lesser of \$73.00 per square foot or \$80,000 for site-built homes. 53.31(g)(2) allows for a maximum of \$65,000 for a replacement MHU.

TMHA COMMENT:

Modular homes should be specifically included with site-built construction and eligible for the same maximum costs – “the lesser of \$73 per square foot or \$80,000.”

Additionally, the MHU replacement maximum should be increased to equal that of site-built and Modular replacement construction costs - “the lesser of \$73.00 per square foot or \$80,000.” Increasing this maximum amount will allow for greater owner choice and an accurate “apples to apples” comparison of possible housing options. An owner should be allowed to choose between their options of, assuming the maximum, an \$80,000 site-built, an \$80,000 Modular, or an \$80,000 MHU.

Comparing size, placement options, amenities, customization and energy efficiency of price comparable MHU, Modular and site-built housing can provide transparency as well as educate a homeowner on their choice.

Potentially some of the home owners who have, in the past, refused assistance with the HOME program might be more persuaded to participate if they are presented options that include more than a site-built home. Price comparable Modular homes can offer more amenities, faster and superior construction as well as delivery within weeks, not months. Price comparable MHUs can offer much greater space, amenities, faster and superior construction and rapid delivery as well.

Limiting MHU participation to \$65,000 per house while allowing \$80,000 per house for site-built homes creates a price disadvantage on one type of housing product over another. Not only does this unjustifiably shift a \$15,000 advantage toward site built construction, it potentially further limits a homeowner's choice because CAs and consultants who participate in the program could, potentially, choose to not offer an MHU option because part of their compensation is tied to the administrative percentage they receive based on the total award. Under the proposed rules, 53.31(j) CAs and their consultants are allowed "no more than 4% of total project costs" as Administrative Costs. A CA and/or consultant who receives compensation on a percentage of an award, for example, of five site-built homes at \$80,000 per house for a total award of \$400,000 has a financial disincentive from offering instead five MHUs at \$65,000 a piece for a total award of \$325,000. Under this example and applying the proposed rule's 4 percent Administrative Cost, on the site-built project the CA/consultant would receive \$16,000, versus only \$13,000 for the MHU project. The disparity in potential Administrative Cost further widens the gap between MHUs and site-built on top of the, as written, initial arbitrary gap of \$15,000 per home.

This same recommendation would apply to the other sections of the proposed rule where this condition currently exists (53.51(f)(2 and 3))

53.31(i) places limits on soft costs. Reconstruction is limited to \$7,000 per housing unit, while MHU Replacement is limited to \$3,500.

TMHA COMMENT:

Modular homes should be specifically included with the \$7,000 per housing unit Reconstruction maximum.

The MHU Replacement limitation of \$3,500 should be increased to equal site-built Reconstruction soft costs of \$7,000. Restricting soft costs to half of site-built Reconstruction disproportionately devalues MHUs as an option under the HOME Program.

Additionally, the disparate impact could result in CA's who seek out and structure HOME Projects for site-built construction, rather than considering a MHU option. Limiting the owner's choice will not be based on the owner's needs or wants, but rather based solely on the amount of compensation/reimbursement the CA's and/or their hired consultants can receive on a house.

"Soft costs" are attributed to services performed, which are sought to be later reimbursed. One of the largest discrepancies and misconceptions is the difference in inspections needed for site-built verses MHUs. It is assumed all MHU inspections are done by the state both at the plant where construction occurs and in the field after final installation. These state fees are assumed to be embedded into the total cost of the MHU. For site-built construction there is no independent third party inspection, much less a state regulatory and enforcement agency, and therefore the CAs and their consultants are responsible for inspection(s). Under the previous HOME matrix of soft costs CAs and their consultants could perform up to seven inspections at \$300 per inspection for site-built home construction. The result was \$2,100 per home reimbursement to the CAs/consultants for a site-built home. The \$300 per inspection is traditionally a "marked up" cost to help insulate other non-reimbursable costs that are inevitably

necessary and/or provide additional compensation to CAs and consultants. Historically and in other similar non-HOME programs, evidence of the “mark up” has been specifically addressed, as it is in these proposed rules, by placing ceiling limits on the amount that can be charged. Without limits, history has shown the mark-ups for allowable reimbursement become so extreme to be blatantly unreasonable. By the very existence of necessary limits it is inferred associated soft costs are “marked up” for compensation and/or other non-reimbursable expense offset. This reality should therefore be applied equally across all housing options, including MHUs.

If CA’s/hired consultants can earn \$7,000 per house for a site-built but only \$3,500 for a MHU, then CA’s/ consultants have a financial reimbursement disincentive to ever offer a MHU as an option. The incentive should not dictate the housing options presented to an owner.

Additionally, there are inspections needed for MHUs that, similar to site-built inspections, should be allowable soft cost reimbursements when performed.

For instance,

- 1) Septic permits and inspections;
- 2) Potential engineering/architect fees for foundations;
- 3) Foundation inspections, especially if rebar enforce concrete foundations are required:
  - a. Site prep,
  - b. Rebar pre-pour inspection,
  - c. Final post-pour inspection;
- 4) Setup/site preparation/proper land clear and slope drainage inspection;
- 5) Utility completion inspection;
- 6) Appliance/safety device (smoke alarms)/air conditioning installation, testing and inspection; and
- 7) Final inspection

If certain efficiencies in the MHU industry and the roles served by the MH Division of TDHCA for plant and installation inspection along with the efficiencies in title work and lien perfection are the justification for the reduced soft cost allotment for MHUs versus site-built, then, in the alternative to increasing the soft cost allotment to \$7,000 for MHUs, a \$3,500 credit should be applied toward the necessary Match needed for each MHU. If these state provided, non-federal, services can be attributed direct dollar amounts per home and these amounts are waived/provided free of charge to the homeowner, then it is recommended those amounts should be allowed as Match.

This same recommendation would apply to the other sections of the proposed rule where this condition currently exists and 53.51(h(2 and 3)).

53.31(p) requires: “(p) For Reconstruction and New Construction, housing units must meet or exceed the 2000 International Residential Code and all applicable local codes and standards. In addition, housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with this chapter.”

TMHA COMMENT: While the requirements for the 2000 IRC and local codes and standards adequately cover site-built and Modular home construction, this section does not adequately address MHUs. By federal law MHUs are built to the “HUD Code” found in 24 CFR 3280. The HUD Code details construction requirements and mandates federal preemption over state and local provisions.

53.31(p) should include language for MHUs to meet or exceed the HUD Code.

The manufactured and modular housing industries of Texas request the TDHCA HOME Program administrators and rule drafters consider the comments submitted above. If there are any questions or follow up issues, please contact DJ Pendleton, Executive Director – Texas Manufactured Housing Association.

Thank you for your consideration.

DJ Pendleton, Executive Director  
Texas Manufactured Housing Association

**REAL ESTATE ANALYSIS  
BOARD ACTION REQUEST  
SEPTEMBER 9, 2010**

**Recommended Action**

Approve publication of revised Real Estate Analysis Rules for public comment.

**RESOLVED**, that the proposed repeal and proposed new rule for the Real Estate Analysis Division, 10 TAC, Chapter 1, Subchapter B, §§1.31 – 1.37, General Provisions, Underwriting Rules and Guidelines, Market Analysis Rules and Guidelines, Appraisal Rules and Guidelines, Environmental Site Assessment Rules and Guidelines, Property Condition Assessment Guidelines, and Reserve for Replacement Rules and Guidelines is hereby ordered and it is approved, together with the preambles presented to this meeting, for publishing in the *Texas Register*.

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

**Background**

The Real Estate Analysis Rules remain separate from the Qualified Allocation Plan to facilitate the application of these rules with all of the Department's multifamily programs. The draft rules presented herein include changes resulting from two main sources of input: public input at roundtable meetings and staff input. Significant changes are summarized below. Other changes that are minor or clarifying in nature are not discussed here but are included in the rule.

**§1.31(b) Definitions**

Term "Sustaining Occupancy" has been changed to "Breakeven Occupancy." Definition has not been changed. All instances of the term "Sustaining Occupancy" throughout the Real Estate Analysis Rules have been changed to "Breakeven Occupancy."

**§1.32 Underwriting Rules and Guidelines**

**§1.32(d)(1)(A) Rental Income**

Language added to allow the Underwriter to consider the current rent roll for a Development, and/or documentation of rents for Comparable Units when determining the rents to use in determining rental income.

**§1.32(d)(1)(B)(v) Miscellaneous Income**

Language modified to clarify that if a fee is charged for the use of an amenity, the cost to construct that amenity may not be included in Eligible Basis, regardless of the amount of the fee charged. This is consistent with §42 of Internal Revenue Code.

**§1.32(d)(2)(I) Reserves**

Language added to clarify that when the Property Condition Assessment ("PCA") is utilized to determine the amount of reserves for replacement, the Underwriter will determine the amount of reserves necessary to fund

capital needs documented in the PCA during the first 15 years of the long term proforma. Previously, the term over which PCA repairs is considered was not explicitly stated.

#### **§1.32(d)(4)(D)(i)(III)(ii) Acceptable Debt Coverage Ratio Range**

Language modified to clarify that clause discusses Debt Coverage Ratios (“DCR”) above 1.35, and to clarify that underwriting report recommendations may be based on increases to debt service. Previously, clause required that the underwriting report be conditioned upon an increase in debt service.

#### **§1.32(e)(1)(B)(ii)(II)(-b-)(-1-) Identity of Interest Land-Only Transactions**

Language added to clarify that only capitalized costs of physical improvements that benefit the proposed Development may be included as holding costs. Additionally, language added to clarify that off-site costs to provide utilities may be included as holding costs. Finally, language added to clarify that a 10% annual return may be applied from the date a cost is incurred until the date of the Department’s Board meeting at which the subject Development’s award will be considered.

#### **§1.32(e)(1)(B)(ii)(II)(-b-)(-2-) Identity of Interest, Transactions Including Existing Buildings that will be Rehabilitated or Maintained**

Language added to clarify that a 10% annual return may be applied from the date a cost is incurred until the date of the Department’s Board meeting at which the subject Development’s award will be considered.

#### **§1.32(e)(1)(C)(i)-(iii) Acquisition of Buildings for Tax Credit Properties**

Addition of a limitation of building acquisition value to the value claimed by the applicant. Additionally, removal of all evaluations of tax assessed land value in determining building acquisition value.

#### **§1.32(e)(3) Site Work Costs**

Language added to clarify that site work costs in excess of \$9,000 per unit, exclusive of ineligible demolition costs, necessitate additional documentation. Previously, the \$9,000 threshold included demolition costs.

#### **§1.32(e)(8) Financing Costs**

Language added to clarify that all sources of construction period financing will be limited according to the described methodology. Additionally, language added to clarify that any cost removed to ineligible cost will not be used to determine the amount of developer fee in Eligible Basis. Previously, any cost removed to ineligible cost could not be used to determine any developer fee, regardless of whether said fee was included in Eligible Basis.

### **§1.33 Market Analysis Rules and Guidelines**

#### **§1.33(d) Market Analysis Contents**

Requirement added that Market Analysis include a summary sheet using a template exhibit to be published by the Real Estate Analysis Division.

#### **§1.33(d)(8) and (9) Secondary Market Area and Primary Market Area**

Language added to state that Primary Market Areas (“PMA”) and Secondary Market Areas (“SMA”) may be based on census tracts, zip codes, or places, as defined by the U.S. Census Bureau. Previously, PMAs and SMAs were required to be based only on census tracts.

### **§1.36 Property Condition Assessment and Guidelines**

**§1.36(a) Property Condition Assessment General Provisions**

Language added to state that Property Condition Assessments (“PCAs”) for reconstruction developments should address the costs that would be required to rehabilitate the development. Additionally, language added to require the completion of the Department’s PCA Cost Schedule Supplement to document all costs and projected replacements through at least fifteen (15) years.



## **Attachment A: Preamble and Proposed New §§1.31 – 1.37**

The Texas Department of Housing and Community Affairs proposes new 10 TAC Chapter 1, Subchapter B, §§1.31 – 1.37, concerning the General Provisions, Underwriting Rules and Guidelines, Market Analysis Rules and Guidelines, Appraisal Rules and Guidelines, Environmental Site Assessment Rules and Guidelines, Property Condition Assessment Guidelines, and Reserve for Replacement Rules and Guidelines followed by the Real Estate Analysis Division. These new rules and guidelines are proposed in order to address guidelines for underwriting, market analysis, appraisal, environmental site assessment, and property condition assessment performed for requests submitted to the Department for review and the establishment of reserve for replacement and subsequent monitoring for developments funded through the Department.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be the more efficient organization and use of Department resources as a result of providing separate processes for the disposition of Department assets and the assessment and collection of administrative penalties. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

The public comment period will be held between September 24, 2010 to October 25, 2010 to receive input on these sections and public hearings will be held. More information on the public hearings can be found at <http://www.tdhca.state.tx.us>. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 25, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The new sections affect no other code, article or statute.

### **§1.31. General Provisions.**

(a) Purpose. The rules in this subchapter apply to the underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and reserve for replacement standards employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA"). This chapter provides rules for the underwriting review of an affordable housing development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides the underwriting staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and TDHCA Governing Board (the "Board") to help ensure procedural consistency in the determination of Development feasibility (§2306.0661(f) and §2306.6710(d), Texas Government Code). Due to the unique characteristics of each development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) Definitions. Terms used in this subchapter that are also defined in Chapter 50 of this title (the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP") have the same meaning as in the QAP. Those terms that are not defined in the QAP or which may have another meaning when used in this subchapter, shall have the meanings set forth in §1.32(b) of this subchapter.

(1) Affordable Housing--Housing that has been funded through one or more of the Department's programs or other local, state or federal programs or has at least one unit that is restricted in the rent that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

(2) Bank Trustee--A bank authorized to do business in this state, with the power to act as trustee.

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

(~~34~~) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.

(4~~5~~) Credit Underwriting Analysis Report--Sometimes referred to as the "Report." A decision making tool used by the Department and Board containing a synopsis and reconciliation of the application information submitted by the Applicant.

(~~56~~) Comparable Unit--A Unit, when compared to the subject Unit, similar in overall condition, location, unit amenities, utility structure, and common amenities, and:

(A) for purposes of calculating the inclusive capture rate targets the same population and is likely to draw from the same demand pool;

(B) for purposes of estimating the Restricted Market Rent targets the same population and is similar in net rentable square footage and number of bedrooms; or

(C) for purposes of estimating the subject Unit market rent does not have any income or rent restrictions and is similar in net rentable square footage and number of bedrooms.

(~~67~~) Contract Rent--Maximum rent limits based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(~~78~~) DCR--Debt Coverage Ratio. Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." A measure of the number of times loan principal and interest are covered by Net Operating Income.

(~~89~~) Development--Sometimes referred to as the "Subject Development." Multi-unit residential housing that meets the affordability requirements for and requests or has received funds from one or more of the Department's sources of funds.

(~~910~~) EGI--Effective Gross Income. The sum total of all sources of anticipated or actual income for a rental Development less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(~~1011~~) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Tax Credit Allocation.

~~(4112)~~ **(1212)** ESA--Environmental Site Assessment. An environmental report that conforms with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with the Department's Environmental Site Assessment Rules and Guidelines in §1.35 of this subchapter as it relates to a specific Development.

~~(4213)~~ **(1213)** First Lien Lender--A lender whose lien has first priority.

~~(4314)~~ **(1314)** Gross Capture Rate--The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand.

~~(4415)~~ **(1415)** Gross Demand--The sum of Potential Demand from the Primary Market (PMA), demand from other sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

~~(4516)~~ **(1516)** Gross Program Rent--Sometimes called the "Program Rents." Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

~~(4617)~~ **(1617)** Hard Costs--The sum total of direct construction costs, site work costs, off-site costs and contingency.

~~(4718)~~ **(1718)** Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates or pricing conducted in accordance with the Department's Market Analysis Rules and Guidelines in §1.33 of this subchapter as it relates to a specific Development.

~~(4819)~~ **(1819)** Market Analyst--Any person who prepares a market study.

~~(4920)~~ **(1920)** Market Rent--The rent concluded by the Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units on properties without rent and income restrictions.

~~(2021)~~ **(2021)** NOI--Net Operating Income. The income remaining after all operating expenses, including replacement reserves and taxes have been paid.

~~(2122)~~ **(2122)** Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

~~(2223)~~ **(2223)** Primary Market--Sometimes referred to as "Primary Market Area" or "PMA." The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this subchapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

~~(2324)~~ **(2324)** Property Condition Assessment--Sometimes referred to as "PCA," "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the property. The PCA must be prepared in accordance with the Department's Property Condition Assessment Rules and Guidelines in §1.36 of this subchapter as it relates to a specific Development.

~~(2425)~~ **(2425)** Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's

market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

~~(2526)~~ Relevant Supply--The relevant supply of proposed and unstabilized Comparable Units includes:

(A) The proposed subject Units;

(B) Comparable Units with priority over the subject, based on the Department's evaluation process described in §50.9(d)(5) of this title, that have made application to TDHCA and have not been presented to the TDHCA Board for decision; and

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

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

~~(2627)~~ Rent Over-Burdened Households--Non-elderly households paying more than 35% of gross income towards total housing expenses (unit rent plus utilities) and elderly households paying more than 50% of gross income towards total housing expenses.

~~(2728)~~ Reserve Account--An individual account:

(A) Created to fund any necessary repairs for a multifamily rental housing development; and

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

~~(2829)~~ Restricted Market Rent--The restricted rent concluded by the Qualified Market Analyst for a particular unit type and size after adjustments are made to rents charged by owners of Comparable Units on properties with the same rent and income restrictions.

~~(2930)~~ Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §1.33(d)(7) of this subchapter.

~~(3031)~~ Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

~~(3132)~~ Supportive Housing--Residential Rental Developments intended for occupancy by individuals or households transitioning from homelessness, at risk of homelessness, or in need of specialized and specific social services.

~~(32)~~ Sustaining Occupancy--Sometimes referred to as "Breakeven Occupancy." The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(33) TDHCA Operating Expense Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 60, Subchapter A of this title, and published on the Department's web site.

(34) Underwriter--The author(s) of the Credit Underwriting Analysis Report.

(35) Unstabilized Development--A Development with Comparable Units that has been approved for funding by the TDHCA Board or is currently under construction or has not maintained a 90% occupancy level for at least twelve (12) consecutive months following construction completion.

(36) Utility Allowance--The estimate of tenant-paid utilities, based either on the most current HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other Services," provided by the local entity responsible for administering the HUD Section 8 program with most direct jurisdiction over the majority of the buildings existing, a documented estimate from the utility provider proposed in the Application, or for an existing development an allowance calculated by the Department pursuant to §60.109 of this title. Documentation from the local utility provider to support an alternative calculation can be used to justify alternative Utility Allowance conclusions but must be specific to the subject development and consistent with the building plans provided.

(37) Work Out Development--A financially distressed Development seeking a change in the terms of Department funding or program restrictions based upon market changes.

(c) Appeals. Certain programs contain express appeal options. Where not indicated, §1.7 and §1.8 of this chapter include general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution methods as outlined in §1.17 of this chapter.

### ***§1.32. Underwriting Rules and Guidelines.***

(a) General Provisions. The Department Governing Board has authorized the development of these rules under its authority under §2306.148, Texas Government Code. The rules provide a mechanism to produce consistent information in the form of a Credit Underwriting Analysis Report to provide interested parties information the Board relies upon in balancing the desire to assist as many Texans as possible by providing no more financing than necessary and have independent verification that Developments are economically feasible. The Report should consider all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development by the Department.

(b) Report Contents. The Report provides an organized and consistent synopsis and reconciliation of the application information submitted by the Applicant. The Report will be based solely upon information that is provided in accordance with the time frames provided in the current QAP, Program Rules or Notice of Funds Availability as appropriate. The Report should also identify the number of revisions and date of most current revision to any information deemed to be relevant by the Underwriter.

(c) Recommendations in the Report. The conclusion of the Report includes a recommended award of funds or allocation of Housing Tax Credits based on the lesser amount calculated by the program limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

(1) Program Limit Method. For Developments requesting Housing Tax Credits, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in the QAP. For Developments requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on current program rules at the time of underwriting.

(2) Gap/DCR Method. This method evaluates the amount of funds needed to fill the gap created by total development cost less total non-Department-sourced funds or Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Tax Credits. In making this determination, the Department adjusts the permanent loan amount and/or any Department-sourced loans, as necessary, such that it conforms to the DCR standards described in this section.

(3) The Amount Requested. The amount of funds that is requested by the Applicant as reflected in the Application documentation.

(d) Operating Feasibility. The operating financial feasibility of Developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from EGI to determine Net Operating Income. This Net Operating Income is divided by the annual debt service to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may choose to make adjustments to the financing structure, such as lowering the debt and increasing the deferred developer fee, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) Income. In determining the Year 1 proforma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) Rental Income. The Underwriter will update the utility allowance and calculate the appropriate rent on a conservative or Contract Rent basis for comparison to the Applicant's estimate in the Application. **To determine the conservative basis, the Underwriter may consider the current rent roll of the subject Development and/or documentation of rents for Comparable Units; this shall be referred to as the "Underwriter's independently verified rents."** The conservative basis for a restricted unit is the lesser of the Gross Program Rent less Utility Allowances ("Net Program Rent") or Restricted Market Rent **or the Underwriter's independently verified rents.** The conservative basis for an unrestricted unit is the lesser of the Market Rent, or Applicant's projected rent where the Applicant's projected rent is reasonable to the Underwriter as supported by documentation of Comparable Units ~~and as independently verified by the Underwriter,~~ **or the Underwriter's independently verified rents.** Where Contract Rents are included, they will be used regardless of the conservative basis derived rent.

(i) Market Rents. The Underwriter reviews the attribute adjustment matrix of Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable rent. Random checks of the validity of the Market Rents may include direct contact with the comparable properties. The Market Analyst's attribute adjustment matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter.

(ii) Restricted Market Rent. The Underwriter reviews the attribute adjustment matrix of Comparable Units by unit size and income and rent restrictions provided by the Market Analyst and determines if the adjustments and conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's conclusion of adjusted Restricted Market Rent by unit, as long as the proposed Restricted Market Rent is reasonably justified and does not exceed the highest existing unadjusted market comparable restricted rent. Random checks of the validity of the Restricted Market Rents may include direct contact with the comparable properties. The Market Analyst's attribute adjustment matrix should include, at a minimum, adjustments for location, size, amenities, and concessions as more fully described in §1.33 of this subchapter.

(iii) Gross Program Rents less Utility Allowance or Net Program Rents. The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents as promulgated by the Department's division responsible for compliance for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all of the Applications are underwritten with the rents promulgated for the same year. Gross Program Rents are reduced by the Utility Allowance. If Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter will adjust the Applicant's EGI to account for any increase or decrease in Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the development cost breakdown.

(iv) Contract Rents. The Underwriter reviews submitted rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The underwriting analysis will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used in the underwriting analysis with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

(i) Exceptions must be justified by operating history of existing comparable properties within the PMA or SMA.

(ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting an apartment unit and must show that the tenant has a reasonable alternative.

(iii) The Applicant's operating expense schedule should reflect an offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iv) Collection rates of exceptional fee items will generally be heavily discounted.

(v) ~~If the total secondary income is over the maximum per unit per month limit,~~ **If an additional fee is charged for the use of an amenity,** any cost associated with the construction, acquisition, or development of the hard assets needed to produce ~~an~~ **the additional fee for such amenity** ~~may also need to~~ **must** be reduced from Eligible Basis for Tax Credit Developments ~~as they may, in that case, be considered to be a commercial cost rather than an incidental to the housing cost of the Development.~~

(C) Vacancy and Collection Loss. The Underwriter uses a vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss) unless the Market Analysis reflects a higher or lower established vacancy rate for the area. Elderly and 100% project-based rental subsidy Developments and other well documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

(D) Effective Gross Income. The Underwriter independently calculates EGI. If the EGI figure provided by the Applicant is within 5% of the EGI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the Year 1 proforma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the type of Development, the size of the units, and the Applicant's expectations as reflected in their proforma. Historical stabilized certified or audited financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; the Department's database summary is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by experience of third parties not related to the contractor or component vendor. Finally, well documented information provided in the Market Analysis, the Application, and other sources may be considered.

(A) General and Administrative Expense. General and Administrative Expense includes all accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. The underwriting tolerance level for this line item is 20%.

(B) Management Fee. Management Fee is paid to the property management company to oversee the effective operation of the property and is most often based upon a percentage of Effective Gross Income as documented in the management agreement contract. Typically, 5% of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database can be concluded. Percentages as low as 3% may be utilized if documented by a fully executed management contract agreement with an acceptable management company. The Underwriter will require documentation for any percentage difference from the 5% of the Effective Gross Income standard.



(C) Payroll and Payroll Expense. Payroll and Payroll Expense includes all direct staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a conventional development. It does not, however, include direct security payroll or additional supportive services payroll. The underwriting tolerance level for this line item is 10%.

(D) Repairs and Maintenance Expense. Repairs and Maintenance Expense includes all repairs and maintenance contracts and supplies. It should not include extraordinary capitalized expenses that would result from major renovations. Direct payroll for repairs and maintenance activities are included in payroll expense. The underwriting tolerance level for this line item is 20%.

(E) Utilities Expense (Gas and Electric). Utilities Expense includes all gas and electric energy expenses paid by the owner. It includes any pass-through energy expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(F) Water, Sewer and Trash Expense. Water, Sewer and Trash Expense includes all water, sewer and trash expenses paid by the owner. It would also include any pass-through water, sewer and trash expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

(G) Insurance Expense. Insurance Expense includes any insurance for the buildings, contents, and liability but not health or workman's compensation insurance. The underwriting tolerance level for this line item is 30%.

(H) Property Tax. Property Tax includes all real and personal property taxes but not payroll taxes. The underwriting tolerance level for this line item is 10%.

(i) The per unit assessed value will be calculated based on the capitalization rate published on the county taxing authority's website. If the county taxing authority does not publish a capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed values may be used in evaluating this line item expense.

(ii) Property tax exemptions or "Proposed Payment In Lieu Of Tax" agreement (PILOT) must be documented as being reasonably achievable if they are to be considered by the Underwriter. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

(I) Reserves. Reserves include annual reserve for replacements of future capitalizable expenses as well as any ongoing additional operating reserve requirements. The Underwriter includes minimum reserves of \$250 per unit for new construction and \$300 per unit for all other Developments. The Underwriter may require an amount above \$300 for Developments other than new construction based on information provided in the PCA. The Applicant's expense for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund ~~future~~ capital needs as documented by the PCA **during the first 15 years of the long term proforma**. Higher levels of reserves also may be used if they are documented in the financing commitment letters.

(J) Other Expenses. The Underwriter will include other reasonable and documented expenses, not including depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. Lender or syndicator's asset management fees or other ongoing partnership fees also are not considered in the Department's calculation of debt coverage. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) Supportive Services Expense. Supportive Services Expense includes the documented cost to the owner of any non-traditional tenant benefit such as payroll for instruction or activities personnel. The Underwriter will not evaluate any selection points for this item. The Underwriter's verification will be limited to assuring any anticipated costs are included. For all transactions supportive services expenses are considered in calculating the Debt Coverage Ratio.

(ii) Security Expense. Security Expense includes contract or direct payroll expense for policing the premises of the Development. The Applicant's amount is typically accepted as provided. The Underwriter will require documentation of the need for security expenses that exceed 50% of the anticipated payroll expense estimate discussed in subparagraph (C) of this paragraph.

(iii) Compliance Fees. Compliance fees include only compliance fees charged by TDHCA. The Department's charge for a specific program may vary over time; however, the Underwriter uses the current charge per unit per year at the time of underwriting. For all transactions compliance fees are considered in calculating the Debt Coverage Ratio.

(iv) Cable Television Expense. Cable Television Expense includes fees charged directly to the owner of the Development to provide cable services to all units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

(K) The Department will communicate with and allow for clarification by the Applicant when the overall expense estimate is over 5% greater or less than the Underwriter's estimate. In such a case, the Underwriter will inform the Applicant of the line items that exceed the tolerance levels indicated in this paragraph, but may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report and the justification provided by the Applicant and the countervailing evidence supporting the Underwriter's determination is noted. If the Applicant's total expense estimate is within 5% of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and use its independent calculation unless the Applicant's Year 1 proforma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income. NOI is the difference between the EGI and total operating expenses. If the Year 1 NOI figure provided by the Applicant is within 5% of the Year 1 NOI figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the Year 1 DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's Year 1 EGI, Year 1 total expenses, and Year 1 NOI are each within 5% of the Underwriter's estimates.

(4) Debt Coverage Ratio. Debt Coverage Ratio is calculated by dividing Net Operating Income by the sum of loan principal and interest for all permanent sources of funds. Loan principal and interest, or "Debt Service," is calculated based on the terms indicated in the submitted commitments for financing. Terms generally include the amount of initial principal, the interest rate, amortization period, and repayment period. Unusual financing structures and their effect on Debt Service will also be taken into consideration.

(A) Interest Rate. The interest rate used should be the rate documented in the commitment letter. Commitments indicating a variable rate must provide a detailed breakdown of the component rates comprising the all-in rate. The commitment must also state the lender's underwriting interest rate, or the Applicant must submit a separate statement executed by the lender with an estimate of the interest rate as of the date of the statement. The Underwriter may challenge the interest rate based on data collected on similarly structured transactions.

(B) Amortization Period. The Department requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization structure is evaluated and recommended. In non-Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.

(C) Repayment Period. For purposes of projecting the DCR over a 30-year period for Developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward Debt Service calculated based on a full amortization and the interest rate stated in the commitment.

(D) Acceptable Debt Coverage Ratio Range. The acceptable Year 1 DCR range for all priority or foreclosable lien financing plus the Department's proposed financing falls between a minimum of 1.15 to a maximum of 1.35. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.

(i) For Developments other than HOPE VI and USDA Rural Development transactions, if the DCR is less than the minimum, the recommendations of the Report are conditioned upon a reduced debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reduction of the interest rate or an increase in the amortization period for TDHCA funded loans;

(II) A reclassification of TDHCA funded loans to reflect grants, if permitted by program rules;

(III) A reduction in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

~~(ii) If the DCR is greater than the minimum, the recommendations of the Report may be conditioned upon an increase in the debt service and the Underwriter may make adjustments to the requested financing structure in the order presented in subclauses (I) and (II) of this clause. If the DCR is greater than the maximum, the recommendations of the Report are conditioned~~ **may be based** upon an increase in the debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) A reclassification of TDHCA funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for TDHCA funded loans;

(III) An increase in the permanent loan amount for non-TDHCA funded loans based upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Tax Credit allocation may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in Debt Service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) Long Term Proforma. The Underwriter will create a 30-year operating proforma.

(A) The base year projection utilized is the Underwriter's Year 1 EGI, Year 1 operating expenses, and Year 1 NOI unless the Applicant's Year 1 EGI, Year 1 total operating expenses, and Year 1 NOI are each within 5% of the Underwriter's estimates.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for expenses.

(C) Adjustments may be made to the Long Term Proforma if sufficient support documentation is provided by the Applicant. Support may include:

(i) Documentation with terms for project-based rental assistance or operating subsidy;

(ii) A fully executed management contract with clear terms;

(iii) Documentation prepared and signed by the Central Appraisal District (CAD) with jurisdiction over the Development indicating the appraisal methodology consistently employed by the CAD and a ten-year history, beginning with the Application year, of tax rates for each taxing district with jurisdiction over the Development; and

(iv) Required reserve for replacement schedule prepared and signed by the proposed permanent lender or equity provider. In no instance will the reserve for replacement figure included in the Long Term Proforma be less than the minimum requirements as described in §1.37 of this subchapter.

(e) Development Costs. The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected total development costs. The Department's estimate of the total development cost will be based on the Applicant's project cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For new construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's total development cost is within 5% of the Underwriter's estimate. The Department's estimate of the total development cost for acquisition/rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §1.36(5) of this subchapter. In the case of a rehabilitation Development, the Underwriter may use a lower tolerance level due to the reliance upon the PCA. If the Applicant's total development cost is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's total cost estimate.

(1) Acquisition Costs. The proposed acquisition price is verified with the fully executed site control document(s) for the entire proposed site.

(A) Excess Land Acquisition. Where more land is being acquired than will be utilized for the site and the remainder acreage is not being utilized as permanent green space, the value ascribed to the proposed Development will be prorated based on acreage from the total cost reflected in the site control document(s). An appraisal containing segregated values for the total acreage, the acreage for the subject site and the remainder acreage, or tax assessment value may be tools that are used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the site control document(s).

(B) Identity of Interest Acquisitions.

(i) The acquisition will be considered an identity of interest transaction when an Affiliate of, a Related Party to, or any owner at any level of the Development Team or permanent lender:

(I) Is the current owner in whole or in part of the proposed property; or

(II) Was the owner in whole or in part of the proposed property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.

(I) The original acquisition cost listed in the submitted settlement statement or, if a settlement statement is not available, the original asset value listed in the most current audited financial statement for the identity of interest owner; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the application:

(-a-) an appraisal that meets the requirements of §1.34 of this subchapter; and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include Property taxes, interest expense, ~~a calculated return on equity at 10%~~, the **capitalized costs** of any physical improvements made to the Property **that benefit the proposed Development**, the cost of rezoning, replatting, ~~or developing the Property, or~~ **and any off-site costs to provide utilities or improve access to the Property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the subject Development's award will be considered.**

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, ~~a calculated return on equity at a rate of 10%~~, and ~~allow~~ the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. **Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.**

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. **The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."**

(C) Acquisition of Buildings for Tax Credit Properties. In order to make a determination of the appropriate building acquisition value, the Applicant will provide and the Underwriter will utilize an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this subchapter. **The building acquisition value utilized by the Underwriter will be equal to the least of the following:**

**(i) The Applicant's claimed building acquisition value;**

**(ii) The Underwriter will prorate the **The building acquisition value that results from the proration of the actual sales price acquisition cost** or identity of interest adjusted sales price **acquisition cost** based upon a calculated "as-is" improvement value over the total "as-is" value provided in the appraisal, so long as the resulting land value utilized by the Underwriter is not less than the land value indicated in the appraisal or tax assessment; or**

**(iii) In the case where the land value indicated by either the appraisal or tax assessment is greater than the prorata land value attributed to the sales price as described above, **The actual acquisition cost or identity of interest adjusted acquisition cost less the greater of the land value in the appraisal or tax assessment is deducted from the sales price to determine the acquisition basis.****

(2) Off-Site Costs. Off-Site costs are costs of development up to the site itself such as the cost of roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well documented and certified by a Third Party engineer on the required application form. If off-site costs are included in eligible basis based on PLR 200916007, a statement of findings from a CPA must also be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the development matches the fact pattern in PLR 200916007. A certification from a Third Party engineer must also be provided that describes the circumstances of the necessity of the off-site improvement, including the relevant requirements of the local jurisdiction with authority over building codes.

(3) Site Work Costs. Project site work costs exceeding \$9,000 per Unit, **exclusive of ineligible demolition costs**, must be well documented and certified by a Third Party engineer on the required application form. In addition, for Applicants seeking Tax Credits, documentation in keeping with §50.9(h)(6)(G) of this title will be utilized in calculating eligible basis.

(4) Direct Construction Costs. Direct construction costs are the costs of materials and labor required for the building or rehabilitation of a Development.

(A) New Construction. The Underwriter will use the Marshall and Swift Residential Cost Handbook or equivalent other comparable published third-party cost estimating data source and historical final cost certifications of all previous Housing Tax Credit allocations to estimate the direct construction cost for a new construction Development. If the Applicant's estimate is more than 5% greater or less than the Underwriter's estimate, the Underwriter will attempt to reconcile this concern and ultimately identify this as a cost concern in the Report.

(i) The "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or equivalent other comparable published third-party data source, based upon the details provided in the application and particularly site and building plans and elevations will be used to estimate direct construction costs. If the Development contains amenities or specifications not included in the Average Quality standard, the Department will take into account these costs.

(ii) If the difference in the Applicant's direct cost estimate and the direct construction cost estimate detailed in clause (i) of this subparagraph is more than 5%, the Underwriter shall also evaluate the direct construction cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for:

(I) the county in which the Development is to be located; or

(II) if cost certifications are unavailable under subclause (I) of this clause, the uniform state service region in which the Development is to be located; or

(III) other Developments by the same Applicant that are similar in design to the subject Development.

(B) Rehabilitation including Reconstruction Costs. In the case where the Applicant has provided a PCA which is inconsistent with the Applicant's figures as proposed in the development cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If said supplement is not provided or the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations in lieu of the Applicant's estimates.

(5) Contingency. All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be added to Contingency with the total limited to the guidelines detailed in this paragraph. Contingency is limited to a maximum of 7% of direct construction costs plus site work for new construction Developments and 10% of direct construction costs plus site work for rehabilitation Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating the eligible contingency cost. The Applicant's figure is used by the Underwriter if the figure is less than 5% **7% or 10%, as applicable.**

(6) Contractor Fee. Contractor fees are limited to a total of 14% on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16% on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18% on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from TX-USDA-RHS, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or TX-USDA-RHS requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible construction costs but will be ineligible for tax credit basis purposes.

(7) Developer Fee. Developer fee claimed must be multiplied by the appropriate applicable percentage depending whether it is attributable to acquisition or rehabilitation basis, consistent with §50.9(d)(6) of this title. Additional fees for ineligible costs will be limited to the same percentage of ineligible development costs (15% for Developments with 50 or more units, or 20% for Developments with 49 or fewer units) but will be ineligible for tax credit basis purposes. All fees to related parties to the owner or developer for work determined by the Underwriter to be typically completed by the developer will be considered part of the Developer fee claimed.

(A) For Tax Credit Developments, the development cost associated with developer fees and Development Consultant (also known as Housing Consultant) fees included in Eligible Basis cannot exceed 15% of the project's Total Eligible Basis less developer fees for Developments proposing 50 units or more and 20% of the project's Total Eligible Basis less developer fees for Developments proposing 49 units or less, as defined in the QAP.

(B) In the case of a transaction requesting acquisition Tax Credits:

(i) the allocation of eligible developer fee in calculating rehabilitation/new construction Tax Credits will not exceed 15% of the rehabilitation/new construction basis less developer fees for Developments proposing 50 units or more and 20% of the rehabilitation/new construction basis less developer fees for Developments proposing 49 units or less; and

(ii) no developer fee attributable to an identity of interest acquisition of the Development will be included in Eligible Basis.

(C) For non-Tax Credit Developments, the percentage can be up to 15% but is based upon total development costs less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any other identity of interest acquisition cost.

(8) Financing Costs. Eligible construction period ~~financing~~ **interest** is limited to ~~not more than~~ **the lesser of actual eligible construction period interest, or the interest on** one (1) year's fully drawn construction **period** loan funds at the construction ~~loan~~ **period** interest rate indicated in the commitment. Any excess over this amount is removed to ineligible cost and will not be considered in the determination of developer fee **included in Eligible Basis**.

(9) Reserves. The Department will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses less management fees and reserve for replacements plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the conventional lender or syndicator if the detail for such greater amount is well documented in the conventional lender or syndicator commitment letter.

(10) Other Soft Costs. For Tax Credit Developments all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities. The Underwriter will evaluate and accept the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the eligibility of any soft costs, the Applicant is given an opportunity to clarify and address the concern prior to removal from Eligible Basis.

(f) Developer Capacity. The Department will review personal credit reports for development sponsors, developer fee recipients and those individuals anticipated to guarantee the completion of the Development. The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the QAP and statute.

(g) Other Underwriting Considerations. The Underwriter will evaluate numerous additional elements as described in subsection (b) of this section and those that require further elaboration are identified in this subsection.

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or

(B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain; or

(C) The Development must be designed to comply with the QAP, as proposed.



(2) The Underwriter will identify in the report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in the following areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical Affordable Housing Developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative cash flows. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of the following: executed subsidy commitment(s); set-aside of Applicant's financial resources; to be substantiated by an audited financial statement evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Development Costs. For Supportive Housing that is styled as efficiencies, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the application, as a base cost in evaluating the reasonableness of the Applicant's direct construction cost estimate for new construction Developments.

(h) Work Out Development. Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) Feasibility Conclusion. An infeasible Development will not be recommended for funding or allocation unless the Underwriter can determine a plausible alternative feasible financing structure and conditions the recommendations of the report upon receipt of documentation supporting the alternative feasible financing structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (4) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate. The method for determining the Gross Capture Rate for a Development is defined in §1.33(d)(10)(F) of this subchapter. The Underwriter will independently verify all components and conclusions

of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

(A) is characterized as a Qualified Elderly Development (including the Elderly section of an Intergenerational Development) and the Gross Capture Rate exceeds 10% for the total proposed units; or

(B) is in an Urban Area and targets the general population, and the Gross Capture Rate exceeds 10% for the total proposed units; or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30%; or

(D) targets Persons with Special Needs and the Gross Capture rate exceeds 30%.

(E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The **proposed** Development is comprised of Affordable Housing which replaces previously existing ~~substandard~~ Affordable Housing within the Primary Market Area as defined in §1.33 of this subchapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing ~~substandard~~ Affordable Housing a leasing preference.

(ii) Existing Housing. The **proposed** Development is comprised of existing Affordable Housing which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in the submitted relocation plan.

(2) Deferred Developer Fee. Developments requesting an allocation of tax credits cannot repay the estimated deferred developer fee, based on the Underwriter's recommended financing structure, from cashflow within the first fifteen (15) years of the long term proforma as described in subsection (d)(5) of this section.

(3) Restricted Market Rent. The Restricted Market Rent for units with rents restricted at 60% of AMGI is less than both the Net Program Rent and Market Rent for units with rents restricted at or below 50% of AMGI unless the Applicant accepts ~~the~~ **all** Underwriting recommendation that all restricted units have rents and incomes restricted at or below the 50% of AMGI level.

(4) Initial Feasibility. The Year 1 annual total operating expense divided by the Year 1 Effective Gross Income is greater than 68% for rural developments 36 units or less and 65% for all other developments.

(5) Long Term Feasibility. Any year in the first fifteen (15) years of the Long Term Proforma, as defined in subsection (d)(5) of this section, reflects:

(A) negative Cash Flow; or

(B) a Debt Coverage Ratio below 1.15.

(6) Exceptions. The infeasibility conclusions may be excepted where either of the following apply.

(A) The requirements in this subsection may be waived by the Executive Director of the Department on appeal if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments meeting the requirements of one or more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (vi) of this subparagraph apply.

(i) The Development will receive Project-based Section 8 Rental Assistance for at least 50% of the units and a firm commitment with terms including contract rent and number of units is submitted at application.

(ii) The Development will receive rental assistance for at least 50% of the units in association with USDA-RD-RHS financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50% of the units.

(iv) The Development will be characterized as Supportive Housing for at least 50% of the units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50% of the units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% lower than both the Net Program Rent and Restricted Market Rent.

(vi) The units not receiving Project-based Section 8 Rental Assistance or rental assistance in association with USDA-RD-RHS financing, or not characterized as public housing do not propose rents that are less than the Project-based Section 8, USDA-RD-RHS financing, or public housing units.

### **§1.33. Market Analysis Rules and Guidelines.**

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) Self-Contained. A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) Market Analyst Qualifications. A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst (§2306.67055.) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

(1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.

(A) Documentation of good standing from the Texas Comptroller of Public Accounts.

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and time frames in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the application round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the application round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

(3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.

(d) Market Analysis Contents. A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

**(4) Summary Sheet. Include the Department's Market Analysis Summary exhibit.**

**(5)** Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

**(56)** Identification of the Property. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

**(67)** Statement of Ownership. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

**(78)** Secondary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in paragraph (8) of this subsection, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the secondary market area (§2306.67055.)

(A) The Secondary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and

(ii) boundaries based on U.S. census tracts, **zip codes, or place, as defined by the U.S. Census Bureau.**

(B) The Market Analyst's definition of the Secondary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;

(ii) a complete demographic report for the defined SMA; and

(iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.

**(89)** Primary Market Area. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The Primary Market Area will be defined by the Market Analyst with:

(i) size based on a base year population of no more than 100,000 people;

(ii) boundaries based on U.S. census tracts, **zip codes, or place, as defined by the U.S. Census Bureau;** and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract **or zip code, and if the PMA is defined by census tract or zip code.**

(B) The Market Analyst's definition of the Primary Market Area must include:

(i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;

(ii) a complete demographic report for the defined PMA; and

(iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) Comparable Units. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

(i) Development name;

(ii) Address;

(iii) Year of construction and year of rehabilitation, if applicable;

(iv) Property condition;

(v) Population target;

(vi) Unit mix specifying number of Bedrooms, number of baths, net rentable square footage; and

(I) monthly rent and utility allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) Description of concessions;

(viii) List of unit amenities;

(ix) Utility structure;

(x) List of common amenities; and

(xi) For rental developments only.

(I) occupancy; and

(II) turnover.

(9) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

(i) total housing;

(ii) rental developments (all multi-family);

(iii) Affordable Housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C) of this subchapter). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Targeted Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of application as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations; and

(iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for an elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the following they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of application as the base year.

(II) Target. If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 50% for Qualified Elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25% of Gross Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for efficiency units.

(II) For Developments targeting the general population:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and

(-c-) The tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all units having three (3) or more bedrooms:

(-a-) Minimum eligible income is based on a 35% rent to income ratio;

(-b-) Appropriate household size is defined as 1.5 persons per bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) For Developments targeting the senior population:

(-a-) Minimum eligible income is based on a 50% rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households.



(iv) Demand from Secondary Market Area:

(I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;

(II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25% of Gross Demand; and

(III) The supply of proposed and unstabilized comparable units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.

(v) Demand from Other Sources:

(I) The source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) Consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) If households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) Documentation of the number of vouchers administered by the local Housing Authority;

(-b-) A complete demographic report for the area in which the vouchers are distributed.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.

(B) Rents. Provide a separate Market Rent and Restricted Market Rent conclusion for each proposed Unit type by number of Bedrooms and rent restriction category. Conclusions of Market Rent or Restricted Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §1.32(i) of this subchapter. Rent Adjustments. In support of the Market Rent and Restricted Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed unit type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Total adjustments in excess of 15% must be supported with additional narrative.

(v) Total adjustments in excess of 25% indicate the Units are not comparable for the purposes of determining Market Rent and Restricted Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) State the Gross Demand for each Unit type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom units restricted at 50% of AMFI; two-Bedroom units restricted at 60% of AMFI); and

(ii) State the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one unit due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The relevant supply of proposed and unstabilized comparable units includes:

(i) The proposed subject Units;

(ii) Comparable Units with priority, as defined in §50.9 of this title, over the subject that have made application to TDHCA and have not been presented to the TDHCA Board for decision;

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

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

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §1.32(i) of this subchapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) Absorption. Project an absorption period for the subject Development to achieve ~~Sustaining~~ **Breakeven** Occupancy. State the absorption rate.

(I) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

### **§1.34. Appraisal Rules and Guidelines.**

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) Self-Contained. An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) Appraiser Qualifications. The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) Appraisal Contents. An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (net rentable area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the property. If an approach is not applicable to a particular

property an adequate explanation must be provided. A land value estimate must be provided if the cost approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms.

(III) Conditions of sale.

(IV) Location.

(V) Highest and best use.

(VI) Physical characteristics (e.g., topography, size, shape, etc.).

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and

physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The net operating income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., unit type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The contract rents should be compared to the market-derived rents. A determination should be made as to whether the contract rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate (OAR) is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation final value estimate is required.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) Appraisal assignments for new construction are required to provide an "as completed" value of the proposed structures. These reports shall provide an "as restricted with favorable financing" value as well as an "unrestricted market" value.

(C) Reports on Properties to be rehabilitated shall address the "as restricted with favorable financing" value as well as both an "as is" value and an "as completed" value. The appraiser should consider the fee simple or leased fee interest as appropriate.

(D) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject property (front, rear, and side elevations, on-site amenities, interior of typical units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) Additional Appraisal Concerns. The appraiser(s) must be aware of Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

### **§1.35.Environmental Site Assessment Rules and Guidelines.**

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The environmental assessment shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards.) Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the Environmental Site Assessment, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

(1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the environmental site assessment or identified during the physical inspection;

(3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) If the subject site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(6) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements; and

(7) Assess the potential for the presence of Radon on the property, and recommend specific testing if necessary.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a TX-USDA-RHS funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this subsection.

### **§1.36. Property Condition Assessment Guidelines.**

(a) General Provisions. The objective of the Property Condition Assessment is to provide cost estimates for repairs and, replacements, and ~~or~~ new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the regulatory period and not less than thirty (30) years. **For Developments proposing reconstruction, the PCA must only address costs to rehabilitate the existing buildings.** The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property



Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all rehabilitation costs and projected repairs and replacements through at least fifteen (15) ~~thirty (30)~~ years. The PCA must also include discussion and analysis of the following:

(1) Useful Life Estimates. For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(2) Code Compliance. The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject property;

(3) Program Rules. The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;

(4) Statement of Acknowledgement. The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and

(5) Cost Estimates for Repair and Replacement. It is the responsibility of the Housing Sponsor or Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the development cost schedule and scope of work submitted as an exhibit of the Application.

(A) Immediately Necessary Repairs and Replacement. Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional repair, replacement, or new construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this

subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) TX-USDA-RHS guidelines for Capital Needs Assessment; or
- (5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

(c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named above in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA should be signed and dated by the report provider not more than six (6) months prior to the date of the application.

### **§1.37. Reserve for Replacement Rules and Guidelines.**

(a) General Provisions. The Department will require Developments to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with §2306.186 Texas Government Code. The reserve must be established for each unit in a Development of 25 or more rental units, regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) The First Lien Lender shall maintain the reserve account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and §2306.186 Texas Government Code.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond indenture or tax credit syndication, the Department shall:

(A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;

(B) Be given notice of any asset management findings or reports, transfer of money in reserve accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and

(C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified from time to time, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under §2306.186 Texas Government Code and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of funds by the Department and §2306.186 Texas Government Code requires that the Department oversee a Reserve Account, the Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) If the Department is not the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Reserve for replacement requirements under the first lien loan agreement;

(2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and

(3) A statement by the First Lien Lender:

(A) That the Development has met all established reserve for replacement requirements; or

(B) Of the plan of action to bring the Development in compliance with all established reserve for replacement requirements, if necessary.

(d) If the Development meets the minimum unit size described in subsection (a) of this section and the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee,

each Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section.

(e) If the Department is the First Lien Lender with respect to the Development, each Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For new construction Developments:

(A) Not less than \$150 per unit per year for units one (1) to five (5) years old; and

(B) Not less than \$200 per unit per year for units six (6) or more years old.

(2) For rehabilitation Developments:

(A) An amount per unit per year established by the Department's division responsible for credit underwriting based on the information presented in a Property Condition Assessment in conformance with §1.36 of this subchapter; and

(B) Not less than \$300 per unit per year.

(3) For either new construction or rehabilitation Developments, the Owner of a multifamily rental housing Development shall contract for a third-party Property Condition Assessment meeting the requirements of §1.36 of this subchapter and the Department will reanalyze the annual reserve requirement based on the findings and other support documentation.

(A) A Property Condition Assessment will be conducted:

(i) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(ii) At least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.

(B) Submission by the Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include:

(i) The complete Property Condition Assessment;

(ii) First Lien Lender and/or Owner response to the findings of the Property Condition Assessment;

(iii) Documentation of repairs made as a result of the Property Condition Assessment; and

(iv) Documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment.

(f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the Department must require:

(1) The Owner to begin making annual deposits to the reserve account on the later of:

(A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date the property is at least 90% occupied; or

(B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.

(2) The Owner to continue making deposits until the earliest of the following dates:

(A) The date on which the Owner suffers a total casualty loss with respect to the Development;

(B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(C) The date on which the Development is demolished;

(D) The date on which the Development ceases to be used as a multifamily rental property; or

(E) The later of:

(i) The end of the affordability period specified by the Land Use Restriction Agreement or restrictive covenant;  
or

(ii) The end of the repayment period of the first lien loan.

(g) The duties of the Owner of a multifamily rental housing Development under this section cease on the date of a change in ownership of the Development; however, the subsequent Owner of the Development is subject to the requirements of this section.

(h) If the Department is the First Lien Lender with respect to the Development or the First Lien Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Owner's Financial Certification packet:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) Signed statement of cause for:

(A) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(B) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and

(C) Failure to make a required deposit.

(i) If a request for extension or waiver is not approved by the Department, Department action, including a penalty of up to \$200 per dwelling unit in the Development and/or characterization of the Development as Materially Non-Compliant, as defined in §60.1 of this title, may be taken when:

(1) A Reserve Account, as described in this section, has not been established for the Development;

(2) The Department is not a party to the escrow agreement for the Reserve Account;

(3) Money in the Reserve Account:

(A) Is used for expenses other than necessary repairs, including property taxes or insurance; or

(B) Falls below mandatory deposit levels;

(4) Owner fails to make a required deposit;

(5) Owner fails to contract for the third party Property Condition Assessment as required under subsection (e)(3) of this section; or

(6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.

(j) On a case by case basis, the Department may determine that the money in the Reserve Account may:

(1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and

(B) The funds withdrawn from the Reserve Account are replaced as cashflow after payment of expenses, but before payment of return to Owner or developer fee is available;

(2) Fall below mandatory deposit levels without resulting in Department action, if:

(A) Development income after payment of operating expenses, but before payment of return to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and

(B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as cashflow after payment of operating expenses, but before payment of return to Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(k) The Department or its agent may make repairs to the Development if the Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to comply with federal, state and/or local health, safety, or building code.

(1) Payment for necessary repairs must be made directly by the Owner or through a replacement Reserve Account established for the Development under this section.

(2) The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs.

(1) This section does not apply to a Development for which the Owner is required to maintain a Reserve Account under any other provision of federal or state law.

## **Attachment B: Preamble and Proposed Repeal of §§1.31 – 1.37**

The Texas Department of Housing and Community Affairs proposes the repeal of 10 TAC Chapter 1, Subchapter B, §§1.31 – 1.37, concerning the General Provisions, Underwriting Rules and Guidelines, Market Analysis Rules and Guidelines, Appraisal Rules and Guidelines, Environmental Site Assessment Rules and Guidelines, Property Condition Assessment Guidelines, and Reserve for Replacement Rules and Guidelines followed by the Real Estate Analysis Division. These repeals are proposed in order to consolidate and simplify the existing rules for all Real Estate Analysis.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Mr. Gerber has also determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

The public comment period will be held between September 24, 2010 to October 25, 2010 to receive input on these sections and public hearings will be held. More information on the public hearings can be found at <http://www.tdhca.state.tx.us>. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 25, 2010.

The proposed repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§1.31. General Provisions.

§1.32. Underwriting Rules and Guidelines.

§1.33. Market Analysis Rules and Guidelines.

§1.34. Appraisal Rules and Guidelines.

§1.35. Environmental Site Assessment Rules and Guidelines.

§1.36. Property Condition Assessment Guidelines.

§1.37. Reserve for Replacement Rules and Guidelines.



**BOARD ACTION SUMMARY**

**MULTIFAMILY FINANCE DIVISION**

**SEPTEMBER 9, 2010**

**Requested Action**

Presentation, Discussion and Possible Approval to publish the proposed repeal of 10 TAC Chapter 49, concerning 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules, and a draft of proposed new 10 TAC Chapter 49, concerning 2011 Housing Tax Credit Program Qualified Allocation Plan and Rules for comment in the *Texas Register*.

**RESOLVED**, that the proposed repeal and proposed new rule for the Qualified Allocation Plan, 10 TAC, Chapter 49, is hereby ordered and it is approved, together with the preamble presented to this meeting, for publication in the *Texas Register* for public comment

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

**Background**

Attached behind this Board Action Item is the 2011 Draft Qualified Allocation Plan and Rules (“Draft QAP”) which reflects staff’s recommendations for revisions to the 2010 QAP for the Board’s consideration. The document is shown as a “blackline” of the 2010 QAP – additions are shown as underlined text and deletions are shown as marked through text. The Department historically maintains two years of actual rules in order to finish the current year under the existing rules while implementing the next year’s rule early for next year’s applicants. Thus, the 2010 QAP will remain in effect but the proposed action will replace the 2009 QAP in its entirety.

The Draft QAP will be posted to the Department’s website and published in the *Texas Register*. Public comment will be taken via mail, email or facsimile. There will be consolidated public hearings between September 24<sup>th</sup> and October 23<sup>rd</sup> to garner public comment. The QAP will be brought before the Board in November for final approval.

The 2011 Draft QAP being recommended by staff contains several material changes from the 2010 QAP but the majority of the changes are organizational or clarification. Some of the more noteworthy changes include:

- The movement of some definitions currently in the QAP that could be applicable to other Departmental multifamily programs (i.e., HOME and HTF) to a newly created General Administrative Rule found in 10 TAC §1.1. The definitions that remain in the QAP are those that staff identified as specific to the Housing Tax Credit program. In addition, to the extent that definitions were already defined in Texas Government Code Chapter 2306 or §42 of the Internal Revenue Code, they are not repeated in the QAP;
- Deleting sections and/or sentences in the QAP that are repetitive or duplicative, especially those that merely restated statute; and

- Reorganizing the QAP to create a more logical order and flow to the document.

The Draft QAP incorporates some initial public comment, includes policy recommendations and administrative changes to improve the Housing Tax Credit program, and maintains compliance with all statutory requirements.

### **Summary of Significant Recommendations from Staff**

This section outlines some of the most significant recommendations being made by staff. Other revisions, details of revisions, formatting adjustments, and streamlining are not summarized, but are reflected in the attached Draft QAP. Citation references are to the numbered sections of the 2011 Draft QAP.

1. **§49.2 – Definitions (Page 4 of 106).** Because they would apply not only to HTC's, but to other multifamily development programs, the majority of the definitions in this section have been moved to the Department's General Administrative Rule as found in 10 TAC §1.1. Some of these definitions have been modified and a few new definitions were added. The definitions that remain in the QAP are those that staff identified as specific to the Housing Tax Credit program and, therefore, should remain in the QAP. The revised Tax Credit (Procedures) Manual will collect all terms defined in statute, the General Rule and the QAP and allow the user to find them all in one place without requiring them to be repeated in the QAP. Any changes that were made to the definitions in the General Administrative Rule or the QAP have been blacklined.
2. **§49.4 – Ineligible Applicants, Applications and Developments (Page 15 of 106).** This section includes changes that reflect a rearrangement of information previously addressed elsewhere in the QAP. What was previously "Ineligibility" is now separated into three different categories of Ineligibility. A notable change includes moving whether a Developer or Principal of the Applicant has been voluntarily or involuntarily removed by a lender, equity partner, etc from the "Penalties" section under Selection Criteria to "Ineligible Applicants."
3. **§49.4(c) Ineligible Developments (Page 20 of 106)–** The third section of Ineligibility is comprised of what was previously included under the Ineligible Building Type definition, negative site features with corresponding point reductions and specific Unit standards previously included under Threshold. Specifically, this consolidated section clarifies the Unit mix percentages in that a Development that only includes two and three bedroom Units is considered ineligible. What were previously considered "negative site features" for a Development now makes the Development "Ineligible." It should be noted, however, that Rehabilitation Developments (excluding Reconstruction) with existing and ongoing federal assistance are exempt. Changes to the "Unit standards" previously included under Threshold include: Rehabilitation Developments that did not originally include a dishwasher in the Unit are not required to include Energy Star dishwashers; plumbing fixtures (toilets and faucets) must meet design standards, all Units must be air-conditioned, fire sprinklers must be in all Units, all operable windows must have screens and laundry connections must be present in all Developments (Rehabilitation Developments exempt). In addition the "or equivalently rated" option has been removed. Deviations for good cause by which one or more of the Unit standards not provided must be approved prior to award and the request for such deviation must be included in the Application. Furthermore, the Executive Director may issue such requests and requests not approved may be appealed to the Board in accordance with the Appeals policy in the QAP.

4. **§49.5(b) Credit Amount (Page 22 of 106)** – This section is revised to clarify who is not considered for purposes of attributing the \$2 million cap. Also, the ability to prorate the credit cap based on the partnership between experienced and inexperienced developers has been removed. General Contractors who solely provide a guarantee but no interest in the Developer or controlling interest in the partnership will not be attributed credits under the cap.
5. **§49.5(d) – Limitations on Developments Proposing to Qualify for a 30% Increase in Eligible Basis (Page 24 of 106)**. This section removes the following two options for Developments to be eligible for the 30% boost: Developments that that qualify for the Renewable Energy Tax Credit and Developments proposed to be located in a school attendance zone that has an academic rating of exemplary or recognized. These items have instead been included under the Selection Criteria. To address density, a Development proposed to be located within one-quarter mile of public transportation must now be a four story or greater Development with structural parking and can be located near Transit Oriented Districts to qualify for the 30% boost and reduces the concentration of existing tax credit properties from 40% to 30% to be consistent with the limitations in the Threshold section of the QAP.
6. **§49.7 – Application Process (Page 28 of 106)**. This newly created section incorporates the major components of the Application Process previously found in several sections of the QAP. Specifically, it addresses Ex Parte Communication, Administrative Deficiencies (including a policy statement), Pre-applications and Applications. It states that Pre-applications and Applications must be submitted via CD-R. This section also specifies the Threshold Criteria for Pre-applications submitted under the State Housing Credit Ceiling.
7. **§49.7 – Administrative Deficiencies (Page 29 of 106)**. This section includes a policy statement as it relates to how exhibits and other information required for Threshold and Selection that was missing entirely and not originally submitted with the Application and information that was originally submitted with the Application but was incomplete or needed clarification will be handled.
8. **§49.8(a)(4) – Threshold (Experience Certification) (Page 43 of 106)**. This revises the requirements that one of the principals of the Development Owner, General Partner, Developer or General Contractor have acquired actual experience through previous participation in and subsequent completion of housing tax credit development of at least 80% as many units as the units in the Development being proposed but an absolute minimum of 36 units.
9. **§49.8(a)(5) – Threshold (Certifications - Common Amenities) (Page 44 of 106)**. This section was revised to reflect the following: the addition of a dog park, separating the green building amenities into categories of Development Energy Savings, Tenant Energy Savings, Other Green Features and LEED Certification. These categories include a slightly revised point structure as well. In addition, although not reflected in this QAP, Chapter 60, (relating to the Compliance and Monitoring Rules) proposes detailed definitions and standards as it relates to the amenities identified in this section. Finally, the number of points required to meet threshold based on Development size has increased by 1 point.
10. **§49.8(a)(5)(O) – Threshold (Certifications) (Page 48 of 106)**. This section includes a certification that the Development Owner will affirmatively market to veterans which was previously included under the Selection Criteria.

11. **§49.8(a)(8)(A) – Threshold (Site Control) (Page 50 of 106).** This section is clarified to reflect that proof of consideration as specified in the contract must be submitted with the Application. Additionally, it clarifies that the site control must be maintained by the same Development Owner, Applicant or Affiliate from the time a pre-application or Application is submitted. Language was added to the requirements for Identity of Interest Applications that are consistent with changes made to the Department’s Draft 2011 Underwriting Rules and Guidelines.
12. **§49.8(a)(8)(B) – Threshold (Zoning) (Page 51 of 106).** This section is revised to state that if the Applicant is in the process of seeking the appropriate zoning, a copy of the application for appropriate zoning and proof of delivery is no longer required at Application. The Applicant will be required to provide documentation of final approval of appropriate zoning at the time the executed Commitment or Determination Notice is submitted to the Department.
13. **§49.8(a)(9)(B) – Threshold (Signage) (Page 55 of 106).** This section is revised to reflect changes to the information that is required on the sign which includes at a minimum a phone number or web address of the Applicant.
14. **§49.8 – Threshold (Third Party Reports) (Page 57 of 106).** This section is revised to reflect a change in the deadline for submission of the third party reports from April 1, 2011 to March 1, 2011 consistent with the submission of the Application.
15. **§49.9(a)(1) – Selection (Financial Feasibility) (Page 59 of 106).** This section is revised to encourage more of a readiness to proceed based on the financial liquidity or net worth standards performed by the lender on the Applicant. To the extent the Application includes a commitment letter from the construction or permanent lender that indicates they have reviewed the Applicant’s financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development, the Application would qualify for the maximum 28 points under this item. If such commitment letter is not obtained then the maximum that they could qualify for would be 20 points.
16. **§49.9(a)(2) – Selection (Quantifiable Community Participation) (Page 60 of 106).** This section is revised to reflect the following:
  - Regardless of whether a pre-application was filed, the Quantifiable Community Participation (QCP) documentation must be submitted no later than March 1, 2011;
  - If there is no neighborhood organization already 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 provided that no neighborhood organization exists and that such assistance is limited to:
    - The use of facsimile, copy machine/copying, email and accommodations at public meetings;
    - Technical assistance, limited to completing the QCP Neighborhood Organization Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;
    - No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to

present information and respond to questions at a duly held meeting where such matter is considered; and

- For non-identity of interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries.
  - The QCP Information Packet must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. The Administrative Deficiency Notice will be sent to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.
  - The scoring of the letters has been revised to reflect 18 points for neutral letters and Applications where there are no existing Neighborhood Organizations would receive 12 points. In both of these scenarios the Applicant will be eligible to receive up to 6 points for Input other than QCP. In addition, support letters must make a direct statement of support. Support by inference (i.e. “the city supports the Development and we support the city”) will not be counted as support.
17. **§49.9(a)(3)—Income Levels of Tenants (Page 63 of 106).** This section is revised to remove three of the lower scoring point categories under this item that have not been utilized by Applicants for purposes of points. These include: Developments that have 10% of the Units at or below 30% AMGI, 40% of the Units at or below 50% AMGI and 35% of the Units at or below 50% AMGI.
18. **§49.9(a)(5) – Commitment of Funding by Unit of General Local Government (Page 64 of 106).** This section is revised to reflect that points will be determined based on the amount of funds to be made available to the Development on a per Unit basis, based on the total number of Units in the Development rather than a percentage of the ever changing development cost. Specifically, a total contribution of at least \$900 (or \$450 for Rural Developments or Developments located in non-participating jurisdictions) per Unit receives 6 points; or a total contribution of at least \$2,250 (or \$1,125 for Rural Developments or Developments located in non-participating jurisdictions) per Unit receives 12 points; or a total contribution equal to or greater than \$4,500 (or \$2,250 for Rural Developments or Developments located in non-participating jurisdictions) per Unit receives 18 points.
19. **§49.9(a)(6) – Community Support from State Representative or State Senator (Page 66 of 106).** This section is revised to reflect a change in the deadline for a State Representative or State Senator to withdraw their letter from June 15, 2011 to June 1, 2011. In addition, a letter that does not directly express support but expresses it indirectly or by inference, (i.e., a letter that says the local jurisdiction supports the development and they support the local jurisdiction) will be treated as a neutral letter.
20. **§49.9(a)(7) – Rent Levels of the Units (Page 67 of 106).** This section is revised to encourage deep rent targeting for maximum points. The maximum points allowed are 12; an application may receive 2 points for every 5% of low income Units at rents and incomes at 50% AMGI or an application may receive 6 points for every 5% of low income Units at rents and incomes at 30% AMGI.

21. **§49.9(a)(9) – Tenant Services (Page 67 of 106).** This section is revised to include more options for Qualified Elderly Developments and also includes guidance on the frequency of the services that are provided.
22. **§49.9(a)(13) – Community Revitalization, Historic Preservation or Rehabilitation (Page 69 of 106).** This section is revised to include New Construction Developments proposed in an area that has existing housing that is part of a Community Revitalization Plan as eligible for points. This scoring item also includes Rehabilitation Developments which was previously a stand-alone scoring item and excludes Adaptive Reuse.
23. **§49.9(a)(14) – Pre-application Participation Incentive Points (Page 70 of 106).** This section is revised to include as part of this exhibit a certification signed by the Principal(s) that signed the site control at pre-application confirming they are the same principal(s) at Application.
24. **§49.9(a)(15) – Green Building Initiatives (Page 70 of 106).** The changes to this scoring item mirror those made to threshold.
25. **§49.9(a)(16) – Development Location (Page 72 of 106).** This section is revised to clarify that Developments located in elementary school attendance zones with a rating of exemplary or recognized does not include magnet schools or elementary schools with district-wide possibility of enrollment or no defined attendance zones. This scoring item is expanded to include the following: evidence that the Development has documented and committed Third-Party funding sources and the Development is located outside of a QCT and that an Applicant cannot use the same funding sources and amounts that qualified under §49.9(a)(5) which was previously a stand-alone scoring item; if the Development is located in an Urban Core; and if the Development is located in a high opportunity area.
26. **§49.9(a)(17) – Economic Development Initiatives (Page 73 of 106).** This section is revised to include two scoring items previously included under Development Location: a geographical area in a Economically Distressed Area; a Colonia; or a DDA and whether a Development is in a county that has received an award within the past three years from the Texas Department of Agriculture’s Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. The documentation requirements for Enterprise and Empowerment Zones is also clarified.
27. **§49.9(a)(21) – Site Characteristics (Page 76 of 106).** This section is revised to remove dry cleaners and family video rental from the list of amenities and also deletes the negative site features which are now proposed to be considered an “Ineligible Development” rather than receive negative points. Rehabilitation Developments with ongoing and existing federal assistance are exempt from these negative site features.
28. **§49.9(a)(27) – Scoring Criteria Imposing Penalties (Page 80 of 106).** This scoring item removes as a scoring penalty on the Application whether the Developer or Principal of the Applicant has been removed by the lender, equity provider or limited partners within the past five years and has been moved to “Ineligible Applicants.” It has been modified in the new location to reflect whether they have been “voluntarily or involuntarily” removed.
29. **§49.12(b) – Commitments (Page 88 of 106).** This section is revised to extend the deadline relating to submission of executed Commitments from ten (10) days to thirty (30) days.

30. **§49.12(g) – Commencement of Substantial Construction (Page 92 of 106).** This section was created to separate the submission deadline for substantial construction documentation from the 10% test deadline.
31. **§49.13(b) – Amendment Process (Page 96 of 106).** This section is revised to reflect that a request for an amendment shall include a proposed form of amendment prepared at the Applicant's sole expense by an attorney and for amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny the amendment within thirty (30) days from the date on which the Department has acknowledgement it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. Furthermore, this section clarifies that an amendment will be disapproved if the circumstances were reasonably foreseeable and preventable unless there is a finding of good cause for the approval of the amendment.

### Scoring Breakdown in Descending Order of Points for the Draft 2011 QAP

QAP Para. #	Topic	Total Points	Notes	Legislative and/or Code Citation
1	Financial Feasibility	28 Max	N/A	2306.6710(b)(1)(A)
2	Quantifiable Community Participation (QCP)	24 Max	Range of +24 to 0	2306.6710(b)(1)(B); 2306.6725(a)(2)
3	Income Levels of the Tenants	22 Max	Range 22 to 20	2306.6710(b)(1)(C) and (e); 2306.111(g)(3)(B) and (E); 42(m)(1)(B)(ii)(I)
4	Size and Quality of the Units	20 Max	Size of Units – up to 4 points; Quality of Units – up to 6 points	2306.6710(b)(1)(D); 42(m)(1)(C)(iii)
5	Commitment of Funding by Unit of General Local Government	18 Max	Range 18 to 12	2306.6710(b)(1)(E)
6	State Representative or Senator Input	14 Max	Range of +14 to -14	2306.6710(b)(1)(F); 2306.6725(a)(2)
7	Rent Levels of the Units	12 Max	Range 12 to 2	2306.6710(b)(1)(G)
8	Cost Per Square Foot	10	N/A	2306.6710(b)(1)(H); 42(m)(1)(C)(iii)
9	Tenant Services	8 Max	Range 8 to 1	2306.6710(b)(1)(I); 2306.6725(a)(1)
10	Declared Disaster Areas	7	N/A	2306.6710(b)(1)(J)
11	Community Input Other Than QCP	6 Max	Range 6 to 0	N/A
12	Housing Needs	6	N/A	42(m)(1)(C)(ii)
13	Revitalization, Historic Preservation and Rehabilitation	6	N/A	42(m)(1)(C)(iii); H.R 3221
14	Pre-Application Incentive Points	6	N/A	2306.6704
15	Green Building Initiatives	6 Max	Range 6 to 1	N/A
16	Development Location	4	N/A	2306.6725(a)(4) and (b)(2); 2306.127; 42(m)(1)(C)(i) and (vii); 2306.6710(e)(1)
17	Economic Development Initiatives	4	N/A	2306.127
18	Census Tracts with No Other Existing Developments Supported by Tax Credits	6	N/A	2306.6725(b)(2)
19	Special Housing Needs Populations	4	N/A	42(m)(1)(C)(v)
20	Length of Affordability	4 Max	Range 4 to 2	2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); 42(m)(1)(B)(ii)(II)
21	Site Characteristics	4	Up to 4 points	N/A
22	Development Size	3	N/A	N/A
23	Sponsor Characteristics	2	N/A	42(m)(1)(C)(iv)
24	Qualified Census Tracts with Revitalization	1	N/A	42(m)(1)(B)(ii)(III)
25	Right of First Refusal	1	N/A	2306.6725(b)(1); 42(m)(1)(C)(viii)
26	Leveraging of Private, State and Federal Resources	1	N/A	2306.6725(a)(3)
27	Penalties	N/A	Range	2306.6710(b)(2)

**Maximum Number of Points Possible:** 227



## Attachment 1 Proposed New Chapter 49

The Texas Department of Housing and Community Affairs proposes new 10 TAC Chapter 49, Qualified Allocation Plan, §§49.1 - 49.17. The new sections are proposed in order to implement changes that will improve the 2010 Housing Tax Credit Program.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

The proposed section will have no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects no other code, article or statute.



~~Multifamily Finance Division~~

~~2010~~ Housing Tax Credit Program

2011 Qualified Allocation Plan ~~and Rules~~

Table of Contents

§49.1 General Program Information.....4  
    A. Purpose and Authority  
    B. Allocation Goals

§49.2 Definitions..... 4

§49.3 Program Calendar.....15

§49.4 Ineligibility..... 17  
    A. Ineligible Applicants  
    B. Ineligible Applications  
    C. Ineligible Developments

§49.5 Site and Development Restrictions.....23  
    A. Floodplain  
    B. Credit Amount  
    C. Size of Developments  
    D. 30% Increase in Eligible Basis

§49.6 Allocation Process..... 27  
    A. Regional Allocation Formula  
    B. Allocation Set-Asides

§49.7 Application Process.....29  
    A. Ex Parte Communication  
    B. Administrative Deficiencies  
    C. Pre-Applications  
    D. Applications  
    E. Evaluation Process

§49.8 Threshold.....42  
    A. Resolutions  
    B. Experience Certificate  
    C. Certifications and Amenities  
    D. Architectural Drawings  
    E. Development Costs and Syndication Information  
    F. Site Control  
    G. Zoning  
    H. Financing Requirements  
    I. Tax Assessment and Title  
    J. Notifications and Signage  
    K. Ownership Structure  
    L. Projected Income and Operating Expenses

- [M. Nonprofit General Partner/Developments](#)
- [N. Third Party Reports](#)

[§49.9 Selection.....60](#)

- [A. Financial Feasibility](#)
- [B. Quantifiable Community Participation](#)
- [C. Income Levels of Tenants](#)
- [D. Size and Quality of the Units](#)
- [E. Unit of General Local Government Funding](#)
- [F. State Representative and State Senator Input](#)
- [G. Rent Levels of the Units](#)
- [H. Cost of the Development by Square Foot](#)
- [I. Tenant Services](#)
- [J. Declared Disaster Areas](#)
- [K. Input other than Quantifiable Community Participation](#)
- [L. Housing Needs Characteristics](#)
- [M. Community Revitalization, Historic Preservation or Rehabilitation](#)
- [N. Pre-application Participation Incentive Points](#)
- [O. Green Building Initiatives](#)
- [P. Development Location](#)
- [Q. Economic Development Initiatives](#)
- [R. Underserved Census Tracts](#)
- [S. Special Housing Needs](#)
- [T. Length of Affordability Period](#)
- [U. Site Characteristics](#)
- [V. Development Size](#)
- [W. Sponsor Characteristics](#)
- [X. Qualified Census Tracts with Revitalization](#)
- [Y. Right of First Refusal](#)
- [Z. Leveraging of Private, State and Federal Resources](#)
- [AA. Scoring Imposed Penalties](#)
- [BB. Tie Breakers](#)

[§49.10 Board Decisions.....83](#)

- [A. Waiting List](#)
- [B. Forward Commitments](#)
- [C. Appeals](#)
- [D. Challenges](#)

[§49.11 Tax Exempt Bond Developments.....87](#)

- [A. Filing of Applications](#)
- [B. Applicability of Rules](#)
- [C. Tenant Services](#)
- [D. Financial Feasibility Evaluation](#)
- [E. Certification for New Docket Numbers](#)

[§49.12 Post Award Activities.....90](#)

- [A. Adherence to Obligations](#)
- [B. Commitment & Determination Notices](#)
- [C. Carryover](#)
- [D. 10% Test](#)
- [E. Commencement of Substantial Construction](#)
- [F. Land Use Restriction Agreement](#)
- [G. Cost Certification](#)

[§49.13 Board Reevaluation.....98](#)

- [A. Amendments](#)

- [B. Extensions](#)
- [C. Ownership Transfers](#)
- [D. Sale of Tax Credit Properties](#)
- [E. Alternative Dispute Resolution](#)

<a href="#">§49.14 Program Related Fees.....</a>	<a href="#">103</a>
<a href="#">§49.15 Filing of Required Documentation.....</a>	<a href="#">105</a>
<a href="#">§49.16 Waiver and Amendment of Rules.....</a>	<a href="#">105</a>
<a href="#">§49.17 Department Responsibilities.....</a>	<a href="#">106</a>
<a href="#">A. Notifications</a>	
<a href="#">B. Qualified Allocation Plan Deadlines</a>	

<a href="#">§50.1. Purpose and Authority; Program Statement; Allocation Goals.....</a>	<a href="#">2</a>
<a href="#">§50.2. Coordination with Rural Agencies.....</a>	<a href="#">2</a>
<a href="#">§50.3. Definitions.....</a>	<a href="#">2</a>
<a href="#">§50.4. State Housing Credit Ceiling.....</a>	<a href="#">12</a>
<a href="#">§50.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.....</a>	<a href="#">13</a>
<a href="#">§50.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.....</a>	<a href="#">16</a>
<a href="#">§50.7. Regional Allocation Formula; Set Asides; Redistribution of Credits.....</a>	<a href="#">19</a>
<a href="#">§50.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results (§2306.6704).....</a>	<a href="#">21</a>
<a href="#">§50.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.....</a>	<a href="#">23</a>
<a href="#">§50.10. Board Decisions; Waiting List; Forward Commitments.....</a>	<a href="#">60</a>
<a href="#">§50.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.....</a>	<a href="#">62</a>
<a href="#">§50.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.....</a>	<a href="#">64</a>
<a href="#">§50.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.....</a>	<a href="#">66</a>
<a href="#">§50.14. Carryover; 10% Test; Commencement of Substantial Construction.....</a>	<a href="#">67</a>
<a href="#">§50.15. LURA, Cost Certification.....</a>	<a href="#">68</a>
<a href="#">§50.16. Housing Credit Allocations.....</a>	<a href="#">70</a>
<a href="#">§50.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.....</a>	<a href="#">72</a>
<a href="#">§50.18. Compliance Monitoring and Material Noncompliance.....</a>	<a href="#">75</a>
<a href="#">§50.19. Department Records; Application Log; IRS Filings.....</a>	<a href="#">75</a>
<a href="#">§50.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.....</a>	<a href="#">76</a>
<a href="#">§50.21. Manner and Place of Filing All Required Documentation.....</a>	<a href="#">79</a>
<a href="#">§50.22. Waiver and Amendment of Rules.....</a>	<a href="#">79</a>
<a href="#">§50.23. Deadlines for Allocation of Housing Tax Credits (§2306.6724).....</a>	<a href="#">79</a>

~~§4950.1. General Program Information. Purpose and Authority; Program Statement; Allocation Goals.~~

(a) **Purpose and Authority.** The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. ~~The Internal Revenue Code of 1986, §42 (the "Code"), as amended, provides for credits against federal income taxes for owners of qualified low income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies.~~ Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§~~4950.1 - 4950.17~~23 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations.

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

(b) **Allocation Goals.** It is the policy of this Department and the Board, as expressed through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. ~~The processes and criteria utilized to implement this policy are described in §§50.7, 50.8 and 50.9 of this chapter, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))~~

~~§50.2. Coordination with Rural Agencies.~~

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

~~§50.3~~49.2. **Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, and 10 TAC Chapter 1 §1.1 and repeated in the Tax Credit (Procedures) Manual.

*NOTE: The definitions below that are proposed to be moved from the QAP to the Department's General Rule are noted accordingly. In addition, there are some new definitions, not noted below that are being added to the General Rule. Those definitions that are already defined in §2306.004, §2306.6702 or §42 are proposed to be deleted from the QAP.*

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

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

~~(2) **Administrative Deficiencies** As referenced in §§50.5, 50.6, 50.8 and 50.9 of the chapter, is defined as information requested by the Department that is required to clarify or correct inconsistencies in an Application. An Administrative Deficiency is a deficiency or inconsistency, in the Department's reasonable judgment, that may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. [moved to General Rule and modified]~~

~~(3) **Affiliate** An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced Developer as described in §50.9(h)(9)(D) of this chapter (relating to Threshold Criteria). [moved to General Rule and modified]~~

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

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

~~(16) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as described~~defined more fully~~ in §42(b) of the Code. However, where the property has not placed in service or an Agreement and Election Statement has not been executed the Applicable Percentage must be estimated as of the date of the Application submission.~~

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

~~(A*i*) not less than 9% through December 31, 2013 for 70% present value credits unless extended by Congress; or the greater of 9% or the current applicable percentage for 70% present value credits for new buildings, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department; or~~

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

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

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

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

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

~~(7) **Applicant** Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702) [moved to General Rule]~~

~~(8) **Application** An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702) [moved to General Rule and modified]~~

~~(29) Application Acceptance Period--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 8, 2009 through March 1, 2010, as more fully described in §§50.8—50.12 of this chapter. For Tax-Exempt Bond Developments this period is the date the Volumes 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier.~~

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

~~(11) Application Submission Procedures Manual The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre Applications and Applications for Housing Tax Credits. [deleted - will be renamed and included in the Tax Credit (Procedures) Manual]~~

~~(12) Area--~~

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

~~(i) An incorporated place; or~~

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

~~(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site. [deleted - changed "Area" to "Place" and define in selection]~~

~~(43) Area Median Gross Income (AMGI)--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.~~

~~(14) At Risk Development A Development that: (§2306.6702)~~

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

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

~~(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);~~

~~(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);~~

~~(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);~~

~~(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;~~

~~(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;~~

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

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

~~(B) Is subject to the following conditions:~~

~~(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31 of the year the Application is submitted); or~~

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

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

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

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

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

~~(16) **Board**--The governing Board of the Department. (§2306.004) [moved to General Rule]~~

~~(4)17) **Carryover Allocation**--An allocation of current year tax credit authority by the Department pursuant to the provisions of §42(h)(1)(C) of the Code and Treasury Regulations, §1.42-6.~~

~~(5)18) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §49.1250.14(ea) of this chapter, (relating to Carryover).~~

~~(19) **Carryover Allocation Procedures Manual**--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests. [deleted - this information will be included in the Tax Credit (Procedures) Manual]~~

~~(6)20) **Code**--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.~~

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

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

~~(B) Has the physical and economic characteristics of a colonia, as determined by the Department. [moved to General Rule]~~

~~(22) **Commitment Notice**--A notice issued by the Department to a Development Owner pursuant to §50.13 of this chapter and also referred to as the "commitment." [moved to General Rule and modified]~~

~~(7) **Certificate of Reservation** --The notice given by the Texas Bond Review Board to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.~~

~~(8)23) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.~~

~~(9)24) **Competitive Housing Tax Credits**--Tax credits available from the State Housing Credit Ceiling.~~

~~(25) **Compliance Period**--With respect to a building, the period of fifteen (15) taxable years, beginning with the first taxable year of the Credit Period pursuant to §42(i)(1) of the Code. [deleted - defined in Code]~~

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

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

~~(28) **Credit Period**--With respect to a building within a Development, the period of ten (10) taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in §42(f)(1) of the Code. [deleted - defined in Code]~~

~~(29) **Department**--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004) [moved to General Rule and modified]~~

~~(10)30) **Determination Notice**--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which ~~states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the~~~~



~~Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits that the Development may be eligible to claim pursuant to §42(m)(1)(D) of the Code. necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the extended use period. (§42(m)(1)(D))~~

~~(31) **Developer**—Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §50.9(d)(6)(B) of this chapter) and any other Person receiving any portion of such fee, whether by subcontract or otherwise. *[moved to General Rule]*~~

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

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

~~(B) Located on scattered sites and contain only rent restricted units. (§2306.6702) *[deleted - defined in statute]*~~

~~(33) **Development Consultant**—Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents. *[moved to General Rule and modified]*~~

~~(34) **Development Funding**—~~

~~(A) A loan or grant; or~~

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

~~(i) provides an economic benefit; and~~

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

~~*[deleted - defined in statute]*~~

~~(35) **Development Owner**—Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702) *[moved to General Rule]*~~

~~(1136) **Development Site**—The area, or if scattered site, areas, on which the Development is proposed to be located. The area, or if scattered site areas, for which the Development is proposed to be located and which is to be under the Applicant's control pursuant to §50.9(h)(7)(A) of this chapter (relating to Threshold Criteria).~~

~~(37) **Development Team**—All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor. *[moved to General Rule]*~~

~~(38) **Disaster Area**—An area that has been declared as a disaster pursuant to §418.014 of the Texas Government Code. *[deleted - defined in selection]*~~

~~(1239) **Economically Distressed Area**—A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code and has adopted and enforces the model rules under §16.343, Texas Water Code. Consistent with §17.921 of the Texas Water Code, an Area in which:~~

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

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

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

~~(1340) **Eligible Basis**—With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code. With respect to a building within a Development, the building's Eligible Basis as defined in §42 of the Code.~~

~~(41) **Executive Award and Review Advisory Committee** ("The Committee")—A Departmental committee as set forth in Chapter 2306 of the Texas Government Code. (§2306.1112) *[moved to General Rule and modified]*~~

~~(1442) **Existing Residential Development**—Any Development Site which contains existing residential Units at the time the Application is submitted to the Department. Any Development Site which contains four (4) or more existing residential Units at the time the Volume I is submitted to the Department.~~

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

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

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

~~(46) **Governing Body**—The elected body of public officials or tribal entity, responsible for the enactment, implementation and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction. *[moved to General Rule and modified]*~~

~~(47) **Governmental Entity**—Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities. *[moved to General Rule]*~~

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

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

~~(50) **Guarantor**—Any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development. *[moved to General Rule and modified]*~~

~~(51) **High Opportunity Area**—An area that includes:~~

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

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

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

~~(D) A census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2010 Housing Tax Credit Site Demographic Characteristics Report). *[deleted - incorporated into 30% boost section and modified]*~~

~~(52) **Historically Underutilized Businesses (HUB)**—Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code. *[moved to General Rule]*~~

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

~~(15)4 **Housing Credit Allocation**—An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this chapter.~~

~~(16)55 **Housing Credit Allocation Amount**—With respect to a Development or a building within a Development, ~~the that~~ amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period ~~and~~ which ~~the Board~~ it allocates to the Development.~~

~~(56) **Housing Tax Credit ("tax credits")**—A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the §42 of the Code. (§2306.6702) *[deleted - defined in statute]*~~

~~(57) **HUD**—The United States Department of Housing and Urban Development, or its successor. *[moved to General Rule]*~~

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

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

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

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

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

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

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

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

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

~~(ii) More than 55% of the total Units are two bedroom Units; or~~

~~(iii) More than 40% of the total Units are three bedroom Units; or~~

~~(iv) More than 5% of the total Units in the Development with four or more bedrooms.~~

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

~~(I) Any Development that contains residential Units that violates the general public use requirement under Treasury Regulation §1.42-9. [deleted - incorporated into §49.4 "Ineligible Developments" and modified]~~

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

~~(A) Have separate and specific buildings exclusively for the age restricted Units;~~

~~(B) Have specific leasing offices and leasing personnel for the age restricted Units;~~

~~(C) Have separate and specific entrances, and other appropriate security measures for the age restricted Units;~~

~~(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;~~

~~(E) Share the same Development Site;~~

~~(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and~~

~~(G) Meet the requirements of the federal Fair Housing Act. [deleted]~~

~~(60) IRS~~—The Internal Revenue Service, or its successor. [moved to General Rule]

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

~~(62) Local Political Subdivision–A county or municipality (city or tribal reservation) in Texas. For purposes of §50.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision." [moved to General Rule and modified]~~

~~(63) Low Income Unit–Sometimes referred to as a tax credit Unit, that is a Unit that is income and rent restricted at no greater than 60% of AMGI and is included in the Applicable Fraction for the Housing Tax Credit program. [moved to General Rule and modified]~~

~~(64) Managing General Partner–A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title. [moved to General Rule]~~

~~(65) Material Deficiency–As referenced in §§50.5, 50.6, 50.8 and 50.9 of this chapter, is defined as any individual Administrative Deficiency or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application. (§2306.6708) [moved to General Rule and modified]~~

~~(66) Material Noncompliance–As defined in Chapter 60, Subchapter A of this title. [moved to General Rule and modified]~~

~~(67) Minority Owned Business–A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734) [moved to General Rule]~~

~~(68) Neighborhood Organization–An organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association. (§2306.001(23-a)) [deleted - defined in statute]~~

~~(69) Not Rentable Area (NRA)–The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas. [moved to General Rule]~~

~~(70) New Construction–Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation (which includes Reconstruction). [moved to General Rule and modified]~~

~~(71) Person–Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group. [moved to General Rule]~~

~~(72) Persons with Disabilities–A person who:~~

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

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

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

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

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

~~(C) Has a disability, as defined in 24 CFR §5.403. [moved to General Rule and modified]~~

~~(73) Persons with Special Needs–Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. [deleted - defined in Selection]~~

~~(74) **Pre-Application**—A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of a Competitive Housing Tax Credit Application, for an allocation from the State Housing Credit Ceiling, including any required exhibits or other supporting material, as more fully described in this chapter. (§2306.6704) [deleted - covered under definition of Application in General Rule]~~

~~(75) **Pre-Application Acceptance Period**—That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department, December 8, 2009 through January 8, 2010. [deleted - incorporated deadline into §49.7 "Application Process"]~~

~~(76) **Principal**—The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:~~

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

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

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

~~(77) **Property**—The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application. [moved to General Rule]~~

~~(78) **Qualified Allocation Plan (QAP)**—This Plan as adopted. [moved to General Rule and modified]~~

~~(79) **Qualified Basis**—With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of §42(c)(1) of the Code. [deleted - defined in Code]~~

~~(80) **Qualified Census Tract**—Any census tract which is so designated by the Secretary of HUD in accordance with §42(d)(5)(C)(ii) of the Code. [deleted - defined in Code]~~

~~(81) **Qualified Elderly Development**—A Development which meets the requirements of the federal Fair Housing Act, and:~~

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

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

~~(82) **Qualified Market Analyst**—A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party. [deleted - defined in Real Estate Analysis Rules]~~

~~(17783) **Qualified Nonprofit Organization**—An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729 is described in §501(c)(3) or (4) of the Code, as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of §42(h)(5)(C) of the Code. A Qualified Nonprofit Organization may select to compete in one or more of the Set Asides, including, but not limited to, the nonprofit Set Aside, the At Risk Development Set Aside and the TRDO-USDA Allocation. (§2306.6729)~~

~~(18884) **Qualified Nonprofit Development**—A Development in which a Qualified Nonprofit Organization is to (directly or through a partnership or wholly-owned subsidiary):~~

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

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

~~(85) **Reference Manual**—That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program. *[deleted and renamed Tax Credit (Procedures) Manual in QAP]*~~

~~(86) **Rehabilitation**—The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing Adaptive Reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered Rehabilitation or reconstruction. *[moved to General Rule and modified]*~~

~~(87) **Related Party**—As defined, (§2306.6702)~~

~~(A) The following individuals or entities:~~

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

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

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

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

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

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

~~(iv) A grantor and fiduciary of any trust;~~

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

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

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

~~(I) The trust; or~~

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

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

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

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

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

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

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

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

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

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

~~(88) **Residential Rental Development**—For purposes of this definition, Residential Rental Development does not include: hotels, motels dormitories, fraternity or sorority houses, rooming houses, hospitals, nursing homes, sanitariums, rest homes, trailer parks and courts for use on a transient basis. Residential Rental Development means:~~

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

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

~~(C) A property that does not provide continual or frequent nursing, medical or psychiatric services. [deleted - incorporated as appropriate in §49.4 "Ineligible Developments"]~~

~~(89) Rules--The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this chapter. [deleted]~~

~~(90) Rural Area--An Area that is located (this definition is not the same as Rural Projects as defined in §520 of the Housing Act of 1949 for purposes of determining rural income as described in H.R. 3221):~~

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

~~(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or~~

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

~~(91) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 Units. [deleted - defined in statute]~~

~~(92) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §50.9(i) of this chapter. [moved to General Rule and modified]~~

~~(93) Set Aside--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702) [deleted - defined in statute]~~

~~(94) Single Room Occupancy (SRO)--A single efficiency unit that contains sanitary facilities but may or may not include food preparation facilities and is intended for occupancy by one person. [moved to General Rule and modified]~~

~~(95) Special Management Districts--Those districts named under Chapters 3801 to 3853, Texas Special District Local Laws Code, Subtitle C. [deleted and defined in Selection]~~

~~(1996) State Housing Credit Ceiling--The limitation on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and/or additional ceiling provided by The Housing and Economic Recovery Act of 2008, H.R. 3221.~~

~~(97) Student Eligibility--Per §42(i)(3)(D) of the Code, A Unit shall not fail to be treated as a low-income Unit merely because it is occupied:~~

~~(A) By an individual who is:~~

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

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

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

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

~~(ii) Married and file a joint return. [deleted]~~

~~(2098) Supportive Housing--Residential ~~r~~Rental ~~d~~Developments intended for occupancy by individuals or households ~~transitioning from homelessness, at risk of homelessness, or~~ in need of specialized and specific ~~non-medical-social~~ services in order to maintain independent living.~~

~~(21) Tax Credit (Procedures) Manual--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.~~

~~(2299) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in §42(h)(4) of the Code, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.~~

~~(23) Transit Oriented District--A mixed-use residential and commercial area, located within a radius of one-quarter mile from an existing or proposed transit stop, designed to encourage pedestrian activities and maximize access to public transportation.~~

~~(100) Texas Department of Rural Affairs (TDRA) as established by Chapter 487 of the Texas Government Code. [moved to General Rule]~~

~~(101) Third Party--A Third Party is a Person who is not:~~

~~(A) An Applicant, General Partner, Developer, or General Contractor; or~~

~~(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or~~

~~(C) Receiving any portion of the fees from the Development. [moved to General Rule]~~

~~(102) **Threshold Criteria**—Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §50.9(h) of this chapter. (§2306.6702) [deleted - defined in statute]~~

~~(103) **Total Housing Development Cost**—The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment. [moved to General Rule and modified]~~

~~(104) **TRDO-USDA**—Texas Rural Development Office (TRDO) of the United States Department of Agriculture (USDA) serving the State of Texas (also known as USDA Rural Development and formerly known as TxEmHA) or its successor. [moved to General Rule and modified]~~

~~(105) **Unit**—Any residential rental unit consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking (such as a microwave), and sanitation. (§2306.6702) [deleted - defined in statute]~~

~~(106) **Urban Area**—The Area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an Area described in paragraph (90)(B) of this section or eligible for funding as described in paragraph (90)(C) of this section. [deleted - defined in statute]~~

~~(107) **Urban Core**—A compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits of a city with a population of no less than 150,000 composed of adjacent block groups in which at least 90% of the land not in public ownership is zoned to accommodate a mix of medium or high density residential and commercial uses and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed. [deleted - defined in Selection]~~

#### ~~§50.4. State Housing Credit Ceiling.~~

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

[§49.3. Program Calendar.](#) All documentation noted below must be submitted to the Department offices located at 221 E. 11<sup>th</sup> Street, Austin, 78701, by 5:00 pm (CST) by the date indicated.

<u>Due Date</u>	<u>Documentation Required</u>
12/20/2010	Pre-application Acceptance Period Begins
12/20/2010	Pre-application Neighborhood Organization Request Date (Competitive HTC Only)
12/31/2010	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only)
01/07/2011	Pre-Application Final Delivery Date (Submitted via CD-R; Competitive HTC Only)



<u>Due Date</u>	<u>Documentation Required</u>
01/21/2011	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/15/2011	Experience Certification Delivery Date (For Tax-Exempt Bond Applications the Experience Certification Documentation must be submitted with the Application)
02/22/2010	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications the response should be received no later than seven (7) days prior to the Application submission.
03/01/2011	Full Application Delivery Date (Submitted via CD-R; Competitive HTC Only)
03/01/2011	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only)
03/01/2011	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §49.9(a)(5) points (must be submitted with Application).
03/01/2011	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal, and Market Study). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.
03/02/2011	Rural Rescue Application Submission Period (Ends 11/15/2011)
04/01/2011	Input from State Senator or Representative Delivery Date (Competitive HTC Only)
04/01/2011	Resolutions Delivery Date (One Mile Three Year Rule, 2x Per Capita, resolutions in connection with Selection Criteria, etc.) For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered)
Mid-May	Final Scoring Notices Issued (Competitive HTC Only)
06/01/2011	Withdraw Deadline for State Senator or

<u>Due Date</u>	<u>Documentation Required</u>
	Representative Letters (Competitive HTC Only)
06/15/2011	Application Challenges Deadline (Competitive HTC Only)
Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only)
Late July	Final Awards (Competitive HTC Only)
Mid-August	Commitments are Issued (Competitive HTC Only)
11/01/2011	Carryover Documentation Delivery Date
07/1/2012	10% Test Documentation Delivery Date
07/01/2012	Documentation of Commencement of Substantial Construction Delivery Date
12/31/2013	Placement in Service Deadline
Sixty (60) days prior to Board meeting	Amendment Requests
Fifteen (15) business days prior to Board meeting	Extension Requests

~~§49.450-5. Ineligible Applicants, Applications and Developments. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.~~

(a) ~~Ineligibility~~ **Ineligible Applicants**. An ~~Applicant~~ **Application** is ineligible if:

~~(1) The any~~ Applicant, Development Owner, Developer or Guarantor **involved with the Application:**

~~(1)~~ has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

~~(2) The Applicant, Development Owner, Developer or Guarantor~~ has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen (15) years preceding the Application deadline; or

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

~~(4) The Applicant, Development Owner, Developer or Guarantor with~~ **has** any past due audits **and** has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications ~~not applying for Housing Tax Credits, but~~ applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Volume III of the Application is submitted; or (§2306.6703(a)(1))

(5) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department; (§2306.6703(a)(2))

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

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

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

(C) The applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(D) If the redemption of the applicable private activity bonds will occur in the first five years of the operation of the ~~e~~Development and complies with §429(h)(4), Internal Revenue Code of 1986:

(i) on the date the ~~e~~Certificate of ~~r~~Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321, of the Texas Government Code, or, if applicable, in the same uniform state service region, as referenced in §1372.0231, Texas Government Code, that is served by the proposed ~~e~~Development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; ~~;~~ (2306.6703)

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

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

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

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency; [inserted from prior "Certain Applicant and Development Standards" section]

(8) There is, involving the Application or Applicant, a violation of Texas Government Code §2306.6733; [inserted from prior "Representation by Former Board Member or Other Person" section and modified]

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

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

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

~~(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2010 (or for Tax-Exempt Bond Developments no later than fourteen (14) days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or~~

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

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

~~(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume 1 is submitted); and~~

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

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

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

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

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

~~(iv) The Governing Body, of the Local Political Subdivision where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A)–(C) of this paragraph. For purposes of this clause, evidence of the Governing Body vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2010 (or for Tax Exempt Bond Developments no later than fourteen (14) days before the Board meeting where the credits will be committed) and may not be more than one (1) year old.~~

~~(E) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §50.9(j) of this chapter. [Items (7) and (8) above moved to Threshold section]~~

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

~~(10) The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under §50.3(65) of this chapter. If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant. [moved to "Ineligible Applications" section]~~

~~(11) More than \$2 million in annual competitive housing tax credits has been requested for a single Application.~~

~~(9) If the Developer or Principal of the Applicant has been voluntarily or involuntarily removed by the lender, equity provider, limited partners or any other owners or investors, however designated, or the Department in the past five (5) years for failure to perform obligations. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. [inserted from selection (penalties) and modified]~~

#### (b) Ineligible Applications.

~~(b) Disqualification and Debarment.~~ The Department will ~~terminate~~**disqualify** an Application, and ~~may~~**or** debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

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

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate that Controls— one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA or if such Material Noncompliance is identified during the Application

~~review~~(~~or any other document containing an Extended Housing Commitment~~) or the program rules in effect for such property as further described in Chapter 60 of this title; ~~or~~ (§2306.6721(c)(3)) ~~or~~

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

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to ~~cure pay in full~~ any fees ~~or penalties within thirty (30) days of when they were billed by the Department, as further~~ described in ~~§49.1450.20 (relating to Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties)~~ of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, ~~violates §2306.1113 relating to Ex Parte Communication as further described in §49.7 of this chapter; or~~ ~~communicates with any Board member during the period of time beginning on the date Applications are filed in an Application Round and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, unless the communication takes place at any board meeting or public hearing held with respect to that Application but not during a recess or other non-record portion of the meeting or hearing. Communication with Department staff must be in accordance with §50.9(b) (relating to ExParte Communications) of this chapter; violation of the communication restrictions of §50.9(b) of this chapter is also a basis for disqualification and/or debarment; (§2306.1113) or~~

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

~~(7) Applicants may be ineligible as further described in this section (relating to Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment); or~~

~~(7)~~ (8) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or

~~(8)~~ (9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award of non-tax credit funds from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing; or

(9) The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under Texas Government Code §1.1. If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant; or

(10) In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven (7) business days of the date of the request by the Department, the Department may terminate the Application.

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

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

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

~~(3) The Development Owner is not financially responsible; [(1) - (3) deleted - covered in §2306]~~

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

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

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

~~(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency; [4(A), (B) and (C) above have been moved to "Ineligible Applicants" section]~~

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

~~(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner. [(5) and (6) deleted - covered in §2306]~~

~~(d) **Representation by Former Board Member or Other Person.** (§2306.6733) (1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over Housing Tax Credits previously employed by the Department may not:~~

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

~~(B) Represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.~~

~~(2) A Person commits a criminal offense if the Person violates §2306.6733, Texas Government Code. An offense under this section is a Class A misdemeanor. [moved to "Ineligible Applicants" section and modified]~~

~~(e) **Due Diligence, Sworn Affidavit.** In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven (7) business days of the date of the request by the Department, the Department may terminate the Application. [moved to "Ineligible Applications" section]~~

(c) **Ineligible Developments.** Those Developments identified in subparagraphs (1) - (14) of this paragraph are considered which are ineligible pursuant to this QAP for funding under the Housing Tax Credit Program as follows:

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

(2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

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

(5) Any Development with any building(s) with four or more stories that does not include an elevator;

(6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;

(7) Any Development that violates §1.15 of this title relating to the Integrated Housing Rule of the Department;

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

(A) More than 30% of the total Units are one bedroom and/or Efficiency Units; or

(B) More than 55% of the total Units are two bedroom Units; or

(C) More than 40% of the total Units are three bedroom Units; or

(D) More than 5% of the total Units in the Development with four or more bedrooms; or

(E) Only two and three bedroom Unit Developments;

(9) Any Development that is not consistent with the definition of a Qualified Elderly Development;

(10) Any Development that contains residential Units that violates the general public use requirement under Treasury Regulation §1.42-9; [Items 1 - 10 above are taken from "Ineligible Building Type" definition and include modifications]

(11) Development Sites with negative characteristics in (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TDRO-USDA are exempt. For purposes of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative characteristic. If none of these negative features exist, the Applicant must sign a certification to that effect. The negative characteristics include:

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail; (Rural Developments funded through TRDO-USDA are exempt);

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments where the buildings are located within the "fall line" of high voltage transmission power lines;

(F) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or

(G) Development is ~~proposed to be~~ located adjacent to or within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined as stated in §243.002 of the Texas Government Code; [Item (11) above inserted from "Negative Site Features"]

(12) One Mile Same Year Rule. Staff will ~~only~~ not recommend an allocation, ~~and the Board may only allocate, Housing Tax Credits from the State Housing Credit Ceiling to more than one Development from the State Housing Credit Ceiling~~ in the same allocation cycle ~~calendar year~~ if the Developments are, or will be, located ~~less~~ ~~more~~ than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million. For purposes of

this chapter, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio; and (§2306.67021) [inserted from prior location]

(13) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the site, the Department will issue a determination that the site is unacceptable. If not appealed in accordance with §49.10 of this chapter (relating to the Appeals Process), this determination becomes final. [inserted from prior location and includes modifications]

(14) A certification that the Development that does not provide will have all of the following amenities will be considered ineligible. These amenities must be at no charge to the tenants. All New Construction, Reconstruction or Adaptive Reuse Units must provide the amenities in clauses (A) - (M) of this subparagraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in clauses (C) - (M) of this subparagraph unless expressly identified as not required. (§2306.187) Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §49.10 of this chapter (relating to the Appeals Process).

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

(B) Laundry Connections; [inserted from Selection]

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

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

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

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

(I) Energy-Star rated ceiling fans in living areas and bedrooms;

(L) Energy-Star rated lighting fixtures in all Units;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252;

(L) All Units must be air-conditioned; and [inserted from Threshold section]

(M) Fire sprinklers in all Units; [inserted from Selection section]

~~(f) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) — (e) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this chapter. They may also utilize the appeals process described in §50.17(b) of this chapter. (§2306.6721(d))~~

~~§49.550.6. Site and Development Restrictions.: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.~~

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



the one-hundred (100) year floodplain unless they already meet the requirements established in this subsection for New Construction, or if the ~~local political subdivision~~ Unit of General Local Government has undertaken mitigation efforts and can establish that the property is no longer within the one-hundred (100) year floodplain.

~~(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §50.3(58) of this chapter will not be considered for allocation of tax credits.~~

~~(c) Scattered Site Limitations. Consistent with §50.3(32) of this chapter, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent restricted units. Tax-Exempt Bond Developments are permitted to be located on multiple sites consistent with Chapter 1372 of the Texas Government Code and as further clarified by the Texas Bond Review Board.~~

~~(b) Credit Amount. (§2306.6711(b)) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. An Applicant may not request more than \$2 million in annual tax credits for any given Application. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor (unless the Guarantor is also exclusively the General Contractor). - Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the ~~2011~~2010 calendar year, including commitments from the ~~2011~~2010 Credit Ceiling and forward commitments from the ~~2011~~2010 Credit Ceiling, are applied to the credit cap limitation for the ~~2012~~2010 Application Round. In order to evaluate this \$2 million limitation, ~~Nonprofit~~ entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. All entities that share a Principal are Affiliates. For purposes of determining the \$2 million limitation of tax credits, a Person is not deemed to be an Affiliate solely because it:~~

(A) Raises or provides equity;

(B) Provides "qualified commercial financing";

(C) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;

(D) Receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater; or

(E) Provides or supports the Applicant's financial capacity for the proposed Development.

~~In order to encourage the capacity enhancement of Developers with less capacity the Department will prorate the credit amount allocated in situations where an inexperienced Developer partners with an experienced Developer. The Department will prorate the credits ascribed to each Developer based on the higher of: the percentage ownership of the Applicant, Developer, Related Party or Guarantor or the proportional percentage of the Developer fee received. In the event the percentages of ownership and developer fees are equal, the Department will prorate the credits based on that percentage. To be considered for this provision, a copy of a Joint Venture Agreement or similar document between the Developers must be provided. At a minimum the document must clearly state the structural decision making process for the Development and provide direction to the Department in the event of a conflict who may withdraw or terminate the Application. The decision making structure must also be clearly stated when the credit limit form is completed and if the Joint Venture Agreement and the credit limit form conflict, the credit limit form will control. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. The limitation does not apply: (§2306.6711(b))~~

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

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

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

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

**(ce) Limitations on the Size of Developments.**

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

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

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

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

(A) the first phase of the Development has been completed and has maintained attained Sustaining Occupancy (as defined in §1.31 of this title) of at least 90% for at least a minimum six (6) months period as reflected in the submitted rent roll; or

(B) a resolution, submitted in the Application, from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old on or before from the date the Application is submitted. ~~, is submitted with the Application.~~ Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar); or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

~~(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, Housing Tax Credits from the State Housing Credit Ceiling to more than one Development from the State Housing Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's State Housing Credit Ceiling, the Development is considered to be in the calendar year in which the Board votes, not in the year of the State Housing Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2010 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this chapter, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711(f)) This restriction does not apply to the allocation of Housing Tax Credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Development Applications under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021) [moved to "Ineligible Developments" section]~~

~~(g) Limitations of Development in Certain Census Tracts. Staff will not recommend and the Board will not allocate Housing Tax Credits for a Competitive Housing Tax Credit or Tax-Exempt Bond Development~~

~~located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:~~  
~~(1) In an Area whose population is less than 100,000;~~  
~~(2) Proposes only reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or~~  
~~(3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, 2010 for Competitive Housing Tax Credit Applications (or for Tax Exempt Bond Development Applications no later than fourteen (14) days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the 2010 Housing Tax Credit Site Demographic Characteristics Report. [moved to Threshold section and modified]~~

~~(d)~~ **Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis if (paragraphs ~~(2)~~ and ~~(4)~~) of this subsection only applies to Competitive Housing Tax Credits allocated from the State Credit Ceiling) ~~if~~:

~~(1) The Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by H.R. 4440, is able to be placed in service by December 31, 2010 (or date as revised by the Internal Revenue Service) as certified in the Application;~~

~~(2)~~ The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than ~~40~~30% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a QCT Qualified Census Tract that has in excess of ~~30~~40% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The eleven (11) digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the ~~2010~~2011 Housing Tax Credit Site Demographic Characteristics Report;

~~(3) The Development qualifies for and receives Renewable Energy Tax Credits. For purposes of this paragraph, the Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification; or [moved to green building amenities in Threshold and Selection criteria and modified]~~

~~(2)~~ Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph:

(A) Any Rural Development;

(B) Developments proposing at least 50% of the total number of Units for Supportive Housing;

(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are proposed in §~~49.9(a)(3)~~50.9(i)(3) of this chapter (relating to Selection); or

(D) Developments proposed in ~~H~~High ~~O~~Opportunity ~~A~~Areas as provided in clauses (i) - ~~(iii)~~(iv) of this subparagraph:

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

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

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

~~(iii)~~(iv) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the ~~2011~~2010 Housing Tax Credit Site Demographic Characteristics Report).

~~(3)~~5 The Development proposing to build in an area impacted by a disaster for which federal legislation providing additional credits has been enacted. ~~Hurricane Ike eligible county as designated by the Emergency~~

~~Economic Stabilization Act of 2008, H.R. 1424 and Presidential Declaration FEMA-1791-DR and is able to place in service by December 31, 2012 (or the date as revised by the Internal Revenue Service) as certified in the Application.~~

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

~~(j) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department. This determination will be made at the sole discretion of the Department, but only after discussion with the Applicant regarding the features of the site considered to be unacceptable.~~

~~(k) **Appeals and Administrative Deficiencies for Site and Development Restrictions.** An Application or Development found to be in violation under subsections (a) — (j) of this section will be notified in accordance with the Administrative Deficiency process described in §50.9(d)(4) of this chapter. They may also utilize the appeals process described in §50.17(b) of this chapter.~~

#### ~~§49.650-7. Allocation Process~~**Regional Allocation Formula; Set-Asides; Redistribution of Credits.**

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

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

(1) **Nonprofit Set-Aside.** At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement; (§2306.6729 and §2306.6706(b))

(2) **USDA Set-Aside.** At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through TRDO-USDA, ~~that meet the definition of a Rural Development, do not exceed 80 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2010 Housing Tax Credits" form by the Pre-Application submission deadline.~~ (§2306.111(d)(2)) If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2011~~2010~~ Competitive Housing Tax Credits issued by the Board in

~~2011~~2010 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-  
USDA Set-Aside for the ~~2011~~2010 Application Round as appropriate;

(3) At-Risk Set-Aside. At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified ~~designated~~ as At-Risk Developments. (§2306.6714) Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. An At-Risk Development is a Development that:—as defined in §50.3(14) of this chapter.—(§2306.6714) (§2306.6702)

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

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

(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701g);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

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

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

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31 of the year the Application is submitted); or

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

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

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

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

~~To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §50.3(14)(A) of this chapter, or provide evidence that it will renew, retain or preserve the financial benefit described in §50.3(14)(A) of this chapter; and must have filed an "Intent to Request 2010 Housing Tax Credits" form by the Pre-Application submission deadline. Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. [this paragraph was modified and moved to beginning of At-Risk paragraph above]~~

(c) Redistribution of Credits. (§2306.111(d)) If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides ~~depending on the quality of Applications submitted as evaluated under the factors described in §50.9(d) of this chapter, based on~~ the need to most closely achieve regional allocation goals and ~~then~~ the level of demand exhibited in the Uniform State Service Regions during the Application Round, ~~except that~~ However, if there

are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under ~~§49.7(g)(3), 50.9(d)(5)(C)~~ of this chapter, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)) As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§49.7~~50.8~~. Application Process.

(a) The application process has two parts, a pre-application which is voluntary and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An Applicant that does not provide an Application on or before the deadlines provided for herein is not eligible to be placed on the list of eligible Applicants to which awards of tax credits may be made. Pre-applications and Applications submitted to the Department are subject to restrictions on Ex Parte Communications as further described in paragraph (1) of this subsection and the Administrative Deficiency process as further described in paragraph (2) of this subsection. ~~Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results. (§2306.6704)~~

(1) Ex Parte Communications. (§2306.1113)

(A) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, except for communications that actually occur in properly posted open meetings, as permitted by §2306.1113 of the Texas Government Code a member of the Board may not communicate with any other Board member or with the following Persons:

- (i) an Applicant or Related Party; and
- (ii) any Person who is:

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

- (-a-) a General Contractor; and
- (-b-) a Developer; and
- (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
- (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

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

- (i) the Applicant or a Related Party; and
- (ii) any Person who is:

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

- (-a-) a General Partner or General Contractor; and
- (-b-) a Developer; and
- (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
- (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

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

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

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

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

- (I) the date, time, and means of communication;
- (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
- (III) the subject matter of the communication; and

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

(D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.

(E) subparagraph (A) of this paragraph does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed. [section inserted from its previous location]

(2) Administrative Deficiency Process. The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold) are not originally submitted in the Application (i.e. financing commitment missing entirely from the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

(A4) Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications. If an Application contains Administrative Deficiencies pursuant to ~~§50.3(2) of this chapter~~ which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then ~~for competitive Applications under the State Housing Credit Ceiling,~~ five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, revise the Unit mix (both income levels and bedroom mixes), or adjust their self-score except in response to a direct request from the Department as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(B) of this chapter (relating to Amendments) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score. [section inserted from its previous location and modified]

(B) Administrative Deficiencies for Tax Exempt Bond Applications. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately,

Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of \$500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.4 of this chapter (relating to Ineligibility). The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed. *[inserted from its previous location]*

(b)(a) ~~Pre-a~~Application Submission. The purpose of the pre-application process is to enable Applicants interested in pursuing the Application to assess generally who else is interested in submitting Applications and the nature of their proposed Development. Based on an understanding of the potential competition they can make a better and more informed decision whether they wish to proceed to prepare and submit an Application.

(1) As used herein a “complete pre-application” means a pre-application that meets all of the Department’s criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) The pre-application must be submitted in accordance with the Pre-application Acceptance Period and Final Delivery Date as identified in §49.3 in this chapter (relating to the Program Calendar).

(3) To submit the complete pre-application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete pre-application to the Department prior to the Pre-application Final Delivery Date.

(4) The pre-application must be accompanied by a paper certification with an original signature in the form provided in the pre-application. Furthermore, the pre-application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required in the application checklist.

(5) If a pre-application is not submitted to the Department on or before the applicable deadline indicated in §49.3 of this chapter (relating to the Program Calendar), the Applicant will be deemed to have not made a pre-application.

~~(6) Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period, December 8, 2009 through January 8, 2010, along with the~~The required ~~P~~pre-~~A~~Application ~~F~~fee as described in §~~49.14~~~~50.20~~ of this chapter (relating to Program Related Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department.

~~(7) Only one P~~pre-~~A~~application may be submitted by an Applicant for each site. ~~under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. Prior to the pre-application deadline While the Pre-Application Acceptance Period is open,~~ Applicants may withdraw their ~~P~~pre-~~A~~application and subsequently file a new ~~P~~pre-~~A~~application utilizing the original ~~P~~pre-~~A~~application ~~F~~fee that was paid as long as no evaluation was performed by the Department. ~~The Department is authorized though not required to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies.~~

(8) Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. The rejection of a ~~P~~pre-~~A~~application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

~~(b) Communication with the Department. Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §50.9(b) of this chapter. (§2306.1113)~~



~~(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a TRDO-USA Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §50.9(i)(14) of this chapter. Pre-Applications that are found to have Administrative Deficiencies will be handled in accordance with §50.9(d)(4) of this chapter. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.~~

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

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

~~(2) Evidence of propertySite eControl through March 1, 20112010 as evidenced by the documentation required under §49.8(a)(8)(A)50.9(h)(7)(A) of this chapter (relating to Threshold); and~~

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

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

~~(i) No later than December 8, 2009 the Pre-application Neighborhood Organization Request Date identified in §49.3 of this chapter, (relating to the Program Calendar), the Applicant must e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") a completed "Neighborhood Organization Request" letter as provided in the Ppre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an aArea that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an aArea that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;~~

~~(ii) If no reply letter is received from the local elected officials by January 1, 2010 the Pre-application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the pPre-application;~~

~~(iii) 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 provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the Ppre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.~~

~~(B) Not later than the date the Ppre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Ppre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of Notification is required in the form~~

of a certification ~~in the "Pre-Application Notification Certification Form"~~ provided in the ~~P~~pre-~~A~~application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in clauses (i) - (ix) of this subparagraph, in the event that the Department requires proof of ~~N~~notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the ~~P~~pre-~~A~~application is submitted.

- (i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site ~~as identified in subparagraph (A)(iii) of this paragraph;~~
  - (ii) Superintendent of the school district containing the Development;
  - (iii) Presiding officer of the board of trustees of the school district containing the Development;
  - (iv) Mayor of any municipality containing the Development;
  - (v) All elected members of the Governing Body of any municipality containing the Development;
  - (vi) Presiding officer of the Governing Body of the county containing the Development;
  - (vii) All elected members of the Governing Body of the county containing the Development;
  - (viii) State senator of the district containing the Development; and
  - (ix) State representative of the district containing the Development.
- (C) Each such notice must include, at a minimum, all of the following:
- (i) The Applicant's name, address, individual contact name and phone number;
  - (ii) The Development name, address, city and county;
  - (iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
  - (iv) ~~Statement of w~~Whether the Development proposes New Construction, ~~r~~Reconstruction, Adaptive Reuse or Rehabilitation;
  - (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (~~general family, Intergenerational Housing,~~ or elderly);
  - (vi) The approximate total number of Units and approximate total number of low-income Units;
  - (vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;
  - (viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and ~~any market rate Units, if applicable. the number of Units and the proposed rents for any market rate Units.~~ Rents to be provided are those that are effective at the time of the ~~P~~pre-~~A~~application, which are subject to change as annual changes in the area median income occur; and
  - (ix) The expected completion date if credits are awarded.

(D) Pre-applications not meeting the Pre-application Threshold Criteria identified in subsection (c) above will be terminated and the Applicant will receive a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Pre-application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. [inserted from "Pre-Application Threshold Criteria" section]

~~(de)~~ ~~P~~pre-~~A~~application Results. Only ~~P~~pre-~~A~~applications which have satisfied all of the ~~P~~pre-~~A~~application Threshold Criteria requirements set forth in subsection ~~(cd)~~ of this section and ~~§49.9(a)(14)50.9(i)(14)~~ of this chapter ~~(relating to Selection)~~, will be eligible for ~~P~~pre-~~A~~application points. The order and scores of those Developments released on the ~~P~~pre-~~A~~application Submission Log do not represent a ~~e~~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 ~~P~~pre-~~A~~application Submission Log. Inclusion of a Development on the ~~P~~pre-~~A~~application Submission Log does not ensure that an Applicant will receive points for a ~~P~~pre-~~A~~application.

~~§50.9.— Application; Submission; Communication with Department Employees; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2008 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations; American Recovery and Reinvestment Act.~~

~~(2)~~ (e)(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application in order to be considered for Housing Tax Credits.

(1) As used herein a “complete application” means an Application that meets all of the Department’s criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) For Applications submitted under the State Housing Credit Ceiling, the Application must be submitted by the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). The Full Application Delivery Date for Tax-Exempt Bond Developments is triggered by the Certificate of Reservation issued by the Texas Bond Review Board and is further defined in §49.11 of this chapter (relating to Tax-Exempt Bond Developments).

(3) To submit the complete application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete application to the Department.

(4) The Application must be accompanied by a paper certification with an original signature in the form provided in the Application. Furthermore, the Application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required by the application checklist.

(5) If an Application is not submitted to the Department on or before the applicable deadline indicated in paragraph (1) of this subsection, the Applicant will be deemed to have not made an Application.

(6) The required Application fee as described in §49.14~~50.20~~ of this chapter (relating to Program Related Fees), must be submitted with the Application in order for the Application to be accepted by the Department. to the Department during the Application Acceptance Period. Only complete Applications will be accepted.

~~All required volumes must be submitted as required by the Application Submission Procedures Manual and fully complete for submission with all required copies and received by the Department not later than 5:00 p.m. on the date the Application is due. A bookmarked electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order as required by the Application Submission Procedures Manual on a CD-R (non-rewritable) clearly labeled with the report type, Development name, and Development location is required for submission and must be received by the Department not later than 5:00 p.m. on the date the Application is due.~~

~~(7) Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, or revise the Unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §50.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this chapter. [last sentence of this paragraph has been moved to “Administrative Deficiencies” under §49.7]~~

~~(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §50.3(2) of this chapter which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department’s Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application~~

~~Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review [moved to beginning of §49.7 - "Application Process"]~~

~~(b) Ex Parte Communications.~~

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

~~(A) an Applicant or Related Party; and~~

~~(B) any Person who is:~~

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

~~(I) a General Contractor; and~~

~~(II) a Developer; and~~

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

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

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

~~(A) the Applicant or a Related Party; and~~

~~(B) any Person who is:~~

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

~~(I) a General Partner or General Contractor; and~~

~~(II) a Developer; and~~

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

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

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

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

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

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

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

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

~~(iii) the subject matter of the communication; and~~

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

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

~~(5) Paragraph (1) of this subsection does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed. [section moved to §49.7 "Application Process"]~~

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

~~does not produce the Development as represented in the Application; does not receive approval for an amendment to the Application by the Department prior to implementation of such amendment; or does not provide the necessary evidence for any points received by the required deadline:~~

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

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

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

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

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

~~(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed. *[moved to "Commitment and Determination Notices" section]*~~

~~(f) Evaluation Process. for Competitive Applications Under the State Housing Credit Ceiling. Applications submitted for ~~competitive~~ consideration (including Tax Exempt Bond Developments) ~~under the State Housing Credit Ceiling~~ will be reviewed according to the Eligibility, Threshold and for competitive applications under the State Housing Credit Ceiling, for Selection Criteria. ~~process outlined in this subsection.~~ An Application, during any of these stages of review, may be determined to be ineligible as further described in ~~§49.450.5~~ of this chapter (relating to Ineligibility); Applicants will be promptly notified in these instances.~~

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

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

~~(3) Eligibility and Threshold Criteria Review. Applications that appear to be most competitive will be evaluated for eligibility under §50.5(a)(7) – (9), (b) – (f) and §50.6 of this chapter. The remaining portions of the Eligibility Review under §50.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. The most competitive Applications will also be evaluated against the Threshold Criteria under subsection (h) of this section. The same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, an Applicant will be notified of its final score. *[deleted - can incorporate into the Tax Credit (Procedures) Manual as appropriate]*~~

~~(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §50.3(2) of this chapter which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under the State Housing Credit Ceiling, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.~~ *[section moved to §49.7 "Application Process" and modified.]*

~~(g5) Subsequent Evaluation of Applications and Methodology for Award Recommendations to the Board.~~ The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. ~~—i~~n general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. However, an Application may be reviewed by the Real Estate Analysis Division prior to the completion of the Eligibility and Threshold reviews. ~~This procedure~~ The procedure identified in paragraphs (1) - (6) of this subparagraph will also be used in making recommendations to the Board ~~as follows:~~

~~(A) Assignments will be determined by separately selecting the Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §50.7(b) of this chapter are attained;~~

~~(1B) Assignments will then be determined by selecting the~~ Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in ~~§49.6(2)50.7(b)~~ of this chapter (relating to USDA Set-Aside) are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;

(2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.6(b)(3) of this chapter (relating to At-Risk Set-Aside) of this chapter are attained;

~~(3C)~~ Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under ~~§49.6(a)50.7(a)~~ of this chapter (relating to Regional Allocation Formula), without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;

~~(4D)~~ If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after allocation under ~~subparagraph (3C)~~ of this ~~subsection paragraph~~ those tax credits shall then be made available in any other Rural Area in the state to the Application in the most underserved Rural sub-region as compared to the Region's Rural Allocation. (§2306.111(d)(3)) This will be referred to as the Rural collapse;

~~(5E)~~ If there are any tax credits remaining in any sub-region after the Rural collapse, in the Rural Regional Allocation or Urban Regional Allocation, they then will be combined and made available to the Application in the most underserved sub-region as compared to the sub-region's allocation. This will be referred to as the statewide collapse;

~~(6F)~~ Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met through the existing

competitive process, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed as provided in ~~§49.6(c)50.7(e)~~ of this chapter, (relating to Redistribution of Credits). If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in ~~§49.5(b)50.6(e)~~ of this chapter, (relating to Credit Amount), the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a ~~W~~waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. ((§2306.6710(a) - (f); §2306.111))

~~(h6) Underwriting Evaluation and Criteria.~~ The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate allocation level of Housing Tax Credits. ~~In determining an appropriate level of Housing Tax Credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous Housing Tax Credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to §42 of the Code, that the amount of Housing Tax Credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, found in §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any set-asides, change their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from Department staff to remedy an Administrative Deficiency as further described in §50.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §50.17(d) of this chapter. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under subsection (i)(1) of this section does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6710 and §2306.11) [the content of this section was moved partially to the "Administrative Deficiencies" section and partially to "Financial Feasibility" under Selection]~~

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

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

~~(i) New construction, the Developer fee cannot exceed 15% of the project's Total Eligible Basis, less Developer fees, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less; and~~

~~(ii) Acquisition/rehabilitation Developments, the acquisition portion of the Developer fee cannot exceed 15% of the existing structures acquisition basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the Developer fee cannot exceed 15% of the total rehabilitation basis, less Developer fee if the Development proposes 50 total Units or more, or 20% of the project's Total Eligible Basis, less Developer fees if the Development proposes 49 total Units or less. [section deleted and incorporated as appropriate into Real Estate Analysis Rules]~~

~~(17) Compliance Evaluation and Eligibility Review.~~ After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status ~~by the Department's Portfolio Management and Compliance Division,~~ in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under ~~§49.450.5(a) — (f)~~ of this chapter, (relating to Ineligibility).

~~(18) Site Evaluation.~~ Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form. ~~provided in the Application and the inspector shall provide a written report of such site evaluation.~~ The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, ~~and~~ educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TRDO-USDA Set-Aside, the Department may rely on the physical site inspection performed by TRDO-USDA.

~~(e) Evaluation Process for Tax Exempt Bond Development Applications.~~ Applications submitted for consideration as Tax Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.

~~(1) Eligibility and Threshold Criteria Review.~~ All Tax Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax Exempt Bond Development Applications will be confirmed for eligibility under §50.5 and §50.6 of this chapter and Applications will be evaluated in detail against the Threshold Criteria. Tax Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting the Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. ~~[deleted]~~

~~(2) Administrative Deficiencies.~~ If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of \$500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §50.5(b)(4) of this chapter. The time period for responding to a deficiency notice begins at the start of the



~~business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed. [moved to §49.7 - "Application Process"]~~

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

~~(4) **Site Evaluation.** Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section. [section (3) and (4) above are deleted]~~

~~(k) **Evaluation Process for Application Process for Rural Rescue Applications Under the 20122014 Credit Ceiling.** The Rural Rescue Applications submitted for consideration as Rural Rescue Applications pursuant to §50.10(c) of this chapter under the 2010 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §50.5 of this chapter; Applicants will be promptly notified in these instances.~~

~~(1) **Procedures for Intake and Review.**~~

~~(1A) **Submission Requirements.** Rural Rescue Applications for Rural Rescue deals may be submitted during the Rural Rescue Application Submission Period as identified in §49.3 of this chapter (relating to the Program Calendar) between March 2, 2010 and November 15, 2010 and must be submitted in accordance with §50.21 of this chapter. A complete Application must be submitted at least sixtyforty (6040) days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.1450.20(c) of this chapter (relating to Program Related Fees). Applicants must submit documents in accordance with the application checklist provided in the Tax Credit (Procedures) Manual for all Volumes, including Volume IV. ~~procedures set out in the 2010 Application Submission Procedures Manual for Volumes I, II, III and IV. Volume IV, evidencing Selection Criteria, MUST be submitted.~~~~

~~(B) Applicants do not need to participate in the Pre-Application process outlined in §50.8 of this chapter, nor will they need to submit pre-certification documents identified in subsection (g) of this section.~~

~~(A) Applications will be processed on a first-come, first-served basis. Applications unable to meet all Administrative eDeficiency and underwriting requirements within thirty (30) days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications most ableready to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.~~

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

~~(2) **Eligibility and Threshold Review.** All Rural Rescue Applications will first be reviewed pursuant to §49.8 and §49.9 of this chapter (relating to Threshold and Selection). ~~as described in this paragraph and eligibility will be confirmed pursuant to §50.5 and §50.6 of this chapter.~~ Additional eligibility requirements include ~~and~~ the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.~~

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

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

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

~~(ii) is being foreclosed; or~~

~~(iii) is being accelerated; or~~

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

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

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

**(34) Selection Criteria Review.** All Rural Rescue Applications will be evaluated against the Selection Criteria pursuant to §49.9 of this chapter and a score will be assigned to the Application. The minimum score for Selection Criteria as identified in §49.9(a) is not required to be achieved to be eligible.

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

~~(6) **Underwriting and Compliance Evaluation and Criteria.** The Department will further review all eligible Rural Rescue Applications for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate and in accordance with the underwriting rules in §§1.31-1.36 of this title. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of Housing Tax Credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.~~

~~(7) **Site Evaluation.** Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section. [sections (5), (6) and (7) above are deleted]~~

**(48) Credit Ceiling and Applicability of this chapter.** All Rural Rescue Applicants will receive their credit allocation out of the ~~20122010~~ Credit Ceiling and therefore, will be ~~required- subject~~ to follow the rules and guidelines identified in the ~~20122010~~ Qualified Allocation Plan ~~and Rules~~ (QAP). However, because the ~~20122010~~ QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered ~~by the Board~~ to have satisfied the requirements of the ~~20122010~~ QAP ~~and are waived from 2010 QAP requirements that are changes from the 2010 QAP, by having satisfied the requirements of the 2011 QAP,~~ to the extent permitted by statute.

**(59) Procedures for Recommendation to the Board.** Consistent with subsection (c) of this section, staff will make its recommendation to the Committee. The Committee will make ~~e~~Ccommitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §~~50~~49.10(a) of this chapter (relating to Board Decisions). Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the ~~20112010~~ Application Round, as required under subsection (g)~~(35)~~ of this section.

**(610) Limitation on Allocation.** No more than \$350,000 in credits will be forward committed from the ~~20112010~~ State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

~~(g) **Experience Pre-Certification Procedures.** No later than fourteen (14) days prior to the close of the Application Acceptance Period for Competitive Housing Tax Credit Applications, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for~~

~~Tax-Exempt Bond Applications or Applications not applying for Competitive Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Principals of the Development Owner, General Partner or the Developer have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. The individual requesting the certification must have completed the same type construction as the Application for tax credits is proposing (i.e. multifamily dwellings or single family residences). If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least \$15,000 of direct hard cost per unit.~~

~~(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:~~

~~(A) At least 200 residential units or, if less than 200 residential units, 80% of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or~~

~~(B) At least 36 residential units if the Development is a Rural Development; or~~

~~(C) At least 25 residential units if the Development has 36 or fewer total Units.~~

~~(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111—Standard Form of Agreement Between Owner & Contractor, AIA Document G704—Certificate of Substantial Completion, AIA Document G702—Application and Certificate for Payment, Certificate of Occupancy, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:~~

~~(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);~~

~~(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and~~

~~(C) The number of units completed or substantially completed. [moved to Threshold section]~~

#### §49.8. Threshold Criteria.

~~(a) **Threshold Criteria.** The following Threshold Criteria listed in this subsection are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process the Application will be terminated.~~

~~(1) **Completion and Submission of the Application.** which includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)~~

~~(2) **Governing Body Resolutions.** The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar) and may not be more than one year old from the date the Volume 1 is submitted to the Department.~~

~~(A) **Twice the State Average.** If the Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the 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.~~

~~(B) **Include in the Application a written statement of support from that Governing Body.** This statement must Such approval must reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))~~

~~(C) **For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 1, 2010 (or for Tax-Exempt Bond Developments no**~~

~~later than fourteen (14) days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or~~

~~(B) One Mile Three Year Rule. If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))~~

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

~~(ii) Has received an allocation of Housing Tax Credits or private activity bonds (including Tax-Exempt Bond Developments) for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and~~

~~(iii) Has not been withdrawn or terminated from the Housing Tax Credit Program;~~

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

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

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

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

~~(IV) The Governing Body, of the Local Political Subdivision Unit of General Local Government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the Governing Body vote or evidence required by this subparagraph must be received by the Department no later than April 1, 2010 (or for Tax Exempt Bond Developments no later than fourteen (14) days before the Board meeting where the credits will be committed) and may not be more than one (1) year old.~~

~~(v) In determining when an existing Development received an allocation as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(b) of this chapter. [Items (A) and (B) above inserted from prior "Ineligibility" section]~~

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

~~(i) The Development is in a Place whose population is less than 100,000;~~

~~(ii) The Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or~~

~~(iii) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 1, 2010 March 1, 2011 for Competitive Housing Tax Credit Applications (or for Tax Exempt Bond Development Applications no later than fourteen (14) days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report. [inserted from prior "Site and Development Restrictions" section]~~

~~(3) Rehabilitation Costs. Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with TRDO-USDA in which case the minimum is \$9,000. [inserted from prior "Site and Development Restrictions" section]~~

~~(4) Experience Certification. No later than the Experience Certification Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar), an Applicant must submit the documents required in this subsection to obtain the required certification. Upon receipt of the evidence required under this section,~~

a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Evidence must show that one of the Principals of the Development Owner, General Partner or the Developer have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. The individual requesting the certification must have completed the same type construction as the Application for tax credits is proposing (i.e. multifamily dwellings or single family residences). If rehabilitation experience is being claimed to qualify for an Application involving New Construction, then the rehabilitation must have been substantial and involved at least \$15,000 of direct hard cost per Unit. Experience must meet the criteria of both subparagraph (A) and (B) with evidence of such provided as stated in subparagraphs (C) and (D).

(A) One of the Principals of the Development Owner, General Partner, Developer or the General Contractor must provide evidence reasonably acceptable to the Department that they have acquired actual experience through previous participation in and subsequent completion of comparable residential units (single family, multifamily) as demonstrated by the submission of a housing tax credit Application, receipt of award, submission of post award activities (Commitment notice, eCarryover, 10% test, etc...), construction oversight, lease-up, stabilization, and receipt of IRS Forms 8609. Executive Directors of non-profits and public housing authorities may qualify for this experience requirement; and

(AB) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of: The Principal requesting the certificate must have experience with the same type of construction as the Application is proposing (single family, multifamily, new construction, rehabilitation, etc...) and meet one of the clauses (i) — (iii) and clause (iv) if proposing rehabilitation. have acquired their experience in connection with a development with at least 80% as many units as the units in the Development for which Application is being made, in no event less than 36 units. The Department will, in issuing an Experience Certificate, state any limitations. Persons who establish that they have participated in the development of 200 units or more will not be restricted. Experience of multiple parties may not be aggregated. Rehabilitation experience must have been substantial and involved at least \$15,000 of direct cost per Unit.

(i) At least 200 residential units or, if less than 200 residential units, 80% of the total number of Units the Applicant is applying to build (e.g., you person claiming experience must have 40 units successfully built in order to apply for 50 Units); or

(ii) At least 36 residential units if the Development is a Rural Development; or

(iii) At least 25 residential units if the Development has 36 or fewer total Units.

(iv) Rehabilitation experience must have been substantial and involved at least \$15,000 of direct cost per unit.

(C) Evidence for experience must clearly indicate that:

(i) The Principal was a Principal of the Development Owner, General Partner or Developer (of the dDevelopment submitted as experience) during the complete specified timeframe and process as identified in subparagraph (A) of this subsection; and

(ii) The Development has been completed (as evidenced by the number of Units completed) development agreements, partnerships agreements, must be accompanied by certificates of completion)

(iii) That tThe names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(iv) The number of units completed or substantially completed.

(BD) One or more of the following documents must be submitted as evidence of completion of the development:

(i) American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor,

(ii) AIA Document G704 - Certificate of Substantial Completion,

(iii) AIA Document G702 - Application and Certificate for Payment,

(iv) Certificate of Occupancy,

(v) IRS Form 8609, (only one for per development is required)

(vi) HUD Form 9822,

(vii) Development agreements,

(viii) Partnership agreements, or

(ix) or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member),

Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(i) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(ii) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(iii) The number of units completed or substantially completed.

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set Aside Eligibility. Documentation must be provided that confirms eligibility for all Set Asides under which the Application is seeking funding as required in the Application.

**(54) Certifications.** The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic common amenities selected for the Development. All Developments must meet at least the minimum threshold of points based on the total number of Units in the Development. These points are not associated with the ~~s~~Selection ~~e~~Criteria points in §49.9(a) of this chapter, subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. ~~Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants.~~ Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item (do not round). Applications for non-contiguous scattered site housing, including New Construction, ~~R~~Reconstruction, Adaptive Reuse, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.13(b)50.17(d) of this chapter (relating to Amendments ~~of Application subsequent to Allocation by Board~~) and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment ~~Notice~~, Determination Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points ~~(based on the total number of Units in the Development)~~ as follows:

(I) Total Units are less than 16, 1 point is required to meet Threshold~~0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet threshold for all other Developments;~~

(II) Total Units are 17-24, 23 points are required to meet Threshold;

(III) Total Units are 25 to 40, 34 points are required to meet Threshold;

(IV) Total Units are 41 to 76, 67 points are required to meet Threshold;

(V) Total Units are 77 to 99, 910 points are required to meet Threshold;

(VI) Total Units are 100 to 149, 132 points are required to meet Threshold;

(VII) Total Units are 150 to 199, 165 points are required to meet Threshold; or

(VIII) Total Units are 200 or more, 198 points are required to meet Threshold.

(ii) The Amenities for selection include those items listed in subclauses (I) - (XXVI) of this clause. Both general population ~~Developments designed for families~~ and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population. The Applicant is instructed to review Chapter 60 of this title relating to the Department's Compliance Rules for detailed definitions and standards as it relates to the amenities listed in this subparagraph.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (~~1~~2 points);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one washer and dryer for each 25 Units~~front-loading washer~~ (1 point);

(VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);

(VII) Covered pavilion that includes barbecue grills and tables (2 points);

(VIII) Swimming pool (3 points);

(IX) Furnished fitness center ~~equipped with a minimum of two of the following fitness equipment options with at least one option per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five-~~(2 points);

(X) Equipped and functioning business center or equipped computer learning center ~~with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine-~~(2 points);

(XI) Furnished Community room (1 point);

(XII) Library with an accessible sitting area (separate from the community room) (1 point);

(XIII) Enclosed community sun porch or covered community porch/patio (2 points);

(XIV) Service coordinator office in addition to leasing offices (1 point);

(XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);

(XVI) Health Screening Room (1 point);

(XVII) Secured Entry (elevator buildings only) (1 point);

(XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);

(XIX) Community Dining Room w/full or warming kitchen (3 points);

(XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point);

(XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);

(XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(XXIII) Furnished and staffed Children's Activity Center (3 points);

(XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points); ~~or~~

(XXV) Dog Park (2 points); or

~~(XXVI) Green Building amenities that include the following (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities):~~

(-a-) Development Energy Savings (1 point for each item):

~~(-a-) Passive solar heating/cooling (3 points maximum);~~

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

~~(-2-) One point if in addition to the above, if the project utilizes a narrow floor plate (less than 40 feet) and single loaded corridors to optimize daylight penetration and passive ventilation; and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east;~~

(-1-) at least 50% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved grey water collection system;

(-2-) native trees and plants installed that are appropriate to the site's soils and microclimate and located to allow for shading in the summer and allow for heat gain in the winter; or

(-3-) The Development qualifies for and receives Renewable Energy Tax Credits. The Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification. [inserted from 30% boost section]

(-b-) Tenant Energy Savings (2 points for each item):

(-1-) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application;

(-2-) Passive solar heating/cooling;

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

(-B-) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet) and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;

(-C-) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August); or

(-D-) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west; applies only to rehabilitation where windows are not replaced with Energy Star rated windows.

~~(-3b-) Water conserving features (2 points maximum, 1 point for each):~~

~~(-A1-) Install low-flow or high efficiency toilets using less than or equal to 1.28 gallons/flush or that exceed State requirements WaterSense certified;~~

~~(-B2-) Install bathroom lavatory faucets, and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that exceed the State standard. do not exceed 1.5 gallons/minute. Applies to all. All fixtures throughout the development must meet the standard at the time of Application. Rehabilitation projects/Developments may choose to install compliant faucet aerators instead of replacing entire faucets; or~~

~~(-C6-) Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development. (2 points);~~

~~(-d-) Irrigation and landscaping (2 points):~~

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

~~(-2-) selection of native trees and plants that are appropriate to the site's soils and~~

~~microclimate;~~

~~(4-e-) Sub-metered utility meters on Rehabilitation Development without existing sub-meters; or (2 points maximum);~~

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

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

~~(5-f-) Energy efficiency (4 points maximum);~~

~~(-A1-) Three points if If the development uses Energy-Star qualified windows and glass doors exclusively; insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC, and domestic hot water heaters, or and insulation that exceeds Energy Star standards; or~~

~~(-B2-) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a demonstrating a certified HERS score of 85 or lower;~~

~~(6-g-) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) (2 points); or~~

~~(-h-) Photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);~~

~~(-1-) Photovoltaic panels that total 10 kW (1 point);~~

~~(-2-) Photovoltaic panels that total 20 kW (2 points);~~

~~(-3-) Photovoltaic panels that total 30 kW (3 points);~~

~~(-i-) Construction waste management to divert a minimum of 50% of construction waste from landfills (1 point);~~

~~(-j-) Implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);~~

~~(7-k-) Recycling service provided throughout the compliance period. (1 point);~~

~~(-l-) Water permeable paving and walkways (at least 20% of walkways and parking) (1 point);~~

(-c-) Other Green Features/Indoor Health (1 point for each item):

~~(-1m-) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation (1 point);~~



~~(-2a-)~~ Healthy flooring, provide at least one of the following for 50% of flooring: finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum seven (7) year wear through warranty ~~(-1 point)~~; or

~~(-3e-)~~ Healthy finish materials, use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard ~~(-1 point)~~.

(-d-) LEED (Leadership in Energy and Environmental Design) Certification. If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.

~~(B) A certification that the Development will have all of the following Amenities at no charge to the tenants. All New Construction or Reconstruction Units must provide the amenities in clauses (i) – (viii) of this subparagraph. Rehabilitation (excluding Reconstruction) and Adaptive Reuse must provide the amenities in clauses (ii) – (viii) of this subparagraph unless expressly identified as not required. (§2306.187)~~

~~(i) All New Construction Units must be wired with RG-6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;~~

~~(ii) Blinds or window coverings for all windows;~~

~~(iii) Disposal and Energy Star or equivalently rated dishwasher (not required for TRDO- USDA or SRO Developments);~~

~~(iv) Energy Star or equivalently rated Refrigerator (not required for SRO Developments);~~

~~(v) Oven/Range (not required for SRO Developments);~~

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

~~(vii) Energy Star or equivalently rated ceiling fans in living areas and bedrooms; and~~

~~(viii) Energy Star or equivalently rated lighting in all Units, which may include compact florescent bulbs. [section (B) above moved to §49.4 "Ineligible Developments" and modified]~~

~~(B) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the Selection Criteria points in §49.9(a)(4) of this chapter (relating to Selection) subsection (i) of this section. Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.~~

~~(i) 550 square feet for an eEfficiency Unit;~~

~~(ii) 650 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development ~~nor an age restricted unit in an Intergenerational Development~~; 550 square feet for a one Bedroom Unit in a Qualified Elderly Development ~~or an age restricted unit in an Intergenerational Development~~;~~

~~(iii) 900 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development ~~nor an age restricted unit in an Intergenerational Development~~; 700 square feet for a two Bedroom Unit in a Qualified Elderly Development ~~or an age restricted unit in an Intergenerational Development~~;~~

~~(iv) 1,000 square feet for a three Bedroom Unit; and~~

~~(v) 1,200 square feet for a four Bedroom Unit.~~

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

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

~~(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period~~

following the date of the Commitment-~~Notice~~ until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment-~~Notice~~ is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(~~FG~~) Pursuant to §2306.6722 of the Texas Government Code, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C, and this subparagraph. (§2306.6722 and §2306.6730)

(~~GH~~) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(~~HI~~) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. ~~All Units must be air-conditioned.~~ The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(~~IJ~~) A certification that the Development will be built by a General Contractor ~~that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor~~ hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(~~JK~~) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186, Texas Government Code and as further described in §1.37 of this title.

(~~KL~~) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter (relating to Selection) subsection (i)(2) of this section, has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §49.9(a)(2)(A)(vi) to meet the requirements under §49.9(a)(2) of this chapter subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in ~~20112010~~.

(~~LM~~) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title (relating to the Department's Compliance Rules).

(~~MN~~) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

~~(N) A certification that the Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veteran's and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department. [inserted from Selection Criteria]~~

~~(O) If the A certification that the Developer or Principal of the Applicant has not been voluntarily or involuntarily removed by the lender, equity provider, limited partners or any other owners or investors, however designated, or the Department in the past five (5) years for failure to perform obligations. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. If a removal has occurred they must disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit signs the certification, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. -[inserted from Selection Criteria - "Penalties"]~~

~~(65) Architectural Drawings Design Items. This exhibit will provide:~~

~~(A) All of the architectural drawings identified in clauses (i) – (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (ii) of this subparagraph are required:~~

~~(i) A site plan which:~~

~~(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;~~

~~(II) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application; and~~

~~(III) Identifies all residential and common buildings; and~~

~~(IV) Clearly delineates the flood plain boundary lines and shows all easements.~~

~~(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each Unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and~~

~~(iii) Unit floor plans for each type of Unit. The Net Rentable Areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments, are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Units types that vary in Net Rentable Area by 10% from the typical Unit; and~~

~~(B) A boundary survey of the proposed Development Site and of the property to be purchased. In cases where more property is purchased than the proposed Development Site, the survey or plat must show the survey calls for both the larger site and the Development Site. The survey must clearly delineate the flood plain boundary lines and show all easements. The survey does not have to be recent; but it must show the property purchased and the property proposed for the Development Site. In cases where the Development Site is only a part of the site being purchased, the depiction or drawing of the Development Site may be professionally compiled and drawn by an architect, engineer or surveyor.~~

~~(76) Evidence of the Development's Development Costs, and Corresponding Credit Request and Syndication Information, as described in subparagraphs (A) – (G) of this paragraph.~~

~~(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1)) [moved to "Financing Requirements" section]~~

~~(AB) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period.~~

~~(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3)) [moved to "Financing Requirements" section]~~

~~(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD or otherwise qualifying for a 30% increase in Eligible Basis, pursuant to the §42(d)(5)(C) of the Code or §50.6(h)(3) and (4) of this chapter, if permitted under §50.6(h) of this chapter, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual. [deleted]~~

~~(E) Rehabilitation Developments (including reconstruction) and Adaptive Reuse must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.~~

(~~BF~~) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(~~CG~~) If projected site work costs (excluding ineligible demolition costs) include unusual or extraordinary items or exceed \$9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

~~(87) Evidence of r~~Readiness to p~~Proceed, as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:~~

(A) Site Control. Evidence of ~~Property~~Site ~~e~~Control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided; ~~and if the acquisition can be characterized as an identity of interest transaction as described in §1.32 of this title, items described in clause (iv) of this subparagraph must also be provided:~~

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least forty-five (45) years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits by the same Development Owner, Applicant or Affiliate as indicated at pre-application. For Tax Exempt Bond Development Applications, site control must be valid through December 1, ~~2010~~2009 with option to extend through March 1, ~~2011~~2010 (Applications submitted for lottery) or ninety (90) days from the date of the ~~Certificate of bond r~~Reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of ~~s~~Site ~~e~~Control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. Proof of consideration, as specified in the contract, must be submitted.

(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title, (relating to the Department's Underwriting Rules and Guidelines) subclauses (I) - (III) of this clause must be provided, the Applicant must provide (not required at Pre-Application):

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(-b-) Any other verifiable costs of owning, holding, or improving the Property that, when added to the value from subclause (I) of this clause, justifies the Applicant's proposed acquisition amount.~~-~~

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, ~~a calculated return on equity at a rate consistent with the historical returns of similar risks, the~~ capitalized costs of any physical improvements made to the property that benefit the proposed Development, the cost of rezoning, replatting ~~or developing the property, and~~ or any off-site costs to provide utilities or improve access to the property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the subject Development's award will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, ~~a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow~~ the cost of exit taxes

not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

~~(v) As described in clauses (ii) and (iii) of this subparagraph, property control must be continuous. Closing on the property is acceptable, as long as evidence is provided that there was no period in which control was not retained.~~

(B) Zoning. Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction, Adaptive Reuse or ~~R~~Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government~~Local Political Subdivision~~ or another local official with appropriate jurisdiction stating that ~~(For Tax Exempt Bond Applications the items in subclauses (I) – (III) of this clause must be submitted no later than fourteen (14) days prior to the Board meeting when the housing tax credits will be considered):~~

(I) The Development is located within the boundaries of a ~~Local Political Subdivision~~Unit of General Local Government which does not have a zoning ordinance; and either subclause (II) or (III) of this clause;

(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or ~~R~~Reconstruction Developments, a letter from the chief executive officer of the ~~Local Political Subdivision~~Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government~~political subdivision~~ a release agreeing to hold the Unit of General Local Government~~political subdivision~~ and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) ~~The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded.~~No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the ~~political subdivision~~Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Financing Requirements.

(1) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to ~~the Rules this chapter~~ must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in subclauses (i) - (iv) of this ~~subparagraph~~ clause:

(i) ~~Bona fide~~ Financing ~~is~~ in place as evidenced by:

~~(a-)~~ A valid and binding loan agreement; and

~~(b-)~~ Deed(s) of trust in the name of the Development Owner as grantor; or

~~(c-)~~ For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR §3560.406 and a copy of the original loan documents; or

(iii) ~~Bona fide~~ Commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and includes the following as identified in (a-) - (d-) of this subparagraph:

~~(a-)~~ which has ~~Has~~ been executed by the lender; and

~~(b-)~~ (the A minimum loan term of the loan must be for a minimum\_ of fifteen (15) years with at least a thirty (30) year amortization; ~~); and~~

~~(c-)~~ The commitment must state an expiration date; and

~~(d-)~~ and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or

(iii) Any federal, state or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

~~(i) Evidence from the lending agency that an application for funding has been made or a letter from the funding entity indicating that funds for which the Applicant intends to apply for, will become available after March 1, 2010, along with a statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested; and~~

~~(a-)~~ A term sheet or commitment from the lending agency which clearly describes the amount and terms of the funding, ~~and the date by which the funding determination will be made and any commitment issued,~~ must be submitted. If applying for points under §49.9(a)(5) of this chapter (relating to Selection) then documentation must be submitted as required by the deadlines stated therein; and

~~(b-)~~ Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the application checklist in the Tax Credit (Procedures) Manual Application Submission Procedures Manual; and

~~(iv) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or~~

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period; ~~;~~

(ii) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and

replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application; and (§2306.6705(1))

(iii) Provide a term sheet or letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) Tax Assessment and Title. Provide the documents in clauses (i) and (iii) of this subparagraph:

~~(i) A copy of the full legal description for the Development Site; and~~

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

(iii) A copy of:

(I) The current title policy (or title status report if on Tribal Land) including a legal description which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(II) a current title commitment including a legal description, with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease;

(III) If the title policy, title status report, or commitment is more than six (6) months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment must be provided.

~~(98) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Notifications. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.~~

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three (3) months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the ~~Ppre-A~~Application ~~Threshold~~ for the same Application and satisfied the Department's review of ~~Pre-A~~Application Threshold, then no additional notification is required at Application. However, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from ~~Ppre-A~~Application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, ~~Intergenerational Housing~~ or ~~family general~~). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three (3) months prior to the date the Volume III of the Application is submitted.

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

(I) No later than the Full Application Neighborhood Organization Request Date as identified in §49.3 of this chapter (relating to the Program Calendar) ~~January 20, 2010 for Competitive Housing Tax Credit Applications (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than fourteen (14) days prior to submission of the Threshold documentation)~~, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Aarea that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Aarea that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(II) If no reply letter is received from the local elected officials by [the Full Application Response to Neighborhood Organization Request Date February 19, 2010](#) ~~(or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by seven (7) days prior to the submission of the Application)~~, then the Applicant must certify to that fact in the ~~"Application Notification-Certification Form"~~ provided in the Application;

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application, in the ~~"Application Notification-Certification Form"~~ provided in the Application.

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

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

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

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the Governing Body of any municipality containing the Development;

(V) All elected members of the Governing Body of any municipality containing the Development;

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

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

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

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

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

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

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

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

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

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

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

(B) **Signage on Property or Alternative.** A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. [The sign must identify that a residential development is being proposed and must provide contact](#)



information for the Applicant in the form of a phone number or web address where they can obtain more information. ~~For Competitive Housing Tax Credit Applications the date, time and location of the public hearing, as published by the Department and closest to the Development Site, must be included on the sign. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond Tax-Exempt Fiscal Responsibility Act (TEFRA) public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty (20) feet of, and facing, the main road adjacent to the site. The Applicant shall make reasonable efforts to sign shall be continuously maintained the sign on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within thirty (30) days of submission and the date, time and location of the TEFRA hearing is indicated on the sign at least thirty (30) days prior to the date of the scheduled hearing.~~ In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, evidence of the applicable ordinance or code or restrictive covenant must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

~~(109) Evidence of the Development's pProposed eOwnership sStructure, and the Applicant's previous experience as described in subparagraphs (A)–(D) of this paragraph.~~

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

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of name reservation of the entity name from the Texas Office of the Secretary of State; ~~or~~

~~(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority in the form of a Certificate of Filing from the Texas Office of the Secretary of State. [delete - already addressed at Commitment]~~

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive

directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The ~~2011~~2019 versions of these forms, as required in the Uniform Application, must be submitted. Units of ~~General~~ Local ~~g~~Government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

~~(D) The experience certification, as further described under subsection (a)(4) of this section, is submitted that reflects a Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals has a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen (14) days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification Person that appears in the organizational chart provided in subparagraph (A) of this paragraph.~~

~~(11)10 Evidence of the Development's projected income and eoperating expenses, as described in subparagraphs (A) - (D) of this paragraph:~~

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties);

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement; (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate;

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph;

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described:

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six (6) months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available ~~and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided;~~ and

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

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

(iii) For ~~Intergenerational Housing Applications or~~ Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

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

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

~~(12)11 Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.~~

~~(A) All Applications under the State Housing Credit Ceiling involving a nonprofit General Partner, regardless of whether the Nonprofit Set-Aside was selected ~~the Set-Aside applied under~~, in which the~~

Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in ~~clauses (i) and (ii) of~~ this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609, (2306.6706) Tax-Exempt Bond Applications only need to submit the information in clauses (A) and (B) of this subparagraph.

(A) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity; ~~and~~

(B) ~~The "Nonprofit Participation Exhibit" as provided in the Application; and~~

~~(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §50.7(b)(1) of this chapter, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i)–(iii) of this subparagraph.~~

(C) A Third Party legal opinion stating:

(i) That the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion; and

(ii) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member; and otherwise meet the requirements of §42(h)(5) of the Code; and

(iii) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

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

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

(D) A copy of the nonprofit organization's most recent audited financial statement; and

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

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

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

~~(12) Applicants applying for acquisition credits must provide:~~

~~(A) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and~~

~~(B) An "Acquisition of Existing Buildings Form." [deleted - addressed in Appraisal section]~~

(13) **Authorization to Release Credit Information.** The authorization to release credit information must be unbound and clearly labeled. An "Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(14) **Supplemental Threshold Reports.** ~~All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraph (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions—The Third Party reports as required in this subsection must meet the requirements stated in subparagraphs (A)–(F) of this paragraph. The entire report must be submitted on or before the Third Party Report Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). If the entire report is not received by that time, the Application will be terminated and will be removed from consideration. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name, and Development location are required.~~

(A) A Phase I Environmental Site Assessment (ESA) report (required for all Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than twelve (12) months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than twelve (12) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three (3) months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report;

(iii) Prepared in accordance with [§1.35 of this title \(relating to the Department's Environmental Site Assessment Rules and Guidelines\)](#); ~~§1.35 of this title; and~~

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements; ~~and-~~

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

(B) A comprehensive Market Analysis report (required for all Developments):

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in [§1.33 of this title \(relating to the Market Analysis Rules and Guidelines\)](#); ~~§1.33 of this title;~~

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the methodology prescribed in [§1.33 of this title \(relating to the Department's Market Analysis Rules and Guidelines\)](#); ~~§1.33 of this title; and~~

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required ~~for Rehabilitation Developments and Identity of Interest transactions under paragraph (7) or (12) of this subsection and~~ prepared in accordance with [§1.34 of this title \(relating to the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines\)](#); ~~§1.34 of this title~~, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055, §42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report (required for Rehabilitation, ~~R~~Reconstruction and Adaptive Reuse Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period;

(iii) Prepared in accordance with [§1.36 of this title \(relating to the Department's Property Condition and Assessment Rules and Guidelines\)](#); ~~§1.36 of this title; and~~

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title relating to Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the [§1.34 of this title \(relating to the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines\)](#); ~~§1.34 of this title;~~ and

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

~~(G) The requirements for each of the reports identified in subparagraphs (A) — (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.~~

~~(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or~~

~~(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 1, 2010. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CDT, April 1, 2010. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration; (iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.~~

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

#### [§49.9\(i\)](#) Selection Criteria.

[\(a\)](#) All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 118, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: [227240](#).

~~(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of 28 points for this item. No partial points will be awarded. Receipt of feasibility points under this paragraph does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division, and, conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive all possible points under this paragraph. Evidence will include the following documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection [§49.8\(a\)\(8\)\(C\)\(h\)\(7\)\(C\)](#) of this [chaptersection](#). To qualify for 20 points ~~†~~the supporting financial data shall include:~~

(A) A fifteen ~~(15)~~ year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five (5) years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen (15) years.

(C) For Developments maintaining existing receiving financing from TRDO-USDA, a current note balance must be provided or the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form of documentation of the existing loan deemed acceptable by the Department to shall meet the requirements of this section.

(D) To qualify for an additional 8 points, the commitment letter from the permanent or construction lender must indicate that they have reviewed the Applicant's financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development. Furthermore, the letter must describe those standards that such lender would require in connection with the proposed Development. If at any time the Application is under consideration by the Department and the lender changes, the Applicant must provide a subsequent letter from the new lender addressing net worth and liquidity under the new lender's standards in order to remain eligible for the additional 8 points.

(2) Quantifiable Community Participation. (§2306.6710(b)(1)(B); §2306.6725(a)(2)) ~~from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site.~~ Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development ~~s~~Site. ~~(§2306.6710(b)(1)(B); §2306.6725(a)(2))~~ It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under ~~§49.8(a)(9) subsection (h)(8)(A)(ii)~~ of this ~~chapter (relating to Notifications) section~~ if the organization provides the information and documentation required in subparagraphs (A) and (B) ~~(C)~~ of this paragraph. It is also possible that ~~a~~ Neighborhood ~~o~~rganizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph ~~(1811)~~(B) of this subsection.

(A) ~~Basic Submission Requirements for Scoring.~~ Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet ~~one letter (and enclosures)~~ that represents the organization's input. In order to receive a point score, the form letter (and enclosures) must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no later than the Quantifiable Community Participation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar), March 1, 2010, for letters relating to Applications that submitted a Pre-Application, or April 1, 2010 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Director of Multifamily Finance (Neighborhood Input)." ~~Forms~~ Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form organization's letter (and enclosures) must:

(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by two officials or board members of the Neighborhood Organization ~~the persons~~ with the authority to sign on behalf of the ~~a~~Neighborhood ~~o~~rganization, and include ~~provide~~:

(I) the street and/or mailing addresses for the signers of the letter;

(II) day and evening phone numbers for the signers of the letter;

(III) ~~and~~ e-mail addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization; and

(IV) a written description and map of the organization's geographical boundaries;

(iii) Certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §49.3 of this chapter (relating to the Program Calendar) March 1, 2010 contain the proposed Development Site;

(iv) Certify that the organization meets the definition of "Neighborhood Organization"; ~~as defined in §50.3(68) of this chapter. For the purposes of this section, a "Neighborhood Organization" is defined~~

as an organization of persons living near one another within the organization's defined boundaries ~~in effect March 1, 2010~~ that contain the proposed Development ~~s~~Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two (2) or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or ~~r~~Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) ~~Include documentation showing that the organization is on record as of the Full Application Delivery Date March 1, 2010 with the state or county in which the Development is proposed to be located. The receipt of the QCP form letter, by the Department on or before March 1, 2010, that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet and the 2010 OAP, will constitute being on record with the State. The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include in its letter, a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization a written description and map of the organization's geographical boundaries; and proof that the boundaries described were in effect as of March 1, 2010. This request must be received no later than March 1, 2010. Acceptance of this documentation will be subject to Department approval.~~ The Department is permitted to issue an Administrative dDeficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) For purposes of this section, if there is no Neighborhood Organization already 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 provided that no Neighborhood Organization exists and that such assistance is limited to:

(I) The use of a facsimile, copy machine/copying, email, and accommodations at public meetings;

(II) Technical assistance, limited to completing the QCP Neighborhood Organization Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(III) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(IV) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries;

~~Accurately certify that the Neighborhood Organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered, with the exception of an identity of interest, to be an agent of the Application) in the 2010 Competitive Housing Tax Credit Application Round, that the organization and any member did not accept money or a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the Neighborhood Organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph). Any deficiency notices issued to the Neighborhood Organization will also be sent to the Applicant for information purposes only. Applicants may not provide delivery assistance of any communication between the Neighborhood Organization and the Department and Applicants may not assist the Neighborhood Organization in preparing its response to a deficiency notice. Applicants may provide information about the deficiency notice process or deadlines to a Neighborhood Organization;~~

(vii) A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers. The Department may exclude from consideration Neighborhood Organizations that do not ~~must also~~ comply, ~~as applicable,~~ with their own bylaws or other constitutive or governing documents;:-

(viii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and

(ix) ~~The form Letters from the Neighborhood Organizations for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the Neighborhood Organization in the Administrative Deficiency process as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization., and subsequent correspondence from Neighborhood Organizations, may not be provided via the Applicant which includes facsimile and e-mail communication.~~

(B) ~~Scoring of Letters (and Enclosures).~~ The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) ~~The score awarded for each letter for this exhibit will be based on the following: range from a maximum of +24 points for the position support to +12 points for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter.~~

(I) Support letters will receive 24 points. Such letters must make a direct statement of support. Support by inference (i.e. "The city supports the Development and we support the city" will not suffice); or

(II) No reason for support or opposition or is unclear will be considered ineligible and scored as neutral (1842 points); or

(III) Applications for which there are no existing Neighborhood Organizations will receive a maximum score of 12 points; or

(IV) Opposition letters (must state reasons for opposition) will receive 0 points;

(IV) Applications that receive multiple eligible letters, the average score of all eligible letters will be applied to the Application as follows:

(-a-) 12 points if one letter is received in opposition and one letter is received in support;

(-b-) 18 points if one letter is received in opposition and two letters are received in support;

(-c-) 0 points if 2 opposition letters are received.

(ii) The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(iii) The Department highly values quality public input addressed to the merits of a Development. Input that ~~points out~~ identifies matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

~~(iii) In general, letters that meet the requirements of this paragraph and:~~

~~(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero); or~~

~~(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).~~



~~(iv) If an Application receives multiple eligible letters, the average score of all eligible letters will be applied to the Application.~~

~~(v) Applications for which no letters from Neighborhood Organizations are scored will receive a neutral score of +12 points.~~

~~(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the Neighborhood Organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail addresses or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within five (5) business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines except in response to an e-mail or facsimile from the Department specifically requesting additional information.~~

(3) The Income Levels of Tenants of the Development. (~~§§2306.111(g)(3)(B); 2306.111(g)(3)(E); 2306.6710(b)(1)(C); 2306.6710(e); and 42(m)(1)(B)(ii)(I)~~) Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (~~C,F~~) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). ~~If a Development includes market rate or non-restricted Units, to qualify for these points at least 10% of all the Units that are not Low Income Units (i.e. market rate or non-restricted Units) in the Development must be set aside with incomes at or below 80% of AMGI.~~ The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. (~~§§2306.111(g)(3)(B); 2306.111(g)(3)(E); 2306.6710(b)(1)(C); 2306.6710(e); and 42(m)(1)(B)(ii)(I)~~)

(A) 22 points if at least 80% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or

(C) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; ~~or~~

~~(D) 18 points if at least 10% of the Low Income Units in the Development are set aside with incomes at or below 30% of AMGI; or~~

~~(E) 16 points if at least 40% of the Low Income Units in the Development are set aside with incomes at or below 50% of AMGI; or~~

~~(F) 14 points if at least 35% of the Low Income Units in the Development are set aside with incomes at or below 50% of AMGI.~~

(4) The Size and Quality of the Units (~~Development Characteristics~~). (~~§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)~~). Applications may qualify to receive up to 20 points. ~~Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D) and §42(m)(1)(C)(iii))~~

(A) Size of the Units (6 points). ~~Applications may qualify to receive 6 points.~~ The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

(i) 600 square feet for an efficiency Unit;

- (ii) 700 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development ~~or an age-restricted unit in an Intergenerational Development~~; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development ~~or an age-restricted unit in an Intergenerational Development~~;
- (iii) 950 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development ~~or an age-restricted unit in an Intergenerational Development~~; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development ~~or an age-restricted unit in an Intergenerational Development~~;
- (iv) 1,050 square feet for a three Bedroom Unit; and
- (v) 1,250 square feet for a four Bedroom Unit.

(B) Quality of the Units (14 points). ~~Applications may qualify to receive 14 points.~~ Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - ~~(xvix)~~ of this subparagraph, ~~not to exceed 14 points in total~~. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding ~~R~~Reconstruction) or Single Room Occupancy may receive 1.5 points for each point item, ~~not to exceed 14 points in total~~ (do not round).

- (i) Covered entries (1 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
- (iii) Microwave ovens (1 point);
- (iv) Self-cleaning or continuous cleaning ovens (1 point);
- ~~(v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);~~
- (vi) Refrigerator with icemaker (1 point);
- ~~(vii) Laundry connections (2 points); [moved to "Ineligible Developments" section]~~
- (viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
- ~~(viiix) Laundry equipment (washers and dryers) for each individual uUnit including a front loading washer and dryer in required UFAS compliant Units (3 points);~~
- ~~(viiiix) Thirty (30) year architectural shingle roofing (1 point);~~
- ~~(ixxi) Covered patios or covered balconies (1 point);~~
- ~~(xixii) Covered parking (including garages) of at least one covered space per Unit (2 points);~~
- ~~(xiiix) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points) (Applicants may not select this item if clause (xiix) of this subparagraph is selected);~~
- ~~(xiiiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 point) (Applicants may not select this item if clause (xiiix) of this subparagraph is selected);~~
- ~~(xiiiv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 and roof at a minimum R-30 (3 points);~~
- ~~(xivvi) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (3 points);~~
- ~~(xvxi) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and RReconstruction or radiant barrier in the attic for Rehabilitation (excluding RReconstruction) (3 points); or~~
- ~~(xviix) High Speed Internet service to all Units at no cost to residents (2 points); or~~
- ~~(xix) Fire sprinklers in all Units (2 points). [moved to "Ineligible Developments" section]~~

(5) The Commitment of Development Funding by ~~Local Political Subdivisions~~ Units of General Local Government. (§2306.6710(b)(1)(E)) Applications may qualify to receive up to 18 points ~~for qualifying~~ under this paragraph, ~~provided for under Development Funding. (§2306.6710(b)(1)(E))~~

(A) ~~Basic Submission Requirements for Scoring~~. Evidence of the following must be submitted in accordance with the application checklist in the Tax Credit (Procedures) Manual ~~Application Submission Procedures Manual (ASPM)~~.

- (i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Units in the Development. ~~Total Housing Development Costs, as defined in this chapter, unless otherwise stipulated in this section.~~
- (ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. ~~For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.~~

(iii) An Applicant may substitute any source in response to an [Administrative](#) Deficiency Notice or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to [§49.8\(a\)\(8\)\(A\)subsection \(h\)\(7\)](#) of this [chapter section](#) to qualify. The value of in-kind contributions may only include the time period between award, or August 2, ~~2011~~2010 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph will be counted. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the [Unit of General Local Government](#) ~~Local Political Subdivision~~ authorizing the Applicant to act on behalf of the Governing Body of the [Unit of General Local Government](#)~~Local Political Subdivision~~ in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the [Unit of General Local Government](#)~~Local Political Subdivision~~ authorizing the Applicant to act on behalf of the [Unit of General Local Government](#)~~Local Political Subdivision~~ in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract remaining as of December 31st of the application year is submitted from the [Unit of General Local Government](#)~~Local Political Subdivision~~. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity ~~and a letter from the funding entity indicating that the application was received~~; or a letter from the funding entity indicating that [the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011. This letter does not have to confirm that the funds will be awarded to the subject Application, but that awards with respect to the Applications under consideration for the funding cycle will be announced by the previously stated deadline.](#) ~~funds for which the Applicant intends to apply for, will become available after March 1, 2010, along with a~~ statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested [must be submitted](#). For in-kind contributions, evidence must be submitted in the Application from ~~Local Political Subdivision~~[Unit of General Local Government](#) substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment ~~Notice~~ is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the [Unit of General Local Government](#)~~Local Political Subdivision~~ for the Development Funding to the Department. If the funding commitment from the [Unit of General Local Government](#)~~Local Political Subdivision~~ has not been received by the date the Department's Commitment ~~Notice~~ is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment ~~Notice~~ will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the [Unit of General Local Government's](#) ~~Local Political Subdivision's~~ Development Funding, the Commitment ~~Notice~~ will be rescinded and the credits reallocated.

(x) Funding commitments from a Unit of General Local Government~~Local Political Subdivision~~ will not be considered final unless the Unit of General Local Government~~Local Political Subdivision~~ attests to the fact that any funds committed were not first provided to the Unit of General Local Government~~Local Political Subdivision~~ by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government~~Local Political Subdivision~~ or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the amount of funds to be made available to the Development on a per unit basis, based on the total number of Units in the Development.~~percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with subsection (c) of this section.~~ Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision~~Unit of General Local Government~~ pursuant to subparagraph (A) of this paragraph.

(i) A total contribution of at least \$900 (or \$450 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 6 points; or~~equal to or greater than 1% (for Urban Developments) and 0.5% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 6 points; or~~

(ii) A total contribution of at least \$2,250 (or \$1,125 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 12 points; equal to or greater than 2.5% (for Urban Developments) and 1.5% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total contribution equal to or greater than \$4,500 (or \$2,250 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 18 points.~~5% (for Urban Developments) and 3% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 18 points.~~

(6) ~~The Level of Community Support from State Representative or State Senator. (§2306.6710(b)(1)(F) and §2306.6725(a)(2)) Applications may qualify to receive 14 points for this item. The level of community support for the Application, evaluated on the basis of written statements received from the State Representative or State Senator that represents the district containing the proposed Development Site. (§2306.6710(b)(1)(F) and §2306.6725(a)(2)) Applications may qualify to receive 14 points for this item.~~ Letters must identify the specific Development, and must clearly state support for or opposition to the specific Development and must be from the State Representative or State Senator that represents the district containing the proposed Development Site. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before the Input from State Senator or Representative Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar) 5:00 p.m. (CDT) April 1, 2010. A State Representative or State Senator may withdraw (in writing), but may not change or replace a letter that is submitted by the April 1st deadline on or before the Withdraw Deadline for State Senator or Representative Letters as identified in §49.3 of this chapter (relating to the Program Calendar) June 15, 2010 but may not submit a new letter. After the Withdraw Deadline such letters may not be withdrawn. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this ~~Exhibit.~~ Support letters are +14 points; Aneutral letters, or letters that do not specifically refer to the Development, will receive 0 points; neither positive nor negative points. Opposition letters (must state reason for opposition) will receive -14 points. ~~Letters from State of Texas Representative or Senator: support letters are +14 points; opposition letters are -14 points for a maximum of either 14 or -14 points.~~ If one letter is received in support and one letter is received in opposition the score would be 0 points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(7) The Rent Levels of the Units. (§2306.6710(b)(1)(G)) Applications may qualify to receive up to 12 points for this item qualifying under this exhibit. (§2306.6710(b)(1)(G)) Pprovided the Application has qualified for points under paragraph (3) of this subsection, relating to Income Levels of Tenants of the Development.7

~~a~~An Application may qualify for points under this subsection by providing additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:

(A) An Application may receive ~~12~~ points for every 5% of Low-Income Units at rents and incomes at 50% of AMGI ~~if the Development provides an additional 10% of all Low Income Units in excess of those committed in paragraph (3) of this subsection at rents and incomes at or below 50% of AMGI;~~ or

(B) An Application may receive 6 points for every 5% of Low-Income Units at rents and incomes at 30% of AMGI ~~if the Development provides an additional 5% of all Low Income Units in excess of those committed in paragraph (3) of this subsection at rents and incomes at or below 50% of AMGI.~~

(8) The Cost of the Development by Square Foot, ~~(Development Characteristics)~~, ~~(§2306.6710(b)(1)(H); §42(m)(1)(C)(iii))~~ Applications may qualify to receive 10 points for this item. ~~(§2306.6710(b)(1)(H); §42(m)(1)(C)(iii))~~ For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development ~~or is an age-restricted building in an Intergenerational Housing Development~~ with an elevator or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed \$95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in §42(i)(3)(B)(iii) and (iv) of the Code), unless located in a "First Tier County" in which case their costs do not exceed \$97 per square foot; and \$85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed \$87 per square foot. The First Tier counties are identified in the Tax Credit (Procedures) Manual. For 2008, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. ~~Intergenerational Housing Developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly Units as determined by using the NRA attributable to the respective elderly and non-elderly Units. The Department will determine if points will be awarded by multiplying the NRA for elderly Units by the applicable square footage limit for the elderly Units and adding that total to the result of the multiplication of the NRA for family Units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the Application, points will be awarded (10 points).~~

(9) ~~The Services to be Provided to Tenants of the Development~~ Tenant Services. ~~(§2306.6710(b)(1)(I) and §2306.6725(a)(1))~~ Applications may qualify to receive up to 8 points for this item. ~~(§2306.6710(b)(1)(I) and §2306.6725(a)(1))~~

~~(A)~~ The Applicant must certify that the Development will provide a combination of ~~special~~ supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided ~~(maximum of 7 points)~~. The same service may not be used for more than one scoring item. Applications will be awarded points for selecting services listed in subparagraphs clauses (A) - (Sviii) of this ~~sub~~paragraph:

~~(A)~~ Joint use library center, as evidenced by a written agreement with the local school district (2 points);

~~(B)~~ child-care ~~Weekday afterschool program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics (i.e. teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.))~~ (3 ~~2~~ points);

~~(C)~~ Daily transportation (2 ~~1~~ point);

~~(iv)~~ basic adult education (1 point);

~~(v)~~ legal assistance (1 point);

- ~~(Dvi)~~ eCounseling services (only Supportive Housing Developments eligible)(1 point);
- (E) Food pantry/common household items (only Supportive Housing Developments eligible) (1 point);
- (Fvii) GED preparation classes (shall include a certified instructor providing on-site coursework and exam) (1 point);
- (Gviii) English as a second language classes (shall include a certified instructor providing on-site coursework and exam) (1 point);
- ~~(ix) vocational training (1 point);~~
- ~~(x) home buyer education (1 point);~~
- ~~(xi) credit counseling (1 point);~~
- (Hiii) Quarterly financial planning assistance or courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.) (1 point);
- ~~(Ixiii) Annual health fair health screening services (1 point);~~
- (Jxiv) Quarterly health and nutritional courses (1 point);
- ~~(Kxv) e~~Organized team sports programs or youth programs (1 point);
- ~~(Lxvi) s~~Scholastic tutoring (1 point); and
- (M) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (N) Weekly exercise classes (2 points);
- (O) Monthly arts and crafts (1 point);
- (P) Annual income tax preparation services (1 point);
- (Q) Monthly transportation to community/social events (i.e. lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc.) (1 point); and
- (R) Monthly on-site social events (i.e. potluck dinners, game night, etc.) (1 point);

(Sxvii) 1 point for any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

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

(10) Declared Disaster Areas. (§2306.6710(b)(1)) Applications may receive 7 points, if by the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar) at time the complete Application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development sSite is located in an area declared a disaster under Texas Government Code §418.014. Disaster Area as defined in §50.3(38) of this chapter.

(11) Community Input other than Quantifiable Community Participation. If an Application was awarded 18 or 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero for this item.

(A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located including, but not limited to, 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 will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO would qualify. as that is a

service organization even though it supports an educational activity. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.

(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the development site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state. [section inserted from prior location for purposes of rank order; includes minor modifications]

~~(11) Rehabilitation, (which includes reconstruction) or Adaptive Reuse. Applications may qualify to receive 3 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for points. [moved to scoring Item (13) - "Community Revitalization, Historic Preservation or Rehabilitation"]~~

(12) Housing Needs Characteristics. (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place-an-Area with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the sSelf sScore form based on objective measures of housing need in the PlaceArea where the Development is located. This Affordable Housing Need Score for each PlaceArea will be published in at the 2011 Site Demographic Characteristics Report table in the Reference Manual. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:

(i) An incorporated place; or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.

(13) Community Revitalization, ~~(Development Characteristics)~~ (§42(m)(1)(C)(iii)) ~~or~~ Historic Preservation or Rehabilitation. Applications may qualify to receive 6 points under for either subparagraphs (A) ~~or (B)~~ of this paragraph or 3 points under subparagraph (D) of this paragraph.

(A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan) and a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan. ~~chief executive officer or other local official with appropriate jurisdiction of the local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted;~~ or

(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including rReconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.

(C) The Development is New Construction and is proposed to be located in an area that has existing housing that is part of a Community Revitalization Plan.

(D) -Rehabilitation (includes Reconstruction) or Adaptive Reuse. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for 3 points.

(14) ~~Pre-Application~~ Participation Incentive Points. (§2306.6704) ~~Applications—Applicants~~ that submitted a ~~Ppre-A~~application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the ~~Ppre-A~~application;

(B) Have met the Pre-~~A~~application Threshold Criteria;

(C) Include, as part of this exhibit, a certification signed by the principal(s) that signed the site control at pre-application confirming they are the same principal(s) at Application.

(C) Be serving the same target population (~~general family, Intergenerational Housing,~~ or elderly) as in the ~~Ppre-A~~application;

(D) Be applying for the same Set-Asides as indicated in the ~~Ppre-A~~application (Set-Asides can be dropped between ~~Ppre-A~~application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at ~~Ppre-A~~application, with the exclusion of points for support and opposition under paragraphs (2), (6), and ~~(1811)~~ of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at ~~Ppre-A~~application will also include all point losses under ~~§49.7(a)(2)(A) subsection (d)(4)~~ of this ~~chapter section (relating to Administrative Deficiencies)~~. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the ~~Ppre-A~~application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from ~~Ppre-A~~application to Application; or

(ii) To request that the ~~Ppre-A~~application points be forfeited and that the Department evaluate the Application as requested in the ~~sSelf-s~~Scoreing-Form sheet.

~~(1517)~~ Green Building Initiatives. Application may qualify to receive up to 6 points for this item provided that providing green building amenities (points under this paragraph ~~are may~~ not be requested for the same items utilized for points under ~~subsection (h)(4)(A)(ii)(XXV) §49.8(a)(5)(A)~~ of this ~~chapter section, Threshold Amenities~~) (~~Rehabilitation Developments (excluding Reconstruction) and Single Room Occupancy Developments~~ will receive 1.5 points for each point requested under this paragraph. ~~for the green building amenities~~);

(A) Development Energy Savings (1 point for each item):

(i) Collected water (at least 50%) for irrigation purposes;

(ii) Selection of native trees and plants that are appropriate to the site's soils and microclimate; or

(iii) The Development qualifies for and receives Renewable Energy Tax Credits. The Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification. [inserted from 30% boost section]

(B) Tenant Energy Savings (2 points for each item):

~~(iA) Passive solar heating/cooling: (3 points maximum);~~

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

~~(iii) One point if in addition to clause (i) of this subsection,~~ if the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet), and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation; or

~~(III) and s~~ Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east (applies only to rehabilitation where windows are not replaced with Energy Star rated windows); or

(IV) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);



~~(iiB) Water conserving features: (2 points maximum, 1 point for each):~~

~~(i) Install low-floor or high efficiency toilets using less than or equal to 1.28 gallons/flush or that exceed State requirements WaterSense certified; or~~

~~(iii) Install bathroom lavatory faucets, and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that exceed the State standard at the time of Application. do not exceed 1.5 gallons/minute. Applies to a All fixtures throughout development must meet the standard. Rehabilitation Developments projects may choose to install compliant faucet aerators instead of replacing entire faucets; or~~

~~(iiiC) Provide Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire dDevelopment; or; (2 points);~~

~~(D) irrigation and landscaping (2 points maximum);~~

~~(i) collected water (at least 50%) for irrigation purposes (1 point);~~

~~(ii) selection of native trees and plants that are appropriate to the site's soils and microclimate (1 point);~~

~~(iiiE) Sub-metered utility meters on Rehabilitation Developments without existing sub-meters; (2 points maximum);~~

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

~~(ii) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point);~~

~~(ivF) Energy efficiency (4 points maximum);~~

~~(i) Three points if the dDevelopment includes Energy-Star qualified windows and glass doors exclusively; and insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC and domestic hot water heaters, or and insulation that exceeds Energy Star standards; or~~

~~(iii) Four points if the Development project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or by demonstrating a certified HERS score of 85 or lower;~~

~~(vG) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) are used (2 points);~~

~~(H) Photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);~~

~~(vi) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application; Photovoltaic panels that total 10 kW (1 point);~~

~~(ii) Photovoltaic panels that total 20 kW (2 points);~~

~~(iii) Photovoltaic panels that total 30 kW (3 points);~~

~~(i) Construction waste management to divert a minimum of 50% of construction waste from landfills (1 point);~~

~~(J) Implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);~~

~~(viiK) Recycling service provided throughout the compliance period. (1 point);~~

~~(L) Water permeable walkways (at least 20% of walkways and parking) (1 point);~~

(C) Other Green Features/Indoor Health (1 point for each item):

~~(iM) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation (1 point); or~~

~~(iiN) Healthy flooring, provide at least one of the following for 50% of flooring. Finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty (1 point); or~~

~~(iiiO) Healthy finish materials, use paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards (1 point).~~

(D) LEED (Leadership in Energy and Environmental Design) Certification. (6 points) If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development

is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.

~~(15) Economic Development Initiatives. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:~~

~~(A) A Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area; is eligible to receive the state or federal economic development grants or loans associated with such designations; and the city/county still has available funds in such program. The letter should be no older than six (6) months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 3; §2306.127); or~~

~~(B) An area that has received an award within the three year period prior to November 1, 2009, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives approved by the Department (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development). Grants that qualify in these areas are included in the Application Reference Manual; (C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area. [section moved for purposes of rank order and modified]~~

(16) Development Location. (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points under this item. Evidence, must not be more than six (6) months old from the first day of the Application Acceptance Period, ~~that the Development Site is located within one of the geographical areas described in subparagraphs (A) – (F) of this paragraph. Areas qualifying under any one of the subparagraphs (A) – (F) of this paragraph will receive 4 points.~~ An Application may only receive points under one of the subparagraphs (A) - (F) of this paragraph.

~~(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2010 Housing Tax Credit Site Demographic Characteristics included in the application materials). (§2306.127)~~

~~(B) The Development is located in a county that has received an award within the three (3) years prior to November 1, 2009, within the past three (3) years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.~~

~~(A)~~ (AG) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census) that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available to the Department as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2011~~2008~~ Housing Tax Credit Site Demographic Characteristics Report.

~~(B)~~ (BD) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone ~~of an elementary school~~ that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. An elementary attendance zone does not include magnet school or elementary schools with district-wide possibility of enrollment or no defined attendance zones. The

date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

~~(CE)~~ The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. ~~Intergenerational Developments may qualify for points if 70% of the non-elderly Units in the Development have an eligible bedroom mix of two bedrooms or more.~~ (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the ~~2011~~2010 Housing Tax Credit Site Demographic Characteristics Report.

~~(D)~~ Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract serving 10% of households at 30% AMGI or less. (§2306.6710(e)(1)) The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. Funding sources and amounts used for points under paragraph (5) of this subsection may not be used for this point item. ~~The Third-Party funding source cannot be a loan from a commercial lender.~~ [inserted from former "(i)(29)" scoring item]

~~(F)~~~~(E)~~ The proposed Development is located in an ~~U~~urban ~~C~~core, on a site where the proposed use is not prohibited by the ~~Local Political Subdivision~~Unit of General Local Government via ordinance or regulation. For purposes of this item, an urban core is defined as a compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits of a city with a population of no less than 150,000 composed of adjacent block groups of which at least 90% of the land not in public ownership is zoned to accommodate a mix of medium or high density residential and commercial uses and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed. Evidence must be submitted in the form of zoning maps and a certification provided in the Application.

(F) The proposed Development is located in a high opportunity area as identified in §49.5(d)(2)(D)(i) - (iii) of this chapter.

~~(1745)~~ Economic Development Initiatives. An Application may qualify to receive 4 points under subparagraphs (A) - (D) of this paragraph. A Development that is located in one of the following two areas may qualify to receive 4 points. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) A Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area. ~~is eligible to receive the state or federal economic development grants or loans associated with such designations; and the city/county still has available funds in such program.~~ The letter should be no older than six (6) months from the first day of the Application Acceptance Period. ~~(General Appropriation Act, Article VII, Rider 3; §2306.127); or~~

(B) An area that has received an award within the three year period prior to the beginning of the Application Acceptance Period November 1, 2009, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives approved by the Department (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development). ~~Grants that qualify in these areas are included in the Application Reference Manual; or~~

~~(C) Points under subparagraphs (A) and (B) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to~~

~~the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.~~

~~(C) A geographical area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2011 Housing Tax Credits Site Demographics Characteristics Report (§2306.127); or~~

~~(D) The Development is located in a county that has received an award within the three (3) years prior to the beginning of the Application Acceptance Period, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.~~

~~(E) Points under subparagraphs (A), (B) and (C) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to the beginning of the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.~~

~~(17) Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV) of this section, Threshold Amenities) (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities):-~~

~~(A) Passive solar heating/cooling (3 points maximum):-~~

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

~~(ii) One point if in addition to clause (i) of this subsection, utilize a narrow floor plate (less than 40 feet), and single loaded corridors to optimize daylight penetration and passive ventilation and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east;~~

~~(B) Water conserving features (2 points maximum, 1 point for each):-~~

~~(i) Install high efficiency toilets using less than or equal to 1.28 gallons/flush or WaterSense certified;~~

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

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

~~(D) Irrigation and landscaping (2 points maximum):-~~

~~(i) collected water (at least 50%) for irrigation purposes (1 point);~~

~~(ii) selection of native trees and plants that are appropriate to the site's soils and microclimate (1 point);~~

~~(E) Sub-metered utility meters (2 points maximum);~~

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

~~(ii) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point);~~

~~(F) Energy efficiency (4 points maximum):-~~

~~(i) Three points if the development includes Energy Star qualified windows and glass doors exclusively; and insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC and domestic hot water heaters, or insulation that exceeds Energy Star standards; or~~

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

~~(G) Thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) are used (2 points);~~

~~(H) Photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);~~

~~(i) Photovoltaic panels that total 10 kW (1 point);~~

~~(ii) Photovoltaic panels that total 20 kW (2 points);~~

~~(iii) Photovoltaic panels that total 30 kW (3 points);~~

~~(I) Construction waste management to divert a minimum of 50% of construction waste from landfills (1 point);~~

~~(J) Implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);~~

~~(K) Recycling service provided throughout the compliance period (1 point);~~

~~(L) Water permeable walkways (at least 20% of walkways and parking) (1 point);~~

~~(M) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation (1 point);~~

~~(N) Healthy flooring, provide at least one of the following for 50% of flooring. Finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty (1 point);~~

~~(O) Healthy finish materials, use paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards (1 point). [section modified and moved for purposes of rank order]~~

~~(18) Demonstration of Community Input other than Quantifiable Community Participation: if an Application was awarded 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A)–(C) of this paragraph. All letters must be received by March 1, 2010 for the Application to receive these points. At no time will the Application receive a score lower than zero for this item.~~

~~(A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community in which the Development is located to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Should an Applicant elect this option and the Application receives letters in opposition by March 1, 2010, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.~~

~~(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the development site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.~~

~~(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of March 1, 2010, include the Development Site and for which there is not a Neighborhood Organization on record with the county or state. [section modified and moved for purposes of rank order]~~

~~(18)9~~ **Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits. (§2306.6725(b)(2))** Applications may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the ~~d~~Development serves ~~the general~~families, or elderly ~~populations~~individuals (Intergenerational Housing is not a type of household as it relates to this paragraph). Applicant must provide ~~e~~Evidence of the census tract in which the Development is located ~~must be~~

~~submitted. (§2306.6725(b)(2))~~—These ~~C~~census ~~T~~tracts are outlined in the ~~2011~~2010 Housing Tax Credit Site Demographic Characteristics Report.

~~(20) Affirmative Marketing for Veterans. Applications may qualify to receive six points for this item. The Department will award these points to Applications that agree to affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Applicant will be required to identify how they will affirmatively market to veteran's and report to the Department in the annual housing report on the results of the marketing efforts to veterans. [section moved to Threshold]~~

~~(19~~21) **Tenant Populations with Special Housing Needs.** ~~(§42(m)(1)(C)(v))~~ Applications may qualify to receive 4 points for this item. ~~(§42(m)(1)(C)(v))~~—The Department will award these points to Applications in which at least ~~10~~5% of the Units are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-~~(12)~~ month period will begin on the date each building receives its ~~e~~Certificate of ~~e~~Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

~~(20~~22) **Length of Affordability Period.** ~~(§§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))~~ Applications may qualify to receive up to 4 points. ~~(§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II))~~—In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the thirty (30) years required in the Code may receive points as follows:

- (A) Add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or
- (B) Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).

~~(21~~23) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to 4 points for this item. ~~will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria in subparagraphs (A) and (B) of this paragraph.~~

~~(A) Proximity of site to amenities.~~—Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three ~~(3)~~ services appropriate to the target population. ~~will receive four points.~~ A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has ~~"on-demand"~~ another form of transportation, including, but not limited to, special transit service, or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or funding a comparable service~~on-demand service~~, then this will be a requirement of the LURA. Only one service of each type listed in clauses (i) - (xii)~~v~~ of this subparagraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. ~~The services must be identified by name on the map.~~ If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad at least 50% complete by the date the Application is submitted ~~4 points~~.

- (i) Full service grocery store or supermarket.
- (ii) Pharmacy.
- (iii) Convenience Store/Mini-market.

- (iv) Department or Retail Merchandise Store.
- (v) Bank/Credit Union.
- (vi) Restaurant (including fast food).
- (vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries.
- (viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.
- (ix) Hospital/medical clinic.
- (x) Medical offices (physician, dentistry, optometry).
- (xi) Public Schools (only eligible for Developments that are not Qualified Elderly

Developments).

(xii) Senior Center.

~~(xiii) Dry cleaners.~~

~~(xiv) Family video rental (Blockbuster, Hollywood Video, Movie Gallery).~~

~~(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative site feature. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect (-6 points).~~

~~(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.~~

~~(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TRDO-USA are exempt from this point deduction.~~

~~(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.~~

~~(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.~~

~~(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.~~

~~(vi) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports will have 1 point deducted from their score. [moved to §49.4 "Ineligible Developments"]~~

~~(2224)~~ **Development Size.** The Development consists of not more than 36 Units (3 points).

~~(2326)~~ **Sponsor Characteristics.** Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

~~(A) The Applicant has submitted An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609; or-~~

~~(B) An Application will receive these points if there is evidence that a There is a HUB that does not meet the experience requirements under §49.8(a)(4) subsection (g) of this chapter section, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced Developer (as defined by subsection (g) of this section); the experienced Developer, as an Affiliate, will not be subject to the credit limit described under §50.6(d) of this chapter for one Application per Application Round. For purposes of this section the experienced Developer may not be a Related Party to the HUB.~~

~~(2425) Qualified Census Tracts with Revitalization. (§42(m)(1)(B)(ii)(III)) Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)) Applications will receive the points for this item\_ if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the (such evidence must include an ordinance, resolution, or otherwise recorded documentation of a vote taken by the local elected Governing Body specifically adopting the Community Revitalization Plan) and Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.a letter from the chief executive officer or other local official with appropriate jurisdiction of the local Governing Body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.~~

~~(26) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))~~

~~(A) An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609.~~

~~(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced Developer (as defined by subsection (g) of this section); the experienced Developer, as an Affiliate, will not be subject to the credit limit described under §50.6(d) of this chapter for one Application per Application Round. For purposes of this section the experienced Developer may not be a Related Party to the HUB. [section moved for purposes of rank order and modified]~~

~~(2527) Developments Intended for Eventual Tenant Ownership--Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.~~

~~(A) Upon the earlier to occur of:~~

~~(i) The Development Owner's determination to sell the Development; or~~

~~(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to date upon which the Development Owner intends to sell the Development.~~

~~(B) During the two (2) years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:~~



(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department;

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department;

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two (2) years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of one hundred twenty (120) days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

~~(268)~~ **Leveraging of Private, State, and Federal Resources.** Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Funding sources used for points under paragraph (5) of this subsection, may ~~not~~ be used for this point item; however, funding amounts may not be duplicative.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government~~Local Political Subdivision~~.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment ~~Notice~~ is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment ~~Notice~~ is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment ~~Notice~~ will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment ~~Notice~~ will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all Low-Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

~~(29) Third Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)) Evidence that the proposed Development has documented and committed Third Party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The Third-Party funding source cannot be a loan from a commercial lender. [section moved to (a)(16) "Development Location" and modified]~~

~~(27)~~<sup>30</sup> Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit ~~e~~Commitment made in the Application Round preceding the current round. For each extension request made, unless the person approving the extension (the Board or the 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, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

~~(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five (5) years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take~~

~~place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal. [moved to "Ineligible Applicants" section]~~

~~(B) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §49.12(a) subsection (e) of this section chapter.~~

**(b) Tie Breaker Factors.**

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per square foot of Net Rentable Area (the lower credits per square foot has preference).

(D) Developments that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the Development is intended to convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in ~~§49.8(a)(2)(B) 50.5(a)(8)~~ of this chapter (relating to ~~the One Mile Three Year Rule~~ ~~Ineligibility~~), and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the ~~Certificate of #~~Reservation docket number issued by the Texas Bond Review Board (TBRB) in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their ~~Certificate of #~~Reservation from the ~~Bond Review Board~~ TBRB on or before April ~~2930, 20112010~~ will take precedence over the Housing Tax Credit Applications in the ~~20112010~~ Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July ~~20112010~~ will take precedence over the Tax-Exempt Bond Developments that received their ~~Certificate of #~~Reservation from the ~~Bond Review Board~~ TBRB on or between May ~~32, 20112010~~ and July ~~2931, 20112010~~; and

(C) After July ~~2929, 20112010~~, a Tax-Exempt Bond Development with a ~~Certificate of #~~Reservation from the ~~Bond Review Board~~ TBRB will take precedence over any Housing Tax Credit Application from the ~~20112010~~ Application Round on the ~~W~~waiting ~~L~~ist. However, if no ~~Certificate of #~~Reservation has been issued by the date the Board approves an allocation to a Development from the ~~W~~waiting ~~L~~ist of Applications in the ~~2011 2010~~ Application Round or a forward commitment, then the ~~W~~waiting ~~L~~ist Application or forward commitment will be eligible for its allocation.

~~(c) Staff Recommendations. (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules other applicable Department rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. Recommendations of staff to the Board will be the recommendations of that Committee except as otherwise disclosed. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all~~

~~factors provided in §50.10(a) of this chapter that were used in making this determination. [last few sentences deleted - addressed in statute]~~

~~(d)~~ Tax Credits Financed Under American Recovery and Reinvestment Act of 2009. (§2306.6736)

(1) To the extent the Department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the Department to award the federal funds in the same manner and subject to the same limitation as the awards of the housing tax credits, the following provisions apply.

(2) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds except:

(A) the Department may, as approved by the Board, establish a separate application procedure for such funds, outside of the uniform application cycle referred to in §2306.111, Texas Government Code, and the deadlines established in §2306.6724, Texas Government Code, and any reference herein to the application period shall refer to the period beginning on the date the Department begins accepting applications for such funds and continuing until all such available funds are awarded;

(B) unless reauthorized, this section is repealed on August 31, 2011.

~~§49.10~~50.10. Board Decisions; ~~Waiting List; Forward Commitments~~.

(a) ~~Board Decisions~~. The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and other applicable Department rules~~Rules~~.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. ~~In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following~~The discretionary factors include: (§2306.111(g)(3))

(A) The Developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing Developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as determined~~found~~ by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. ~~The Committee~~ Department staff shall provide to the Board a written report regarding the results of the assessments. ~~The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057) The Board has established a rule for the materiality of noncompliance in Chapter 60 of this title to address noncompliance associated with the Development, Applicant or Affiliate.~~

(b) **Waiting List.** (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of ~~the Commitment, commitments,~~ a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the ~~Waiting List~~ provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments ~~Notices~~ expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment ~~Notice~~ to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation, ~~and~~ 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under §42(h)(5) of the Code. At the end of each calendar year, all Applications which have not received a Commitment ~~Notice~~ shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) **Forward Commitments.** The Board may determine to issue ~~e~~Commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this ~~rule chapter~~ and the application checklist provided in the Tax Credit (Procedures) Manual. ~~Application Submission Procedures Manual.~~ The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. ~~The Board may utilize the forward commitment authority to allocate credits to TRDO-USDA Developments which are experiencing foreclosure or loan acceleration at any time during the 2010 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2010 QAP and granted a Forward Commitment of 2010 Housing Tax Credits are considered by the Board to comply with the 2010 QAP by having satisfied the requirements of this 2010 QAP, except for statutorily required QAP changes.~~

(1) Unless otherwise provided in the Commitment ~~Notice~~ with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of §42(h)(1)(C) of the Code.

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

(d) Appeals Process. (§2306.6715) An Applicant may appeal decisions made by the Department as follows:

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria;

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application;

and

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant;

(3) An Applicant must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.7 of this chapter. The appeal must be in writing, signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. The Appeal must be addressed to the

Department to the attention of the Director of Multifamily Finance. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this QAP. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request;

(4) The Executive Director of the Department shall respond in writing to the appeal not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department in its offices. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh calendar day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third calendar day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph;

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is the final decision of the Department;

(6) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5)) [section inserted from previous location and modified]

(e) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2011 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (4) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than the Application Challenges Deadline as identified in §49.3 of this chapter (relating to the Program Calendar):

(1) Within fourteen (14) business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;

(2) Within seven (7) business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and

(3) Within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(4) Nothing herein shall serve to limit the authority of the Board to apply discretion for good cause to the fullest extent lawfully permitted. [section inserted from previous location - added paragraph (4).]

~~§50.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.~~

~~(a) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.~~

~~(1) Within approximately fourteen (14) days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its website. Such log shall contain the Development name, address, Set-Aside, number of Units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))~~

~~(2) Approximately thirty (30) days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its website.~~

~~(3) Not later than fourteen (14) days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)~~

~~(A) Publish an Application submission log on its website.~~

~~(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii)–(x) of this subparagraph. (§2306.6718(a)–(c))~~

~~(i) The following information will be provided in these notifications:~~

~~(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;~~

~~(II) A summary of relevant facts associated with the Development;~~

~~(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and~~

~~(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.~~

~~(ii) Presiding officer of the Governing Body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development;~~

~~(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within thirty (30) days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate; (General Appropriation Act, Article VII, Rider 5) (§42(m)(1))~~

~~(iv) Any member of the Governing Body of a political subdivision who represents the Area containing the Development. If the Governing Body has single member districts, then only that member of the Governing Body for that district will be notified, however if the Governing Body has at-large districts, then all members of the Governing Body will be notified;~~

~~(v) State representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))~~

~~(vi) United States representative who represents the community containing the Development;~~

~~(vii) Superintendent of the school district containing the Development;~~

~~(viii) Presiding officer of the board of trustees of the school district containing the Development;~~

~~(ix) Any Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and~~

~~(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's e-mail list service.~~

~~(C) The Department shall maintain an electronic mail notification service that will notify a subscriber, by ZIP code, of: (§2306.67171)~~

~~(i) The receipt of a Pre-Application or Application for a Development Site within such ZIP code within fourteen (14) days of receipt;~~

~~(ii) The publication of materials to be presented to the Board for the Pre-Application or Application referred to in clause (i) of this subparagraph; and~~

~~(iii) Any public hearing for the Pre-Application or Application referred to in clause (i) of this subparagraph.~~

~~(D) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))~~

~~(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for Competitive Housing Tax Credit Applications under the State Housing Credit Ceiling. (§2306.6717(c))~~

~~(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and~~

~~closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))~~

~~(6) Approximately forty (40) days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.~~

~~(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's website. (§2306.6717(a)(3))~~

~~(8) At least thirty (30) days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:~~

~~(A) Provide the Application scores to the Board; and (§2306.6711(a))~~

~~(B) If feasible, post to the Department's website the entire Application, including all supporting documents and exhibits, the Application Log as further described in §50.19(b) of this chapter, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))~~

~~(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if such comments are received thirty (30) business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.~~

~~(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for Housing Tax Credits, the Department shall provide an Applicant who did not receive a commitment for Housing Tax Credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e)) [section above deleted - addressed in statute]~~

~~(b) Viewing of Pre-applications and Applications. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act. [section deleted]~~

~~(c) Confidential Information. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Texas Government Code. (§2306.6717(d)) [section deleted]~~

~~§50.1249.11. Tax-Exempt Bond Developments. - Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.~~

~~(a) Filing of Applications for Tax-Exempt Bond Developments. Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:~~

~~(1) Applicants which receive advance notice of a Program Year ~~2011~~2010 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 30, ~~2010~~2009. Such filing must be accompanied by the Application fee described in §~~49.14~~50.20 of this chapter;~~

~~(2) Applicants which receive advance notice of a Program Year ~~2011~~2010 Certificate of #R reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §~~49.14~~50.20 of this chapter prior to the Applicant's Certificate of bond #R reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within fourteen (14) days of the~~



Certificate of bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least sixty (60) days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission;

(3) ~~Applications involving multiple sites must submit the required information as outlined in the Application Submission Procedures Manual. The Application~~ Multiple site applications will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

(b) ~~Applicability of Rules for Tax Exempt Bond Developments.~~ Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4(c)(12) (relating to the One Mile Same Year Rule); §49.5(b) (relating to the Credit Amount); §49.6 (relating to the Allocation Process); §49.7(b), (c) and (d) (relating to Pre-application); §49.7(g) (relating to Methodology for Awards); §49.7(k) (relating to Rural Rescue Applications); §49.9 (relating to Selection); §49.10(b) and (c) (relating to Waiting List and Forward Commitments); and §49.12(e), (f) and (g) (relating to Carryover, 10% Test and Substantial Construction). ~~§50.4 of this chapter (regarding State Housing Credit Ceiling), §50.7 of this chapter (regarding Regional Allocation and Set Asides), §50.8 of this chapter (regarding Pre-Application), §50.9(d) and (f) of this chapter (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §50.9(i) of this chapter (regarding Selection Criteria), §50.10(b) and (c) of this chapter (regarding Waiting List and Forward Commitments), and §50.14(a) and (b) of this chapter (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §50.9(h) of this chapter. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §50.15 of this chapter. No later than sixty (60) days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department approved Fair Housing training relating to design issues for at least five (5) hours. Certifications must not be older than two (2) years. Applications that receive a reservation from the TBRB on or before December 31, 2009 will be required to satisfy the requirements of the 2009 QAP; Applications that receive a reservation from the TBRB on or after January 1, 2010 will be required to satisfy the requirements of the 2010 QAP. [this section incorporated as appropriate in the "Determination Notices" section]~~

(c) ~~Supportive Tenant Services for Tax Exempt Bond Developments.~~ Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services include those as described in §49.9(a)(9) of this chapter. ~~paragraphs (1) – (3) of this subsection include:~~

~~(1) The services must be in at least one of the following categories: child care, transportation, notary public service, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities;~~

~~(2) Any other program described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or~~

~~(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.~~

(d) **Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Section 42(m)(2)(D), Internal Revenue Code, requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department ~~may request such underwriting report will, nonetheless, review the underwriting report~~ and may upon review make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by §42(m)(2)(D) of the Code, ~~that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period.~~ Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §49.14 of this chapter (relating to Program Related Fees).

~~(e) Satisfaction of Requirements for Tax-Exempt Bond Developments. If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §50.10(a) of this chapter in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the §42(m)(1)(D) of the Code.~~

(e) **Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of bond Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB, and Oone of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The application must remain unchanged. This means that at a minimum, the following cannot have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under ~~§49.8(a)(9)50.9(h)(8)~~ of this chapter are not required to be reissued. ~~In the event that the Department's Board has already approved the Application for tax credits, the Application is not required to be presented to the Board again (unless there is public opposition) and a~~ A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number, ~~and no later than thirty (30) days before the anticipated closing.~~ In the event that the

Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number ~~and no later than forty five (45) days before the anticipated Department's Board meeting date~~; or

(2) If there are changes ~~ing~~ to the Application as referenced in paragraph (1) of this subsection or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

~~§49.1250-13. Post Award Activities, Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.~~

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

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

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

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

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

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

(3) For amendments approved administratively by the Executive Director, the penalties in paragraph (2) of this subsection will not be imposed. [inserted from prior location - no changes made]

~~(a) Commitment and Determination Notices. If the Board approves an Application for a Housing Tax Credit Allocation, the Department will:~~

~~(b1) Commitments and Determination Notices.~~

(1) Commitments. If the Application is for a commitment from the State Housing Credit Ceiling, the Department shall issue a Commitment ~~Notice~~ to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in ~~§50.16 of~~ this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This eCommitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the eCommitment by executing the Commitment ~~Notice~~, pays the required fee specified in ~~§49.14(f) 50.20~~ of this chapter, and satisfies any other conditions set forth therein by the Department. The Commitment ~~Notice~~ expiration date may not be extended;

(2) Determination Notices. If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP and other applicable Department rules in accordance with the §42(m)(1)(D) of the Code. Applications that receive a Certificate of Reservation from the TBRB on or before November 15, 2010 will be required to satisfy the requirements of the 2010 QAP; Applications that receive a Certificate a Reservation from the TBRB on or after January 1, 2011 will be required to satisfy the requirements of the 2011 QAP. and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in ~~§50.12~~§49.11 of this chapter (relating to Tax-Exempt Bond Developments) and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice, ~~and paying~~ the required fee specified in ~~§49.14(f)50-20~~ of this chapter ~~and.~~ ~~The Determination Notice shall also expire unless the Development Owner~~ satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. Furthermore, no later than sixty (60) days following closing on the bonds, the Development Owner must submit a Management Plan and an Affirmative Marketing Plan (as further described in the carryover procedures as identified in the Tax Credit (Procedures) Manual and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours. Certifications must not be older than two (2) years;

(3) The Department shall ~~Notify~~, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment ~~Notice~~ or Determination Notice, as applicable;

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and ~~Rules~~other applicable Department rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented;

~~(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in Chapter 60 of this title; [deleted; already covered under "Ineligible Applications"]~~

(6) The executed Commitment or Determination Notice must be returned to the Department ~~on the date specified within the Commitment Notice or Determination Notice, which shall be no later earlier than ten~~thirty (30) days after the effective date of the Notice provided that for Commitments under the State Housing Credit Ceiling that date is not later than December 31.

(7) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(A) The Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(B) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(C) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.4 of this chapter if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(D) The Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department. [inserted from former §50.17(h) "Cancellations" section]

(c) Agreement and Election Statement. ~~Together with the Development Owner's acceptance of the Carryover Allocation, the~~ The Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage with respect to a building or buildings ~~for the Development as that~~ for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the §42(b)(2) of the Code. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development (receiving credits from the State Housing Credit Ceiling), the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment ~~Notice~~ or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in ~~§49.1450-20~~ (f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded. For each Applicant all of the following must be provided:

(1) For entities formed outside the state of Texas, Eevidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Amendment Organization from the Texas Office of the Secretary of State if the name reserved at Application has changed;

~~(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and~~

(3) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution ~~or by laws~~ which indicates ~~same from~~ the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence that the Applicant has and will maintain Site Control through 10% Test; and

(6) Any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment.

#### ~~§50.14. Carryover; 10% Test; Commencement of Substantial Construction.~~

(e) Carryover. All Developments which received a Commitment ~~Notice~~, and will not be placed in service and receive IRS Form 8609 in the year the Commitment ~~Notice~~ was issued, must submit the Carryover documentation to the Department no later than the Carryover Documentation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar) November 2 of the year in which the Commitment ~~Notice~~ is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment ~~Notice~~ is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.

(2) If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) The Carryover Allocation ~~format~~ must be properly completed and delivered to the Department as prescribed by the carryover procedures identified in the Tax Credit (Procedures) Manual ~~Carryover Allocation Procedures Manual~~.

(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development ~~s~~Site is still under control of the Development Owner. For purposes of this paragraph, site

control must be identical to the same Development Site that was submitted at the time of Application ~~S~~submission.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October ~~31, 2011~~2010.

~~(f)~~ **10% Test.** No later than six (6) months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10% Test Documentation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). ~~July 1 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing items (1) - (6) of this paragraph. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation.~~ The 10% Test Documentation will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment-~~Notice~~:

(1) Evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site;

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the carryover procedures Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Tax Credit (Procedures) Manual.~~Carryover Procedures Manual~~;

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development ~~s~~Site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter should not be older than three (3) months from the first day of the Application Acceptance Period and must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development Site; ~~If utilities are not already accessible (undeveloped areas), then the letter should not be older than three (3) months from the first day of the Application Acceptance Period;~~

(4) A Management Plan and an Affirmative Marketing Plan as further described in the carryover procedures identified in Tax Credit (Procedures) Manual;

(5) Evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation; and

(6) A Certification from the Architect that the Development will be equipped with Energy Saving Devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation.

(g4) Commencement of Substantial Construction. No later than July 1 of the year following the execution of the Carryover Allocation Document ~~F~~the Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title (relating to the Department's Compliance Rules).

#### ~~§50.15. LURA, Cost Certification.~~

(~~h~~**a**) **Land Use Restriction Agreement (LURA).** The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title, ~~— (relating to the Department's Compliance Rules.)~~ The Development Owner must complete, date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(~~i~~**b**) **Cost Certification.** The ~~cost certification procedures as identified in the Tax Credit (Procedures) Manual~~ ~~Cost Certification Procedures Manual~~ sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

~~(1) To request IRS Forms 8609, Developments must have:~~

~~(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;~~

~~(B) Scheduled a final construction inspection in accordance with Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures;~~

~~(C) Informed the Department of and received written approval for all Development amendments in accordance with §50.17(c) of this chapter;~~

~~(D) Submitted to the Department the LURA in accordance with subsection (a) of this section;~~

~~(E) Paid all applicable Department fees; and~~

~~(F) Prepared all Cost Certification documentation as more fully described in the Cost Certification Procedures Manual including:~~

~~(i) Carryover Allocation Agreement/Determination Notice and Election Statement;~~

~~(ii) Owner's Statement of Certification;~~

~~(iii) Owner Summary;~~

~~(iv) Evidence of Nonprofit and CHDO Participation;~~

~~(v) Evidence of Historically Underutilized Business (HUB) Participation;~~

~~(vi) Development Summary;~~

~~(vii) As-Built Survey;~~

~~(viii) Closing Statement;~~

~~(ix) Title Policy;~~

~~(x) Evidence of Placement in Service;~~

~~(xi) Independent Auditor's Reports;~~

~~(xii) Total Development Cost Schedule;~~

~~(xiii) AIA Form G702 and G703, Application and Certificate for Payment;~~

~~(xiv) Rent Schedule;~~

~~(xv) Utility Allowance;~~

~~(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;~~

- ~~(xvii) Current Annual Operating Statement and Rent Roll;~~
- ~~(xviii) Final Sources of Funds;~~
- ~~(xix) Executed Limited Partnership Agreement;~~
- ~~(xx) Loan Agreement or Firm Commitment;~~
- ~~(xxi) Architect's Certification of Fair Housing Requirements; and~~
- ~~(xxii) TDHCA Compliance Workshop Certificate.~~

(12) Required ~~Cost~~ ~~C~~certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment ~~Notice~~ or Determination Notice that fails to submit its ~~Cost~~ ~~C~~certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with ~~§49.13(c)50.20(l)~~ of this chapter (relating to Extension Requests);

~~(23) The Department will perform an initial evaluation of the Cost Certification documentation within forty five (45) days from the date of receipt and notify the Development Owner in a deficiency letter of all additional required documentation. Any communication deficiency letters issued to the Development Owner pertaining to the Cost Certification documentation may will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than ninety (90) days from the date that all required documents have been received;~~

~~(4) The Department will perform an evaluation to determine if the Applicant is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title, prior to issuance of IRS Forms 8609.~~

(3) For the Department to release IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; December 31 of the second year following the year the Carryover Allocation Agreement was executed; or approved Placed in Service deadline;

(B) Submitted all Cost Certification documentation as more fully described in the cost certification procedures identified in the Tax Credit (Procedures) Manual, including:

- (i) Carryover Allocation Agreement/Determination Notice and Election Statement;
- (ii) Owner's Statement of Certification;
- (iii) Owner Summary;
- (iv) Evidence of Nonprofit and CHDO Participation;
- (v) Evidence of Historically Underutilized Business (HUB) Participation;
- (vi) Development Summary;
- (vii) As-Built Survey;
- (viii) Closing Statement;
- (ix) Title Policy;
- (x) Evidence of Placement in Service;
- (xi) Independent Auditor's Reports;
- (xii) Total Development Cost Schedule;
- (xiii) AIA Form G702 and G703, Application and Certificate for Payment;
- (xiv) Rent Schedule;
- (xv) Utility Allowance;
- (xvi) Annual Estimated Operating Expenses and 15-Year Proforma;
- (xvii) Current Annual Operating Statement and Rent Roll;
- (xviii) Final Sources of Funds;
- (xix) Executed Limited Partnership Agreement;
- (xx) Loan Agreement or Firm Commitment;
- (xxi) Architect's Certification of Fair Housing Requirements; and
- (xxii) TDHCA Compliance Workshop Certificate;

(C) Complied with the requirements set forth in the Cost Certification Procedures Manual;

(D) Received written notice from the Department that all deficiencies noted during the final inspection have been resolved in accordance with Chapter 60 of this title, (relating to the Department's Compliance Monitoring Policies and Procedures);

(E) Informed the Department of and received written approval for all Development amendments in accordance with §49.13(b) of this chapter;

(F) Informed the Department of and received written approval for all ownership transfers in accordance with §49.13(d) of this chapter;



(G) Submitted to the Department the LURA in accordance with subsection (h) of this section;  
(H) Paid all applicable Department fees; and  
(I) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title (relating to the Department's Compliance Monitoring Policies and Procedures).

**~~§50.16. Housing Credit Allocations.~~**

~~(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the §42 of the Code. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of §42 of the Code. The Department shall have no responsibility for ensuring that a Development Owner who receives a Housing Credit Allocation from the Department will qualify for the tax credit.~~

~~(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)) Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in §42(m)(2)(B) of the Code, and the Department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.~~

~~(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §50.9(h)(4)(i) of this chapter, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the Commitment Notice or Carryover Allocation Agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.~~

~~(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §50.17(c) of this chapter. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.~~

~~(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §50.20 of this chapter have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third Party accessibility specialist to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the~~

~~Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a tax credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with, §42(h)(1)(F) of the Code, a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.~~

~~(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by §42(b) of the Code, and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first year conventions described in §42(f)(2)(A) and (3)(B) of the Code. The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low income housing commitment as required by §42(h)(6)(C)(i) of the Code.~~

~~(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction Threshold Criteria and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5(d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §50.20 of this chapter. Details regarding the construction inspection process are set forth in the Department Rule Chapter 60 of this title, the Department's Compliance Monitoring Policies and Procedures. (§2306.081; General Appropriation Act, Article VII, Rider 8(b))~~

~~(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §50.15 of this chapter, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.~~

~~(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.~~

~~(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. [paragraphs (a) through (j) above are deleted]~~

~~(k) If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September~~

~~2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%. [this paragraph moved to §49.14(m) under "Penalties"]~~

~~§50.1749.13. Board Reevaluation. (§2306.6731(b)), Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.~~

(a) ~~Board Reevaluation. (§2306.6731(b))~~ Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment ~~Notice~~ or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be based on those items identified in subsection (b)(4) of this section. The Board may revoke any Commitment ~~Notice~~ or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

~~(b) Appeals Process. (§2306.6715) An Applicant may appeal decisions made by the Department as follows:~~

~~(1) The decisions that may be appealed are identified in subparagraphs (A)–(D) of this paragraph.~~

~~(A) A determination regarding the Application's satisfaction of:~~

~~(i) Eligibility Requirements;~~

~~(ii) Disqualification or debarment criteria;~~

~~(iii) Pre-application or Application Threshold Criteria;~~

~~(iv) Underwriting Criteria;~~

~~(B) The scoring of the Application under the Application Selection Criteria; and~~

~~(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application;~~

~~(D) Any Department decision that results in termination of an Application.~~

~~(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.~~

~~(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §50.9 of this chapter. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.~~

~~(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:~~

~~(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or~~

~~(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph;~~

~~(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final;~~

~~(6) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5)) [section moved to §49.10 "Board Decisions" and modified]~~

~~(c) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2010 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1)–(3) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than June 15, 2010:~~

~~(1) Within fourteen (14) business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;~~

~~(2) Within seven (7) business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and~~

~~(3) Within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant. [section moved to §49.10 "Board Decisions"]~~

**(b) Amendment of Application Subsequent to Allocation by Board.** (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any ~~s~~Selection ~~e~~Criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application and such request shall include a proposed form of amendment prepared at the Applicant's sole expense by an attorney licensed to practice law in the State of Texas and the applicable fee as identified in §49.14(l) of this chapter. ~~The amendment request will not be considered received unless accompanied with the corresponding fee.~~

(2) The Executive Director of the Department shall require the appropriate Department staff ~~assigned to underwrite Applications~~ to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with (h) of this subsection §50.18 of this chapter (relating to Compliance Monitoring and Material Noncompliance) shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny within thirty (30) days from the date on which the Department has acknowledged it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. For amendments which require Board approval, the amendment request must be received by the Department at least ~~sixty~~thirty (30) days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment that is material. The Executive Director may administratively approve an amendment that is not material. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment ~~Notice~~ or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the ~~W~~waiting List if the Board determines that the modification proposed in the amendment:

- (A) Would materially alter the Development in a negative manner; or
- (B) Would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

- (A) A significant modification of the site plan;
- (B) A modification of the number of units or bedroom mix of units;
- (C) A substantive modification of the scope of tenant services;
- (D) A reduction of 3% or more in the square footage of the units or common areas;
- (E) A significant modification of the architectural design of the Development;
- (F) A modification of the residential density of the Development of at least 5%;
- (G) An increase or decrease in the site acreage of greater than 10% from the original site under

control and proposed in the Application; and

(H) Any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant. An amendment will be disapproved if the circumstances were reasonably foreseeable and preventable unless there is a finding of good cause for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply:-

(A) For amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development; ~~and-~~

(B) ~~Additionally,~~ if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(c) Extension Requests. All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee as identified in §49.14(l) of this chapter. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than six (6) months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least fifteen (15) business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee as identified in §49.14 of this chapter must be received by the Department to qualify for issuance of Forms 8609. [section inserted from previous location and modified]

**(de) Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person including an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers (other than an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the ~~Credit Cap~~ credit amount further described in ~~§49.550-6~~ (b) of this chapter, the ~~credit cap~~ credit amount will not be applied in the following circumstances:

(A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) In cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

**(e) Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two (2) years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code, and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with ~~§49.9(a)~~ 50.9(i) of this chapter (relating to Selection Criteria), a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7) of the Code, and the Department declines to purchase the Development.

**(f) Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment ~~Notice~~, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment ~~Notice~~ or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

~~(h) Cancellations. The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:~~

~~(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;~~

~~(2) Any statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;~~

~~(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §50.5 of this chapter if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or~~

~~(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department. [moved to "Commitment Notices" section]~~

**(g) Alternative Dispute Resolution (ADR) Policy.** In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2010, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by law and the Department's ~~e~~Ex ~~p~~Parte ~~e~~Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

~~§50.18. Compliance Monitoring and Material Noncompliance.~~

~~(h) Compliance Monitoring and Material Noncompliance.~~ Section 42(m)(1)(B)(iii) of the Code, requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of §42 of the Code and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title.

~~§50.19. Department Records; Application Log; IRS Filings.~~

~~(a) Department Records.~~ At all times during each calendar year the Department shall maintain a record of the following:

- ~~(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;~~
- ~~(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;~~
- ~~(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and~~
- ~~(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.~~

~~(b) Application Log.~~ (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1)–(9) of this subsection.

- ~~(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;~~
- ~~(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;~~
- ~~(3) The number of Units and the amount of Housing Tax Credits requested for allocation by the Department to the Applicant;~~
- ~~(4) Any Set Aside category under which the Application is filed;~~
- ~~(5) The requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;~~
- ~~(6) Any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate Housing Tax Credits to the Development;~~
- ~~(7) The names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;~~
- ~~(8) The amount of Housing Tax Credits allocated to the Development; and~~
- ~~(9) A dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.~~

~~(c) IRS Filings.~~ The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements. *[paragraphs (a) through (c) above deleted]*

~~§49.1450.20. Program Related Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.~~

(a) Timely Payment of Fees. All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than ten (10) business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an

Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, Commitment or Allocation to be terminated.

(b) **Pre-Application Fee.** Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of \$10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee. ~~(General Appropriation Act, Article VII, Rider 7; (\$2306.6716(d))~~ For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, Bond Counsel), and \$5,000 (payable to the Texas Bond Review Board).

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be \$20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be \$30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. ~~(General Appropriation Act, Article VII, Rider 7; (\$2306.6716(d))~~ For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of \$30 per unit and bond application fee of \$10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000. ~~Those Applications utilizing a local issuer only need to submit the tax credit application fee.~~

(d) **Refunds of Pre-Application or Application Fees.** (\$2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) **Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with ~~§49.7(h)50.9(d)(6), (e)(3), and (f)(6)~~ of this chapter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the ~~e~~Commitment ~~f~~Fee established in subsection (f) of this section, in the event that a Commitment-~~Notice~~ or Determination Notice is issued by the Department to the Development Owner.

(f) **Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment ~~Notice~~ or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination ~~n~~Notice, a Commitment or Determination ~~f~~Fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination ~~f~~Fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, ~~2011~~2010, the Development Owner may receive a refund of 50% of the



Commitment Fee. If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within ninety (90) days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after ninety (90) days of the issuance date of the Determination Notice.

(g) **Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit ~~u~~Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two (2) years from the first payment date of the bonds; the asset management fee, if applicable is paid in advance and is equal to \$25/Unit beginning two (2) years from the first payment date. ~~if applicable.~~ Compliance fees may be adjusted from time to time by the Department.

(h) **Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is \$750. Inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in ~~§49.1150-12~~ of this chapter (relating to Tax-Exempt Bond Developments), requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one (1) year.

(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying, and other costs of production.

(k) **Periodic Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) **Extension and Amendment ~~Requests Fees.~~**

(1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of \$2,500. Such extension requests must be submitted to the Department in accordance with §49.13(c) of this chapter ~~no later than the date for which an extension is being requested. All requests for extensions totaling less than six (6) months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least fifteen (15) business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of \$2,500 must be received by the Department to qualify for issuance of Forms 8609.~~

(2) Amendment requests must be submitted consistent in accordance with ~~§49.1350-17(b)~~ of this chapter. ~~Amendment requests shall be submitted to the Department in writing~~ and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of \$2,500. ~~The amendment request will not be considered received until the corresponding fee is received.~~

(3) The Board may waive extension or amendment fees for good cause.

(m) **Penalties.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

**§49.15~~50.21~~. Manner and Place of Filing All Required Documentation.**

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph, electronic submission or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's website to provide necessary data to the Department.

**§49.16~~50.22~~. Waiver and Amendment of Rules.**

(a) The Board, in its discretion, may waive any one or more of ~~these Rules~~ the rules provided herein if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

~~(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.~~

~~(c)~~ (b) The Department may amend this chapter ~~and the Rules~~ contained herein at any time in accordance with Chapter 2001, Texas Government Code.

**§49.17~~50.23~~. Department Responsibilities.~~Deadlines for Allocation of Housing Tax Credits. (§2306.6724)~~**

(a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.

(b) In accordance with §2306.6724, §2306.67022 and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits the following shall apply:

(1) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program;:-

~~(b)~~ (2) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year;:-

(3e) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year;:- ~~(§2306.67022; §42(m)(1))~~

(4d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits;:-

(5e) Applications for Housing Tax Credits to be issued a Commitment ~~Notice~~ during the Application Round in a calendar year must be submitted to the Department not later than March 1;:-

(6f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30; ~~and~~-

(7g) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the ~~Qualified Allocation Plan~~ not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final ~~e~~C commitments for allocations of Housing Tax Credits each year in accordance with the ~~Qualified Allocation Plan~~ not later than September 30. Department staff will subsequently issue Commitment ~~s~~ ~~Notices~~ based on the Board's approval. Final ~~e~~C commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

(c) With respect to site demographics information, the general rule is for the Department to use current State Demographer information. If the State Demographer information is not available as of the date the Application Acceptance Period opens the Executive Director may approve the use of prior year site demographics.



Housing Tax Credit Program  
 2011 Qualified Allocation Plan  
 Table of Contents

§49.1 General Program Information.....4  
 A. Purpose and Authority  
 B. Allocation Goals

§49.2 Definitions.....4

§49.3 Program Calendar.....5

§49.4 Ineligibility.....7  
 A. Ineligible Applicants  
 B. Ineligible Applications  
 C. Ineligible Developments

§49.5 Site and Development Restrictions.....11  
 A. Floodplain  
 B. Credit Amount  
 C. Size of Developments  
 D. 30% Increase in Eligible Basis

§49.6 Allocation Process.....13  
 A. Regional Allocation Formula  
 B. Allocation Set-Asides

§49.7 Application Process.....14  
 A. Ex Parte Communication  
 B. Administrative Deficiencies  
 C. Pre-Applications  
 D. Applications  
 E. Evaluation Process

§49.8 Threshold.....21  
 A. Resolutions  
 B. Experience Certificate  
 C. Certifications and Amenities  
 D. Architectural Drawings  
 E. Development Costs and Syndication Information  
 F. Site Control  
 G. Zoning  
 H. Financing Requirements  
 I. Tax Assessment and Title  
 J. Notifications and Signage  
 K. Ownership Structure  
 L. Projected Income and Operating Expenses  
 M. Nonprofit General Partner/Developments  
 N. Third Party Reports

§49.9 Selection.....	35
A. Financial Feasibility	
B. Quantifiable Community Participation	
C. Income Levels of Tenants	
D. Size and Quality of the Units	
E. Unit of General Local Government Funding	
F. State Representative and State Senator Input	
G. Rent Levels of the Units	
H. Cost of the Development by Square Foot	
I. Tenant Services	
J. Declared Disaster Areas	
K. Input other than Quantifiable Community Participation	
L. Housing Needs Characteristics	
M. Community Revitalization, Historic Preservation or Rehabilitation	
N. Pre-application Participation Incentive Points	
O. Green Building Initiatives	
P. Development Location	
Q. Economic Development Initiatives	
R. Underserved Census Tracts	
S. Special Housing Needs	
T. Length of Affordability Period	
U. Site Characteristics	
V. Development Size	
W. Sponsor Characteristics	
X. Qualified Census Tracts with Revitalization	
Y. Right of First Refusal	
Z. Leveraging of Private, State and Federal Resources	
AA. Scoring Imposed Penalties	
BB. Tie Breakers	
§49.10 Board Decisions.....	50
A. Waiting List	
B. Forward Commitments	
C. Appeals	
D. Challenges	
§49.11 Tax Exempt Bond Developments.....	52
A. Filing of Applications	
B. Applicability of Rules	
C. Tenant Services	
D. Financial Feasibility Evaluation	
E. Certification for New Docket Numbers	
§49.12 Post Award Activities.....	54
A. Adherence to Obligations	
B. Commitment & Determination Notices	
C. Carryover	
D. 10% Test	
E. Commencement of Substantial Construction	
F. Land Use Restriction Agreement	
G. Cost Certification	
§49.13 Board Reevaluation.....	58
A. Amendments	
B. Extensions	
C. Ownership Transfers	

- D. Sale of Tax Credit Properties
- E. Alternative Dispute Resolution

§49.14 Program Related Fees.....	61
§49.15 Filing of Required Documentation.....	63
§49.16 Waiver and Amendment of Rules.....	64
§49.17 Department Responsibilities.....	64
A. Notifications	
B. Qualified Allocation Plan Deadlines	

#### §49.1. General Program Information.

(a) **Purpose and Authority.** The rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits authorized by applicable federal income tax laws. Pursuant to Chapter 2306, Subchapter DD, of the Texas Government Code, the Department is authorized to make Housing Tax Credit Allocations for the State of Texas. As required by §42(m)(1) of the Code, the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.17 of this chapter. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations.

(b) **Allocation Goals.** It is the policy of this Department and the Board, as expressed through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula to promote maximum utilization of the available tax credit amount and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built.

#### §49.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, and 10 TAC Chapter 1 §1.1 and repeated in the Tax Credit (Procedures) Manual.

(1) **Applicable Percentage**--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as described in §42(b) of the Code. However, where the property has not placed in service or an Agreement and Election Statement has not been executed the Applicable Percentage must be estimated as of the date of the Application submission. For purposes of the Application, the Applicable Percentage must be projected at:

(A) not less than 9% through December 31, 2013 for 70% present value credits unless extended by Congress; or

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

(2) **Application Acceptance Period**--That period of time during which Applications may be submitted to the Department.

(3) **Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.

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

(5) **Carryover Allocation Document**--A document issued by the Department, and executed by the Development Owner, pursuant to §49.12(e) of this chapter, (relating to Carryover).

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

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

(8) **Community Revitalization Plan**--A published document under any name, approved and adopted by the local Governing Body or, if the Governing Body has lawfully assigned responsibility for oversight of communication or activities to a body created or sponsored by that Governing Body, the vote of the Governing

Body so designated, by ordinance, resolution, or vote that targets specific geographic areas for revitalization and development of residential developments.

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

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

(11) **Development Site**--The area, or if scattered site, areas, on which the Development is proposed to be located.

(12) **Economically Distressed Area**--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code and has adopted and enforces the model rules under §16.343, Texas Water Code.

(13) **Eligible Basis**--With respect to a building within a Development, the building's Eligible Basis pursuant to §42(d) of the Code.

(14) **Existing Residential Development**--Any Development Site which contains existing residential Units at the time the Application is submitted to the Department.

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

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

(17) **Qualified Nonprofit Organization**--An organization that meets the requirements of Texas Government Code §2306.6706 and §2306.6729.

(18) **Qualified Nonprofit Development**--A Development in which a Qualified Nonprofit Organization is to own an interest in the Development directly or through a partnership and materially participates (within the meaning of §469(h) of the Code) in the development and operation of the development throughout the Compliance Period.

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

(20) **Supportive Housing**--Residential rental developments intended for occupancy by individuals or households in need of specialized and specific non-medical services in order to maintain independent living.

(21) **Tax Credit (Procedures) Manual**--The manual produced and amended from time to time by the Department which reiterates the rules and provides guidance for the filing of tax credit related documents.

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

(23) **Transit Oriented District**-- A mixed-use residential and commercial area, located within a radius of one-quarter mile from an existing or proposed transit stop, designed to encourage pedestrian activities and maximize access to public transportation.



**§49.3. Program Calendar.** All documentation noted below must be submitted to the Department offices located at 221 E. 11<sup>th</sup> Street, Austin, 78701, by 5:00 pm (CST) by the date indicated.

<u>Due Date</u>	<u>Documentation Required</u>
12/20/2010	Pre-application Acceptance Period Begins
12/20/2010	Pre-application Neighborhood Organization Request Date (Competitive HTC Only)
12/31/2010	Pre-application Response to Neighborhood Organization Request Date (Competitive HTC Only)
01/07/2011	Pre-Application Final Delivery Date (Submitted via CD-R; Competitive HTC Only)
01/21/2011	Full Application Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, Rural Rescue, HOME or HTF Applications the request must be sent no later than fourteen (14) days prior to the submission of the Threshold Documentation.
02/15/2011	Experience Certification Delivery Date (For Tax-Exempt Bond Applications the Experience Certification Documentation must be submitted with the Application)
02/22/2010	Full Application Response to Neighborhood Organization Request Date (Competitive HTC Only). For Tax-Exempt Bond, HOME or HTF Applications the response should be received no later than seven (7) days prior to the Application submission.
03/01/2011	Full Application Delivery Date (Submitted via CD-R; Competitive HTC Only)
03/01/2011	Quantifiable Community Participation (QCP) Delivery Date (Competitive HTC Only)
03/01/2011	Unit of General Local Government Resolutions for Applications applying for TDHCA HOME funds and selecting §49.9(a)(5) points (must be submitted with Application).
03/01/2011	Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal, and Market Study). For Tax-Exempt Bond Developments the Third Party Reports must be submitted no later than 60 days prior to the Board meeting at which the tax credits will be considered. The 60 day deadlines are available on the Department's website.
03/02/2011	Rural Rescue Application Submission Period (Ends 11/15/2011)

<u>Due Date</u>	<u>Documentation Required</u>
04/01/2011	Input from State Senator or Representative Delivery Date (Competitive HTC Only)
04/01/2011	Resolutions Delivery Date (One Mile Three Year Rule, 2x Per Capita, resolutions in connection with Selection Criteria, etc.) For Tax-Exempt Bond Developments all resolutions are due no later than 14 days prior to the Board meeting at which the tax credits will be considered)
Mid-May	Final Scoring Notices Issued (Competitive HTC Only)
06/01/2011	Withdraw Deadline for State Senator or Representative Letters (Competitive HTC Only)
06/15/2011	Application Challenges Deadline (Competitive HTC Only)
Late June	Release of Eligible Applications for Consideration for Award in July (Competitive HTC Only)
Late July	Final Awards (Competitive HTC Only)
Mid-August	Commitments are Issued (Competitive HTC Only)
11/01/2011	Carryover Documentation Delivery Date
07/1/2012	10% Test Documentation Delivery Date
07/01/2012	Documentation of Commencement of Substantial Construction Delivery Date
12/31/2013	Placement in Service Deadline
Sixty (60) days prior to Board meeting	Amendment Requests
Fifteen (15) business days prior to Board meeting	Extension Requests

**§49.4. Ineligible Applicants, Applications and Developments.**

(a) **Ineligible Applicants.** An Applicant is ineligible if any Applicant, Development Owner, Developer or Guarantor involved with the Application:

(1) has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

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

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

(4) has any past due audits and has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond

Developments or other Applications applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than thirty (30) days after Volume III of the Application is submitted; or (§2306.6703(a)(1))

(5) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over Housing Tax Credits employed by the Department; (§2306.6703(a)(2))

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

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

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

(C) The applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(D) If the redemption of the applicable private activity bonds will occur in the first five years of the operation of the Development and complies with §429(h)(4), Internal Revenue Code of 1986:

(i) on the date the Certificate of Reservation is issued, the Texas Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under §1372.0321 of the Texas Government Code or, if applicable, in the same uniform state service region, as referenced in §1372.0231, Texas Government Code, that is served by the proposed Development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting, if any, established by the Department; (2306.6703)

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

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

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

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

(8) There is, involving the Application or Applicant, a violation of Texas Government Code §2306.6733;

(9) If the Developer or Principal of the Applicant has been voluntarily or involuntarily removed by the lender, equity provider, limited partners or any other owners or investors, however designated, or the Department in the past five (5) years for failure to perform obligations. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis.

**(b) Ineligible Applications.** The Department will terminate an Application, and may debar a Person, if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one (1) year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

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

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor, or any Affiliate that Controls one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA or if such Material Noncompliance is identified during the Application review or the program rules in effect for such property as further described in Chapter 60 of this title; or (§2306.6721(c)(3))

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

(4) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to cure any fees described in §49.14 of this chapter (relating to Program Related Fees) seven (7) days prior to the Board meeting at which the decision for the Application is to be made; or

(5) An Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a consultant, lobbyist or attorney by an Applicant or a Related Party, violates §2306.1113 relating to Ex Parte Communication as further described in §49.7 of this chapter; or

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

(7) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application and through the date of final allocation due to a failure to meet contractual obligations; or

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

(9) The Application is submitted after the Application submission deadline (time or date); includes an electronic submission that is unreadable by the Department's computer system; has an entire Volume of the Application missing; or has a Material Deficiency as defined under Texas Government Code §1.1. If an Application is determined ineligible pursuant to this subsection, the Application will be terminated without further consideration and the Applicant will be notified of such termination. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant; or

(10) In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other Persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven (7) business days of the date of the request by the Department, the Department may terminate the Application.

**(c) Ineligible Developments.** Those Developments identified in subparagraphs (1) - (14) of this paragraph are considered ineligible for funding under the Housing Tax Credit Program:

(1) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing, as provided in the §42(i)(3)(B)(iii) and (iv) of the Code) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development;

(2) A property that provides continual or frequent nursing, medical or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(3) Any Qualified Elderly Development of two stories or more that does not include elevator service for any Units or living space above the first floor;

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

(5) Any Development with any building(s) with four or more stories that does not include an elevator;

(6) Any Qualified Elderly Development proposing more than 70% two-bedroom Units;

(7) Any Development that violates §1.15 of this title relating to the Integrated Housing Rule of the Department;

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

(A) More than 30% of the total Units are one bedroom and/or Efficiency Units; or

(B) More than 55% of the total Units are two bedroom Units; or

(C) More than 40% of the total Units are three bedroom Units; or

(D) More than 5% of the total Units in the Development with four or more bedrooms; or

(E) Only two and three bedroom Unit Developments;

(9) Any Development that is not consistent with the definition of a Qualified Elderly Development;

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

(11) Development Sites with negative characteristics in (A) - (G) of this paragraph will be considered ineligible. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD or TDRO-USDA are exempt. For purposes of this exhibit, the term "adjacent" is interpreted as sharing a boundary with the Development Site. The distances are to be measured from all boundaries of the Development Site to all boundaries of the property containing the negative characteristic. If none of these negative features exist, the Applicant must sign a certification to that effect. The negative characteristics include:

(A) Developments located adjacent to or within 300 feet of junkyards;

(B) Developments located adjacent to or within 300 feet of active railroad tracks, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail; (Rural Developments funded through TRDO-USDA are exempt);

(C) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants, refinery blast zones, etc.;

(D) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills;

(E) Developments where the buildings are located within the "fall line" of high voltage transmission power lines;

(F) Developments where the buildings are located within the accident zones or clear zones for commercial or military airports; or

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

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

(13) **Unacceptable Sites.** Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department, based on the evaluation factors identified in the Site Evaluation form, augmented by any other inspections or other documented findings of the Department. The Department will advise the Applicant if it makes an initial finding that a proposed site is unacceptable and provide the applicant with a reasonable opportunity to address any identified concerns. If in the Department's reasonable judgment the Applicant is not able to address adequately the Department's concerns regarding the

site, the Department will issue a determination that the site is unacceptable. If not appealed in accordance with §49.10 of this chapter (relating to the Appeals Process), this determination becomes final.

(14) A Development that does not provide all of the following amenities will be considered ineligible. These amenities must be at no charge to the tenants. All New Construction, Reconstruction or Adaptive Reuse Units must provide the amenities in clauses (A) - (M) of this subparagraph. Rehabilitation Developments must provide the amenities in clauses (C) - (M) of this subparagraph unless expressly identified as not required. (§2306.187) Deviations for good cause, by which one or more of the foregoing will not be provided, must be approved prior to award and the request for such deviation must be included in the Application. The Executive Director may issue such approvals. Requests not approved may be appealed to the Board in accordance with §49.10 of this chapter (relating to the Appeals Process).

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

(B) Laundry Connections;

(C) Blinds or window coverings for all windows;

(D) Screens on all operable windows;

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

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

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

(I) Energy-Star rated ceiling fans in living areas and bedrooms;

(L) Energy-Star rated lighting fixtures in all Units;

(K) Plumbing fixtures (toilets and faucets) must meet design standards at 30 TAC §290.252;

(L) All Units must be air-conditioned; and

(M) Fire sprinklers in all Units;

#### §49.5. Site and Development Restrictions.

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

(b) **Credit Amount.** (§2306.6711(b)) An Applicant may not request more than \$2 million in annual tax credits for any given Application. The Department shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party, Affiliate or Guarantor (unless the Guarantor is also exclusively the General Contractor). Tax-Exempt Bond Development Applications are not subject to this limitation and Tax-Exempt Bond Development Applications will not count towards the total limit on tax credits per Applicant. Competitive Housing Tax Credits approved by the Board during the 2011 calendar year, including commitments from the 2011 Credit Ceiling and forward commitments from the 2011 Credit Ceiling, are applied to the credit cap limitation for the 2012 Application Round. In order to evaluate this \$2 million limitation, nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must provide the documentation required in the Application with regard to this requirement. All entities that share a Principal are Affiliates. For purposes of determining the \$2 million limitation of tax credits, a Person is not deemed to be an Affiliate solely because it:

(A) Raises or provides equity;

(B) Provides "qualified commercial financing";

(C) Is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services;

(D) Receives fees as a Development Consultant or Developer that do not exceed 10% of the Developer Fee (or 20% for Qualified Nonprofit Developments) to be paid or \$150,000, whichever is greater; or

(E) Provides or supports the Applicant's financial capacity for the proposed Development.

**(c) Limitations on the Size of Developments.**

(1) The minimum Development size will be 16 Units.

(2) Developments in Rural Areas involving any New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) will be limited to 80 Units. Rehabilitation Developments (excluding Reconstruction) do not have a limitation as to the number of Units.

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

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

(A) the first phase of the Development has been completed and has maintained occupancy of at least 90% for a minimum six (6) month period as reflected in the submitted rent roll; or

(B) a resolution, submitted in the Application, from the Governing Body of the city or county, in which the proposed Development is located, dated no more than one (1) year old from the date the Application is submitted. Such resolution must state that there is a need for additional Units and that the Governing Body has reviewed a market study, the conclusion of which supports the need for additional Units. The resolution must be submitted to the Department by the Resolution Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar); or

(C) the proposed Development is intended to provide replacement of previously existing affordable Units on the Development Site or that were originally located within a one mile radius from the Development Site; provided, however, the combined number of Units in the proposed Development may not exceed the number of Units being replaced. Documentation of such replacement units must be provided.

**(d) Developments Proposing to Qualify for a 30% increase in Eligible Basis.** Staff will only recommend a 30% increase in Eligible Basis if (paragraph (2) of this subsection only applies to Competitive Housing Tax Credits allocated from the State Credit Ceiling):

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 30% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a QCT that has in excess of 30% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5)(C) of the Code, unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings). Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. The eleven (11) digit census tract number must be clearly marked on the map. These ineligible Qualified Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report;

(2) Pursuant to the authority granted by H.R. 3221, the Development meets one of the criteria described in subparagraphs (A) - (D) of this paragraph:

(A) Any Rural Development;

(B) Developments proposing at least 50% of the total number of Units for Supportive Housing;

(C) Developments proposing to provide 10% of the Low-Income Units, that will serve individuals and families at or below 30% of AMGI, in excess of those that are proposed in §49.9(a)(3) of this chapter (relating to Selection); or

(D) Developments proposed in high opportunity areas as provided in clauses (i) - (iii) of this subparagraph:

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

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

(iii) A Development that is proposed in a census tract that has no greater than 10% poverty population according to the most recent census data (these census tracts are designated in the 2011 Housing Tax Credit Site Demographic Characteristics Report).

(3) The Development proposing to build in an area impacted by a disaster for which federal legislation providing additional credits has been enacted.

#### §49.6. Allocation Process.

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

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

(1) **Nonprofit Set-Aside.** At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code. Qualified Nonprofit Organizations must have the Controlling interest in the Development Owner applying for this Set-Aside. If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit Set-Aside must have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement; (§2306.6729 and §2306.6706(b))

(2) **USDA Set-Aside.** At least 5% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through TRDO-USDA. (§2306.111(d)(2)) If an Application in this Set-Aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region. Developments financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program, in whole or in part, will not be considered under this Set-Aside. Any Rehabilitation or Reconstruction of an existing §515 Development that retains the §515 loan and restrictions will be considered under the At-Risk Development and TRDO-USDA Set-Asides, unless such Development is also financed through TRDO-USDA's §538 Guaranteed Rural Rental Housing Program. Commitments of 2011 Competitive Housing Tax Credits issued by the Board in 2011 will be applied to each Set-Aside, Rural Regional Allocation, Urban Regional Allocation and/or TRDO-USDA Set-Aside for the 2011 Application Round as appropriate;

(3) **At-Risk Set-Aside.** At least 15% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional formula required under subsection (a) of this section. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% of the State Credit Ceiling associated with this Set-Aside may be given priority to Rehabilitation Developments funded with TRDO. An At-Risk Development is a Development that: (§2306.6702)

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

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



- (ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);
  - (iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);
  - (iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);
  - (v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;
  - (vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;
  - (vii) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. §§1484, 1485, and 1486); or
  - (viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42); and
- (B) Is subject to the following conditions:
- (i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two (2) calendar years of July 31 of the year the Application is submitted); or
  - (ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted);
- (C) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site;
- (D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development;
- (E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years' IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(c) **Redistribution of Credits.** (§2306.111(d)) If any amount of Housing Tax Credits remain after the initial commitment of Housing Tax Credits among the Set-Asides, Rural Regional Allocation and Urban Regional Allocation, the Department may redistribute the credits amongst the different regions and Set-Asides based on the need to most closely achieve regional allocation goals and the level of demand exhibited in the Uniform State Service Regions during the Application Round. However, if there are any tax credits set aside for Developments in a Rural Area in a specific Uniform State Service Region that remain after the allocation under §49.7(g)(3) of this chapter, those tax credits shall be made available in any other Rural Area in the state, first, and then to Developments in Urban areas of any uniform state service region. (§2306.111(d)(3)) As described in subsection (b)(1) and (2) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

**§49.7. Application Process.**

(a) The application process has two parts, a pre-application which is voluntary and applies only to Applications submitted under the State Housing Credit Ceiling and an Application which is mandatory. An Applicant that does not provide an Application on or before the deadlines provided for herein is not eligible to be placed on the list of eligible Applicants to which awards of tax credits may be made. Pre-applications and Applications submitted to the Department are subject to restrictions on Ex Parte Communications as further described in paragraph (1) of this subsection and the Administrative Deficiency process as further described in paragraph (2) of this subsection.

(1) **Ex Parte Communications.** (§2306.1113)

(A) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, except for communications that actually occur in properly posted open meetings, as permitted by §2306.1113 of the Texas Government Code a member of the Board may not communicate with any other Board member or with the following Persons:

- (i) an Applicant or Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a General Partner, Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.
- (B) During the period beginning on the first date of the Application Acceptance Period and ending on the date the Board makes a final decision with respect to the approval of any Application in that Application Round, an employee of the Department may communicate about any Application with the following Persons:
- (i) the Applicant or a Related Party; and
  - (ii) any Person who is:
    - (I) active in the construction, rehabilitation, ownership, or Control of the proposed Development, including:
      - (-a-) a General Partner or General Contractor; and
      - (-b-) a Developer; and
      - (-c-) a Principal or Affiliate of a General Partner or General Contractor; or
    - (II) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.
- (C) A communication under paragraph (2) of this subsection may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:
- (i) the communication must be restricted to technical or administrative matters directly affecting the Application;
  - (ii) the communication must occur or be received on the premises of the Department during established business hours; and
  - (iii) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:
    - (I) the date, time, and means of communication;
    - (II) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;
    - (III) the subject matter of the communication; and
    - (IV) a summary of any action taken as a result of the communication.
- (D) Notwithstanding subparagraph (A) or (B) of this paragraph, a Board member or Department employee may communicate without restriction with a Person listed in subparagraph (A) or (B) of this paragraph during any Board meeting or public hearing held with respect to the Application, but not during a recess or other non-record portion of the meeting or hearing.
- (E) Subparagraph (A) of this paragraph does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed.

**(2) Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow the Applicant an opportunity to provide clarification or correction to information originally submitted in the Application. For example, if exhibits and other information required under §49.8 of this chapter (relating to Threshold) are not originally submitted in the Application (i.e. financing commitment missing entirely from the Application) staff will recommend termination of the Application. However, for information missing in part from the Application (i.e. financing commitment is submitted but it is not executed by the lender) staff will request the missing or corrected information via an Administrative Deficiency. For exhibits and other information required under §49.9 of this chapter (relating to Selection) not originally submitted in the Application (i.e. Community Revitalization Plan or letter from Appropriate Local Official missing entirely from the Application) staff will not award points for that item, even if points were requested in the Applicant's Self Scoring Form. For information missing in part from the Application (i.e. the letter from the Appropriate Local Official does not include all required information) staff will request the missing information via an Administrative Deficiency and award points provided the information submitted in response to the Administrative Deficiency is satisfactory to the Department.

**(A) Administrative Deficiencies for Applications submitted under the State Housing Credit Ceiling and Rural Rescue Applications.** If an Application contains Administrative Deficiencies which, in the

determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, Quantifiable Community Participation (QCP) and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five (5) points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not add any Set-Asides, increase the requested credit amount, revise the Unit mix (both income levels and bedroom mixes), or adjust their self-score except in response to a direct request from the Department as a result of an Administrative Deficiency or by approved amendment of an Application after a commitment or allocation of tax credits as further described in §49.13(B) of this chapter (relating to Amendments) (§2306.6708). This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division during their review. To the extent that the review of Administrative Deficiency documentation during the review alters the score assigned to the Application, Applicants will be re-notified of their final score.

(B) **Administrative Deficiencies for Tax Exempt Bond Applications.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the e-mail within twenty-four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies by 5:00 p.m. on the fifth business day following the date of the deficiency notice will result in a penalty fee of \$500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after 5:00 p.m. on the tenth day following the date of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination pursuant to §49.4 of this chapter (relating to Ineligibility). The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. This Administrative Deficiency process applies equally to the Real Estate Analysis Division review and feasibility evaluation and the same penalty and termination will be assessed.

(b) **Pre-application Submission.** The purpose of the pre-application process is to enable Applicants interested in pursuing the Application to assess generally who else is interested in submitting Applications and the nature of their proposed Development. Based on an understanding of the potential competition they can make a better and more informed decision whether they wish to proceed to prepare and submit an Application.

(1) As used herein a "complete pre-application" means a pre-application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) The pre-application must be submitted in accordance with the Pre-application Acceptance Period and Final Delivery Date as identified in §49.3 in this chapter (relating to the Program Calendar).

(3) To submit the complete pre-application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete pre-application to the Department prior to the Pre-application Final Delivery Date.

(4) The pre-application must be accompanied by a paper certification with an original signature in the form provided in the pre-application. Furthermore, the pre-application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required in the application checklist.

(5) If a pre-application is not submitted to the Department on or before the applicable deadline indicated in §49.3 of this chapter (relating to the Program Calendar), the Applicant will be deemed to have not made a pre-application.

(6) The required pre-application fee as described in §49.14 of this chapter (relating to Program Related Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department.

(7) Only one pre-application may be submitted by an Applicant for each site. Prior to the pre-application deadline Applicants may withdraw their pre-application and subsequently file a new pre-application utilizing the original pre-application fee that was paid as long as no evaluation was performed by the Department.

(8) Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of pre-application. The rejection of a pre-application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(c) **Pre-application Threshold Criteria.** The Pre-application Threshold Criteria include:

(1) Submission of a pre-application;

(2) Evidence of Site Control through March 1, 2011 as evidenced by the documentation required under §49.8(a)(8)(A) of this chapter (relating to Threshold); and

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. (§2306.6704)

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

(i) No later than the Pre-application Neighborhood Organization Request Date identified in §49.3 of this chapter, (relating to the Program Calendar), the Applicant must e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") a completed "Neighborhood Organization Request" letter as provided in the pre-application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(ii) If no reply letter is received from the local elected officials by the Pre-application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the in the pre-application;

(iii) 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 provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the pre-application submission in the .

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

signed receipt for mail or courier delivery and confirmation of receipt by the recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the pre-application is submitted.

- (i) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site;
  - (ii) Superintendent of the school district containing the Development;
  - (iii) Presiding officer of the board of trustees of the school district containing the Development;
  - (iv) Mayor of any municipality containing the Development;
  - (v) All elected members of the Governing Body of any municipality containing the Development;
  - (vi) Presiding officer of the Governing Body of the county containing the Development;
  - (vii) All elected members of the Governing Body of the county containing the Development;
  - (viii) State senator of the district containing the Development; and
  - (ix) State representative of the district containing the Development.
- (C) Each such notice must include, at a minimum, all of the following:
- (i) The Applicant's name, address, individual contact name and phone number;
  - (ii) The Development name, address, city and county;
  - (iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
  - (iv) Whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;
  - (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, high-rise etc.) and population being served (general or elderly);
  - (vi) The approximate total number of Units and approximate total number of low-income Units;
  - (vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the approximate percentage of Units that are market rate;
  - (viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and any market rate Units, if applicable. Rents to be provided are those that are effective at the time of the pre-application, which are subject to change as annual changes in the area median income occur; and
  - (ix) The expected completion date if credits are awarded.
- (D) Pre-applications not meeting the Pre-application Threshold Criteria identified in subsection (c) above will be terminated and the Applicant will receive a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Pre-application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled.

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

(e) **Application Submission.** An Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application in order to be considered for Housing Tax Credits.

(1) As used herein a "complete application" means an Application that meets all of the Department's criteria for an Application with all required information and exhibits provided pursuant to the application checklist provided in the Tax Credit (Procedures) Manual.

(2) For Applications submitted under the State Housing Credit Ceiling, the Application must be submitted by the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). The Full Application Delivery Date for Tax-Exempt Bond Developments is triggered by the Certificate of Reservation issued by the Texas Bond Review Board and is further defined in §49.11 of this chapter (relating to Tax-Exempt Bond Developments).

(3) To submit the complete application the Applicant must deliver one (1) CD-R containing a PDF copy and Excel copy of the complete application to the Department.

(4) The Application must be accompanied by a paper certification with an original signature in the form provided in the Application. Furthermore, the Application must be a single file, individually bookmarked at each of the required volumes and exhibits presented in the order as required by the application checklist.

(5) If an Application is not submitted to the Department on or before the applicable deadline indicated in paragraph (1) of this subsection, the Applicant will be deemed to have not made an Application.

(6) The required Application fee as described in §49.14 of this chapter (relating to Program Related Fees) must be submitted with the Application in order for the Application to be accepted by the Department.

(7) Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original Pre-application Fee that was paid as long as no evaluation was performed by the Department.

(f) **Evaluation Process.** Applications submitted for consideration (including Tax Exempt Bond Developments) will be reviewed according to the Eligibility, Threshold and for competitive applications under the State Housing Credit Ceiling, for Selection Criteria. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.4 of this chapter (relating to Ineligibility); Applicants will be notified in these instances.

(g) **Subsequent Evaluation and Methodology for Award Recommendations to the Board.** The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division. In general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. However, an Application may be reviewed by the Real Estate Analysis Division prior to the completion of the Eligibility and Threshold reviews. The procedure identified in paragraphs (1) - (6) of this subparagraph will also be used in making recommendations to the Board:

(1) Applications with the highest scores in the TRDO-USDA Allocation until the minimum requirements stated in §49.6(2) of this chapter (relating to USDA Set-Aside) are attained. If an Application in this Set-Aside involves Rehabilitation it will be attributed to, and come from the, At-Risk Set-Aside; if an Application in this Set-Aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region;

(2) Applications with the highest scores in the At-Risk Set-Aside Statewide until the minimum requirements stated in §49.6(b)(3) of this chapter (relating to At-Risk Set-Aside) of this chapter are attained;

(3) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.6(a) of this chapter (relating to Regional Allocation Formula), without exceeding the credit amounts available for a Rural Regional Allocation and Urban Regional Allocation in each region. To the extent that Applications in the At-Risk and TRDO-USDA Set-Asides are not competitive enough within their respective Set-Asides, they will also be able to compete, with no Set-Aside preference, within their appropriate sub-region;

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

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

(6) Staff will ensure that at least 10% of the State Housing Credit Ceiling is allocated to Qualified Nonprofit Organizations to satisfy the Nonprofit Set-Aside. If 10% is not met through the existing competitive process, then the Department will add the highest scoring Application by a Qualified Nonprofit Organization statewide until the 10% Nonprofit Set-Aside is met. Staff will ensure that at least 20% of the State Housing Credit Ceiling is allocated to Rural Developments. If this 20% minimum is not met through the existing competitive process, then the Department will add the highest scoring Rural Development Application statewide until the 20% Rural Development Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban Regional Allocation. Funds for the Rural Regional Allocation or Urban Regional Allocation within a region, for which there are no eligible feasible Applications, will be redistributed

as provided in §49.6(c) of this chapter (relating to Redistribution of Credits). If the Department determines that an allocation recommendation would cause a violation of the \$2 million limit described in §49.5(b) of this chapter, (relating to Credit Amount), the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting Set-Aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available Housing Tax Credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a waiting list, the Department shall underwrite as many additional Applications as necessary to ensure that all available Competitive Housing Tax Credits are allocated within the period required by law. ((§2306.6710(a) - (f); §2306.111))

(h) **Underwriting Evaluation.** The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate allocation of Housing Tax Credits. In making this determination, the Department will use the Underwriting Rules and Guidelines found in §1.32 of this title. The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(i) **Compliance Evaluation.** After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under §49.4 of this chapter, (relating to Ineligibility).

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

(k) **Application Process for Rural Rescue Applications Under the 2012 Credit Ceiling.** The Rural Rescue Applications will be reviewed according to the process outlined in this subsection.

(1) **Submission Requirements.** Rural Rescue Applications may be submitted during the Rural Rescue Application Submission Period as identified in §49.3 of this chapter (relating to the Program Calendar) A complete Application must be submitted at least sixty (60) days prior to the date of the Board meeting at which the Applicant would like the Board to act on the proposed Development. Applications must include the full Application Fee as further described in §49.14 of this chapter (relating to Program Related Fees). Applicants must submit documents in accordance with the application checklist provided in the Tax Credit (Procedures) Manual for all Volumes, including Volume IV.

(A) Applications will be processed on a first-come, first-served basis. Applications unable to meet all Administrative Deficiency and underwriting requirements within thirty (30) days of the request by the Department, will remain under consideration, but will lose their submission status and the next Application in line will be moved ahead in order to expedite those Applications ready to proceed. Applications for Rural Rescue will be processed and evaluated as described in this paragraph. Applications will be reviewed to ensure that the Application is eligible as a rural "rescue" Development as described in paragraph (2) of this subsection.

(B) Prior to the Development being recommended to the Board, TRDO-USDA shall provide the Department with a copy of the physical site inspection report performed by TRDO-USDA, if applicable.

(2) **Eligibility and Threshold Review.** All Rural Rescue Applications will be reviewed pursuant to §49.8 and §49.9 of this chapter (relating to Threshold and Selection). Additional eligibility requirements include the criteria listed in subparagraphs (A) - (C) of this paragraph. Applications found to be ineligible will be notified.

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

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

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

(ii) is being foreclosed; or

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

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

(3) **Selection Criteria Review.** All Rural Rescue Applications will be evaluated against the Selection Criteria pursuant to §49.9 of this chapter and a score will be assigned to the Application. The minimum score for Selection Criteria as identified in §49.9(a) is not required to be achieved to be eligible.

(4) **Credit Ceiling and Applicability of this chapter.** All Rural Rescue Applicants will receive their credit allocation out of the 2012 Credit Ceiling and therefore, will be subject to the rules and guidelines identified in the 2012 Qualified Allocation Plan (QAP). However, because the 2012 QAP will not be in effect during the time period that the Rural Rescue Applications can be submitted, Applications submitted and eligible under the Rural Rescue Set-Aside will be considered to have satisfied the requirements of the 2012 QAP by having satisfied the requirements of the 2011 QAP, to the extent permitted by statute.

(5) **Procedures for Recommendation to the Board.** Consistent with subsection (c) of this section, staff will make its recommendation to the Committee. The Committee will make Commitment recommendations to the Board. Staff will provide the Board with a written, documented recommendation which will address at a minimum the financial and programmatic viability of each Application and a breakdown of which Selection Criteria were met by the Applicant. The Board will make its decision based on §49.10(a) of this chapter (relating to Board Decisions). Any award made to a Rural Rescue Development will be credited against the TRDO-USDA Set-Aside for the 2011 Application Round, as required under subsection (g)(3) of this section.

(6) **Limitation on Allocation.** No more than \$350,000 in credits will be forward committed from the 2011 State Housing Credit Ceiling. To the extent Applications are received that exceed the maximum limitation; staff will prepare the award for Board consideration noting for the Board that the award would require a waiver of this limitation.

#### **§49.8. Threshold Criteria.**

(a) The Threshold Criteria listed in this subsection are mandatory requirements that must be submitted at the time of Application submission unless specifically indicated otherwise. If any of the Threshold Criteria indicated below are not resolved, clarified or corrected to the satisfaction of the Department, through the Administrative Deficiency process the Application will be terminated.

(1) **Submission of the Application.** Includes the entire Uniform Application and any other supplemental forms which may be required by the Department and in the format prescribed by the Department. (§2306.1111)

(2) **Governing Body Resolutions.** The following resolutions, if applicable to the proposed Development, must be submitted by the Resolutions Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar) and may not be more than one year old from the date the Volume 1 is submitted to the Department.

(A) **Twice the State Average.** If the 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 reference this rule and authorize an allocation of Housing Tax Credits for the Development; (§2306.6703(a)(4))

(B) **One Mile Three Year Rule.** If the Applicant proposes to construct a Development proposing New Construction or Adaptive Reuse (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(i) Serves the same type of household as the new Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(ii) 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 Volume I is submitted); and

(iii) Has not been withdrawn or terminated from the Housing Tax Credit Program;

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



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

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

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

(IV) The Governing Body, of the Unit of General Local Government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph.

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

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

(i) The Development is in a Place whose population is less than 100,000;

(ii) The Applicant proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or

(iii) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development. These ineligible census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

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

(4) **Experience Certification.** No later than the Experience Certification Delivery Date as indicated in §49.3 of this chapter (relating to the Program Calendar), an Applicant must submit the documents required in this subsection to obtain the required certification. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in its Application(s). Experience must meet the criteria of both subparagraph (A) and (B) with evidence of such provided as stated in subparagraphs (C) and (D).

(A) One of the Principals of the Development Owner, General Partner, Developer or the General Contractor must provide evidence reasonably acceptable to the Department that they have acquired actual experience through previous participation in and subsequent completion of comparable residential units (single family, multifamily) as demonstrated by the submission of a housing tax credit Application, receipt of award, submission of post award activities (Commitment, Carryover, 10% test, etc...), construction oversight, lease-up, stabilization, and receipt of IRS Forms 8609. Executive Directors of non-profits and public housing authorities may qualify for this experience requirement; and

(B) The Principal requesting the certificate must have experience with the same type of construction as the Application is proposing (single family, multifamily, new construction, rehabilitation, etc...) and have acquired their experience in connection with a development with at least 80% as many units as the units in the Development for which Application is being made, in no event less than 36 units. The Department will, in issuing an Experience Certificate, state any limitations. Persons who establish that they have participated in the development of 200 units or more will not be restricted. Experience of multiple parties may not be aggregated. Rehabilitation experience must have been substantial and involved at least \$15,000 of direct cost per Unit.

(C) Evidence for experience must clearly indicate that:

(i) The Principal was a Principal of the Development Owner, General Partner or Developer (of the Development submitted as experience) during the complete specified timeframe and process as identified in subparagraph (A) of this subsection; and

(ii) The Development has been completed (as evidenced by the number of Units completed)

(iii) The names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(D) One or more of the following documents must be submitted as evidence of completion of the development:

(i) American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor,

(ii) AIA Document G704 - Certificate of Substantial Completion,

(iii) AIA Document G702 - Application and Certificate for Payment,

(iv) Certificate of Occupancy,

(v) IRS Form 8609, (only one for per development is required)

(vi) HUD Form 9822,

(vii) Development agreements,

(viii) Partnership agreements, or

(ix) or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience.

(5) **Certifications.** The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic common amenities selected for the Development. All Developments must meet at least the minimum threshold of points based on the total number of Units in the Development. These points are not associated with the Selection Criteria points in §49.9(a) of this chapter. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments proposing Rehabilitation (excluding Reconstruction) or proposing Single Room Occupancy will receive 1.5 points for each point item (do not round). Applications for non-contiguous scattered site housing, including New Construction, Reconstruction, Adaptive Reuse, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.13(b) of this chapter (relating to Amendments) and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment, Determination Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points as follows:

(I) Total Units are less than 16, 1 point is required to meet Threshold;

(II) Total Units are 17 to 24, 3 points are required to meet Threshold;

(III) Total Units are 25 to 40, 4 points are required to meet Threshold;

(IV) Total Units are 41 to 76, 7 points are required to meet Threshold;

(V) Total Units are 77 to 99, 10 points are required to meet Threshold;

(VI) Total Units are 100 to 149, 13 points are required to meet Threshold;

(VII) Total Units are 150 to 199, 16 points are required to meet Threshold; or

(VIII) Total Units are 200 or more, 19 points are required to meet Threshold.

(ii) The amenities include those items listed in subclauses (I) - (XXVI) of this clause. Both general population and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population. The Applicant is instructed to review Chapter 60 of this title relating to the Department's Compliance Rules for detailed definitions and standards as it relates to the amenities listed in this subparagraph.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (2 points);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one washer and dryer for each 25 Units (1 point);

(VI) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);

(VII) Covered pavilion that includes barbecue grills and tables (2 points);

- (VIII) Swimming pool (3 points);
- (IX) Furnished fitness center (2 points);
- (X) Equipped and functioning business center or equipped computer learning center (2 points);
- (XI) Furnished Community room (1 point);
- (XII) Library with an accessible sitting area (separate from the community room) (1 point);
- (XIII) Enclosed community sun porch or covered community porch/patio (2 points);
- (XIV) Service coordinator office in addition to leasing offices (1 point);
- (XV) Senior Activity Room (Arts and Crafts, etc.) (2 points);
- (XVI) Health Screening Room (1 point);
- (XVII) Secured Entry (elevator buildings only) (1 point);
- (XVIII) Horseshoe pit, putting green or shuffleboard court (1 point);
- (XIX) Community Dining Room w/full or warming kitchen (3 points);
- (XX) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (1 point);
- (XXI) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);
- (XXII) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (XXIII) Furnished and staffed Children's Activity Center (3 points);
- (XXIV) Community Theater Room equipped with a 52 inch or larger screen with surround sound equipment; DVD player; and theater seating (3 points);
- (XXV) Dog Park (2 points); or
- (XXVI) Green Building amenities that include the following:

**(-a-) Development Energy Savings (1 point for each item):**

- (-1-) at least 50% of the water needed annually for site irrigation is from a rain water harvesting/collection system and/or locally approved grey water collection system;
- (-2-) native trees and plants installed that are appropriate to the site's soils and microclimate and located to allow for shading in the summer and allow for heat gain in the winter; or
- (-3-) The Development qualifies for and receives Renewable Energy Tax Credits. The Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification.

**(-b-) Tenant Energy Savings (2 points for each item):**

- (-1-) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application;
- (-2-) Passive solar heating/cooling;
  - (-A-) If the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west;
  - (-B-) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet) and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation;
  - (-C-) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August); or
  - (-D-) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west; applies only to rehabilitation where windows are not replaced with Energy Star rated windows.
- (-3-) Water conserving features:
  - (-A-) Install low-flow or high efficiency toilets that exceed State requirements;
  - (-B-) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard. All fixtures throughout the development must meet the standard at the time of Application. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets; or
  - (-C-) Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development;

(-4-) Sub-metered utility meters on Rehabilitation Development without existing sub-meters; or

(-5-) Energy efficiency:

(-A-) If the development uses Energy-Star qualified windows and glass doors exclusively; insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC, and domestic hot water heaters, and insulation that exceeds Energy Star standards; or

(-B-) If the project promotes energy efficiency by demonstrating a certified HERS score of 85 or lower;

(-6-) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) (2 points); or

(-7-) Recycling service provided throughout the compliance period.

**(-c-) Other Green Features/Indoor Health (1 point for each item):**

(-1-) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation;

(-2-) Healthy flooring, provide at least one of the following for 50% of flooring: finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum seven (7) year wear through warranty; or

(-3-) Healthy finish materials, use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard.

**(-d-) LEED (Leadership in Energy and Environmental Design) Certification.** If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.

(B) A certification that the Development will meet the minimum threshold for size of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with the points in §49.9(a)(4) of this chapter (relating to Selection). Developments proposing Rehabilitation (excluding Reconstruction) or Single Room Occupancy will not be subject to the requirements of this subparagraph.

(i) 550 square feet for an Efficiency Unit;

(ii) 650 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development; 550 square feet for a one Bedroom Unit in a Qualified Elderly Development;

(iii) 900 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development; 700 square feet for a two Bedroom Unit in a Qualified Elderly Development;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

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

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

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(F) Pursuant to §2306.6722 of the Texas Government Code, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C, and this subparagraph. (§2306.6722 and §2306.6730)

(G) For Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist.

(H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(I) A certification that the Development will be built by a General Contractor hired by the Development Owner or the Applicant; if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186, Texas Government Code and as further described in §1.37 of this title.

(K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a Neighborhood Organization for purposes of §49.9(a)(2) of this chapter (relating to Selection) , has not given money or a gift to cause the Neighborhood Organization to take its position of support or opposition, nor has provided any assistance to a Neighborhood Organization outside of the assistance allowed under §49.9(a)(2)(A)(vi) to meet the requirements under §49.9(a)(2) of this chapter as it relates to the Applicant's Application or any other Application under consideration in 2011.

(L) Operate in accordance with the requirements pertaining to rental assistance in Chapter 60 of this title (relating to the Department's Compliance Rules).

(M) A certification that the Development Owner will contract with a Management Company throughout the Compliance Period that will perform criminal background checks on all adult tenants, head and co-head of households.

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

(O) A certification that the Developer or Principal of the Applicant has not been voluntarily or involuntarily removed by the lender, equity provider, limited partners or any other owners or investors, however designated, or the Department in the past five (5) years for failure to perform obligations. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. If an Applicant or Developer signs the certification, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded.

**(6) Architectural Drawings.** While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) Is consistent with the number of buildings and building type/unit mix specified in the "Building/Unit Configuration" provided in the Application;

(III) Identifies all residential and common buildings; and

(IV) Clearly delineates the flood plain boundary lines and shows all easements.

(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition. Adaptive Reuse Developments, are only required to provide building plans delineating each Unit by number, type and area consistent with those in the "Rent Schedule" and pictures of each elevation of the existing building depicting the height of each floor and percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit. The Net Rentable Areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" and "Building/Unit Configuration" provided in the Application. Adaptive Reuse Developments are only required to provide Unit floor plans for each distinct typical Unit type (i.e. one-bedroom, two-bedroom) and for all Unit types that vary in Net Rentable Area by 10% from the typical Unit.

**(7) Development Costs, Corresponding Credit Request and Syndication Information.**

(A) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period.

(B) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(C) If projected site work costs (excluding ineligible demolition costs) include unusual or extraordinary items or exceed \$9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

**(8) Readiness to Proceed.**

(A) **Site Control.** Evidence of Site Control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least forty-five (45) years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase or a lease which is valid for the entire period the Development is under consideration for tax credits by the same Development Owner, Applicant or Affiliate as indicated at pre-application. For Tax Exempt Bond Development Applications, site control must be valid through December 1, 2010 with option to extend through March 1, 2011 (Applications submitted for lottery) or ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at which the award of Housing Tax Credits will be considered (Applications not submitted for lottery). The potential expiration of Site Control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. Proof of consideration, as specified in the contract, must be submitted.

(iv) If the acquisition can be characterized as an identity of interest transaction, as described in §1.32 of this title (relating to the Department's Underwriting Rules and Guidelines) subclauses (I) - (III) of this clause must be provided:

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement specifically indicating the asset value for the Development Site; and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the Application;

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection; and

(-b-) Any other verifiable costs of owning, holding, or improving the Property that, when added to the value from subclause (I) of this clause, justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense, capitalized costs of any physical improvements made to the property that benefit the proposed Development, the cost of rezoning, replatting and or any off-site costs to provide utilities or improve access to the property that benefit the proposed Development. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the subject Development's award will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the property, and the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the property and avoid foreclosure. Additionally, an annual return of 10% may be applied to the original acquisition cost and documented holding and improvement costs; this return can be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the subject Development's award will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(III) In no instance will the acquisition cost utilized by the underwriter exceed the lesser of the original acquisition cost evidenced by subclause (I) of this clause plus costs identified in subclause (II)(-b-) of this clause, or the "as-is" value conclusion evidenced by subclause (II)(-a-) of this clause. The resulting acquisition cost will be referred to as the "identity of interest adjusted acquisition cost."

**(B) Zoning.** Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) For New Construction, Adaptive Reuse or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is located within the boundaries of a Unit of General Local Government which does not have a zoning ordinance; and either subclause (II) or (III) of this clause;

(II) The letter must state that the Development is consistent with a local consolidated plan, comprehensive plan, or other local planning document that addresses affordable housing; or

(III) The letter must state that there is a need for affordable housing, if no such planning document exists.

(ii) For New Construction or Reconstruction Developments, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the Unit of General Local Government release agreeing to hold the Unit of General Local Government and all other parties harmless in the event that the appropriate zoning is denied. (§2306.6705(5)(B)) Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) For Rehabilitation Developments, documentation of current zoning is required. If the property is currently a non-conforming use as presently zoned, a letter from the chief executive officer of the Unit of General Local Government or another local official with appropriate jurisdiction which addresses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

**(C) Financing Requirements.**

(1) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to this chapter must be identified in the "Rent Schedule" and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be imposed by the Housing Tax Credit LURA and monitored throughout the extended use period. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in subclauses (I) - (IV) of this clause:

(I) Financing is in place as evidenced by:

(-a-) A valid and binding loan agreement; and

(-b-) Deed(s) of trust in the name of the Development Owner as grantor; or

(-c-) For TRDO-USDA §515 Developments involving, an executed TRDO-USDA letter indicating TRDO-USDA has received a notification of the tax credit Application; or

(II) Commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and includes the following as identified in (-a-) - (-d-) of this subparagraph:

(-a-) Has been executed by the lender; and

(-b-) A minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

and

(-c-) An expiration date; and

(-d-) All the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or

(III) Any federal, state or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(-a-) A term sheet or commitment from the lending agency which clearly describes the amount and terms of the funding must be submitted. If applying for points under §49.9(a)(5) of this chapter (relating to Selection) then documentation must be submitted as required by the deadlines stated therein; and

(-b-) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the application checklist in the Tax Credit (Procedures) Manual and

(IV) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than six (6) months prior to the close of the Application Acceptance Period;

(2) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application; and (§2306.6705(1))

(3) Provide a term sheet or letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of Housing Tax Credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

**(D) Tax Assessment and Title.** Provide the documents in clauses (i) and (ii) of this subparagraph:

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



(ii) A copy of:

(I) The current title policy (or title status report if on Tribal Land) including a legal description which shows that the ownership (or leasehold) of the Development Site is vested in the name of the Development Owner; or

(II) a current title commitment including a legal description, with the proposed insured matching the name of the Development Owner and the title of the Development Site vested in the name of the seller or lessor as indicated on the sales contract, option or lease;

(III) If the title policy, title status report, or commitment is more than six (6) months old as of the day the Application Acceptance Period closes, then a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, title status report or commitment must be provided.

**(9) Notifications.**

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three (3) months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the pre-application for the same Application and satisfied the Department's review of Pre-application Threshold, then no additional notification is required at Application. However, re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly or general). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three (3) months prior to the date the Volume III of the Application is submitted.

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

(I) No later than the Full Application Neighborhood Organization Request Date as identified in §49.3 of this chapter (relating to the Program Calendar), the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;

(II) If no reply letter is received from the local elected officials by the Full Application Response to Neighborhood Organization Request Date, then the Applicant must certify to that fact in the certification form provided in the Application;

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the submission of the Application, in the certification form provided in the Application.

(ii) No later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials, however, are required to notify county officials. Evidence of notification is required in the form of a certification provided in the Application, although it is encouraged that Applicants retain proof of delivery of the notifications, to the persons or entities prescribed in subclauses (I) - (IX) of this clause, in the event that the Department requires proof of notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

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

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the Governing Body of any municipality containing the Development;

(V) All elected members of the Governing Body of any municipality containing the Development;

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

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

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

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

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

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction, reconstruction, Adaptive Reuse or Rehabilitation;

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

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

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

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

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

**(B) Signage on Property or Alternative.** A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted unless prohibited by local ordinance or code or restrictive covenants. Scattered site Developments must install a sign on each non-contiguous Development Site. The sign must identify that a residential development is being proposed and must provide contact information for the Applicant in the form of a phone number or web address where they can obtain more information. The Applicant shall make reasonable efforts to maintain the sign on the site until the day that the Board takes final action on the Application for the Development. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, evidence of the applicable ordinance or code or restrictive covenant must be submitted in the Application.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development Site.

**(C)** If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that it has notified each tenant at the Development of all the information otherwise required on the sign, including the Department's public hearing schedule for comment on submitted Applications.

#### **(10) Development's Proposed Ownership Structure.**

**(A)** A chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all

Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit and trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of name reservation of the entity name from the Texas Office of the Secretary of State.

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2011 versions of these forms, as required in the Uniform Application, must be submitted. Units of General Local Government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) The experience certification, as further described under subsection (a)(4) of this section, is submitted that reflects a Person that appears in the organizational chart provided in subparagraph (A) of this paragraph.

#### **(11) Development's Projected Income and Operating Expenses.**

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties);

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement; (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate;

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph;

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to the Applicant's inability to provide all documentation as described:

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six (6) months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available; and

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

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

(iii) For Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

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

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

**(12) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.** All Applications under the State Housing Credit Ceiling involving a nonprofit General Partner, regardless of whether the Nonprofit Set-Aside was selected, in which the Development will receive some financial or tax benefit for the involvement of the nonprofit General Partner, must submit all of the documents described in this subparagraph and indicate the nonprofit status on the carryover documentation and IRS Forms 8609. (§2306.6706) Tax-Exempt Bond Applications only need to submit the information in clauses (A) and (B) of this subparagraph.

(A) An IRS determination letter which states that the nonprofit organization is a §501(c)(3) or (4) entity;

(B) The "Nonprofit Participation Exhibit" as provided in the Application;

(C) A Third Party legal opinion stating:

(i) That the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion; and

(ii) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling managing member; and otherwise meet the requirements of §42(h)(5) of the Code; and

(iii) That one of the exempt purposes of the nonprofit organization is to provide low-income housing; and

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

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

(D) A copy of the nonprofit organization's most recent audited financial statement; and

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

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

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

**(13) Authorization to Release Credit Information.** The authorization to release credit information must be unbound and clearly labeled. An "Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of 10% or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

**(14) Supplemental Threshold Reports.** The Third Party reports as required in this subsection must meet the requirements stated in subparagraphs (A) - (F) of this paragraph. The entire report must be submitted on or before the Third Party Report Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). If the entire report is not received by that time, the Application will be terminated and will be removed from consideration. A searchable electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name, and Development location are required.

(A) A Phase I Environmental Site Assessment (ESA) report (required for all Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than twelve (12) months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than twelve (12) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three (3) months prior to the first

day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report;

(iii) Prepared in accordance with §1.35 of this title (relating to the Department's Environmental Site Assessment Rules and Guidelines);

(iv) Developments whose funds have been obligated by TRDO-USDA will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements; and

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

(B) A comprehensive Market Analysis report (required for all Developments):

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §1.33 of this title (relating to the Market Analysis Rules and Guidelines);

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the methodology prescribed in §1.33 of this title (relating to the Department's Market Analysis Rules and Guidelines); and

(iv) For Applications in the TRDO-USDA Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §1.34 of this title (relating to the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055, §42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report (required for Rehabilitation, Reconstruction and Adaptive Reuse Developments):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period;

(iii) Prepared in accordance with §1.36 of this title (relating to the Department's Property Condition and Assessment Rules and Guidelines); and

(iv) For Developments which require a capital needs assessment from TRDO-USDA, the capital needs assessment may be substituted and may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §1.36 of this title.

(D) An appraisal report (required for Rehabilitation Developments and Identity of Interest transactions pursuant to §1.34 of this title relating to Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines):

(i) Prepared by a qualified Third Party;

(ii) Dated not more than six (6) months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than six (6) months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than twelve (12) months old as of the first day of the Application Acceptance Period;

(iii) Prepared in accordance with the §1.34 of this title (relating to the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines); and

(iv) For Developments that require an appraisal from TRDO-USDA, the appraisal may be more than six (6) months old, as long as TRDO-USDA has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

#### §49.9. Selection Criteria.

(a) All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TRDO-USDA Applications, must receive a final score totaling a minimum of 118, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 227.

(1) **Financial Feasibility.** (§2306.6710(b)(1)(A)) Applications may qualify to receive a maximum of 28 points for this item. Receipt of feasibility points under this paragraph does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division, and, conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive all possible points under this paragraph. Evidence will include the following in addition to the commitment letter required under subsection §49.8(a)(8)(C) of this chapter. To qualify for 20 points the supporting financial data shall include:

(A) A fifteen (15) year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five (5) years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen (15) years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter, or other form deemed acceptable by the Department, indicating that the lender's assessment finds that the Development will be feasible for fifteen (15) years.

(C) For Developments maintaining existing financing from TRDO-USDA, a current note balance must be provided or other form of documentation of the existing loan deemed acceptable by the Department to meet the requirements of this section.

(D) To qualify for an additional 8 points, the commitment letter from the permanent or construction lender must indicate that they have reviewed the Applicant's financial position and credit worthiness and have determined that the Applicant meets the financial liquidity or net worth standards that such lender would require in connection with the proposed Development. Furthermore, the letter must describe those standards that such lender would require in connection with the proposed Development. If at any time the Application is under consideration by the Department and the lender changes, the Applicant must provide a subsequent letter from the new lender addressing net worth and liquidity under the new lender's standards in order to remain eligible for the additional 8 points.

(2) **Quantifiable Community Participation.** (§2306.6710(b)(1)(B); §2306.6725(a)(2)) Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development Site. It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under §49.8(a)(9) of this chapter (relating to Notifications) if the organization provides the information and documentation required in subparagraphs (A) and (B) of this paragraph. It is also possible that Neighborhood Organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring. If an organization is determined not to be qualified under this paragraph, the organization may qualify under paragraph (11)(B) of this subsection.

(A) **Submission Requirements.** Each Neighborhood Organization may submit the form as included in the QCP Neighborhood Information Packet that represents the organization's input. In order to receive a point score, the form must be received, by the Department, or postmarked, if mailed by the U.S. Postal Service, no

later than the Quantifiable Community Participation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). Forms received after the deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The form must:

(i) State the name and location of the proposed single Development;

(ii) Certify that the letter is signed by two officials or board members of the Neighborhood Organization with the authority to sign on behalf of the Neighborhood Organization, and include:

(I) the street and/or mailing addresses for the signers of the letter;

(II) day and evening phone numbers for the signers of the letter;

(III) e-mail addresses and/or facsimile numbers for the signers of the letter and one additional contact for the organization; and

(IV) a written description and map of the organization's geographical boundaries;

(iii) Certify that the organization has boundaries, and that the boundaries in effect on or before the Full Application Delivery Date identified in §49.3 of this chapter (relating to the Program Calendar) contain the proposed Development Site;

(iv) Certify that the organization meets the definition of "Neighborhood Organization"; defined as an organization of persons living near one another within the organization's defined boundaries that contain the proposed Development Site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood (§2306.004(23-a)). For purposes of this section, "persons living near one another" means two (2) or more separate residential households. "Neighborhood Organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood Organizations" do not include broader based "community" organizations;

(v) Include documentation showing that the organization is on record as of the Full Application Delivery Date with the state or county in which the Development is proposed to be located. The receipt of the QCP form that meets the requirements of this subsection and further outlined in the QCP Neighborhood Information Packet will constitute being on record with the State. The Department is permitted to issue an Administrative Deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

(vi) For purposes of this section, if there is no Neighborhood Organization already 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 provided that no Neighborhood Organization exists and that such assistance is limited to:

(I) The use of a facsimile, copy machine/copying, email, and accommodations at public meetings;

(II) Technical assistance, limited to completing the QCP Neighborhood Organization Information Packet, providing boundary maps and assisting in the Administrative Deficiency process;

(III) No person required to be listed in accordance with §2306.6707 may participate in any way in the deliberations of a Neighborhood Organization of the Development to which the Application requiring their listing relates. This does not preclude their ability to present information and respond to questions at a duly held meeting where such matter is considered;

(IV) For non-Identity of Interest Applications the seller or their agents could be a member of the Neighborhood Organization if the seller will maintain primary residence within the Neighborhood Organizations boundaries;

(vii) A Neighborhood Organization must take reasonable measures to provide notice to persons eligible to join or participate in the affairs of the organization of that right. Examples of reasonable measure would be giving notice in a newsletter distributed where residents will likely see them; posting notice (in compliance with local signage requirements); or distribution flyers. The Department may exclude from consideration Neighborhood Organizations that do not comply with their own bylaws or other constitutive or governing documents;

(viii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and

(ix) The form from the Neighborhood Organization for the purposes of this subsection must be submitted to the Department by the Neighborhood Organization and not the Applicant. This documentation must be submitted independent of the Application. Furthermore, while the Applicant may assist the

Neighborhood Organization in the Administrative Deficiency process as it relates to this item, the Administrative Deficiency Notice from the Department will be issued to the Neighborhood Organization with a copy to the Applicant; however, the Deficiency response must be submitted to the Department directly by the Neighborhood Organization.

(B) **Scoring.** The input must clearly and concisely state each reason for the Neighborhood Organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will be based on the following:

(I) Support letters will receive 24 points. Such letters must make a direct statement of support. Support by inference (i.e. "The city supports the Development and we support the city" will not suffice); or

(II) No reason for support or opposition or is unclear will be considered ineligible and scored as neutral (18 points); or

(III) Applications for which there are no existing Neighborhood Organizations will receive a maximum score of 12 points; or

(IV) Opposition letters (must state reasons for opposition) will receive 0 points;

(IV) Applications that receive multiple eligible letters, the average score of all eligible letters will be applied to the Application as follows:

(-a-) 12 points if one letter is received in opposition and one letter is received in support;

(-b-) 18 points if one letter is received in opposition and two letters are received in support;

(-c-) 0 points if 2 opposition letters are received.

(ii) The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and Neighborhood Organizations for more information. The Department may consider any relevant information specified in letters from other Neighborhood Organizations regarding a Development in determining a score.

(iii) The Department highly values quality public input addressed to the merits of a Development. Input that identifies matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the Neighborhood Organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

(3) **The Income Levels of Tenants of the Development.** (§§2306.111(g)(3)(B); 2306.111(g)(3)(E); 2306.6710(b)(1)(C); 2306.6710(e); and 42(m)(1)(B)(ii)(I)) Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (C) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code.

(A) 22 points if at least 80% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or

(C) 20 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes at or below 50% of AMGI.

(4) **The Size and Quality of the Units** (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)). Applications may qualify to receive up to 20 points under both subparagraphs (A) and (B) of this paragraph.

(A) **Size of the Units** (6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications



involving Rehabilitation (excluding Reconstruction), Developments receiving funding from TRDO-USDA, or Developments proposing Single Room Occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted in clauses (i) - (v) of this subparagraph. Changes to an Application during any phase of the review process that decreases the square footage below the minimums noted in clauses (i) - (v) of this subparagraph, will be re-evaluated and may result in a reduction of the Application score.

- (i) 600 square feet for an Efficiency Unit;
- (ii) 700 square feet for a one Bedroom Unit that is not in a Qualified Elderly Development ; 600 square feet for a one Bedroom Unit in a Qualified Elderly Development ;
- (iii) 950 square feet for a two Bedroom Unit that is not in a Qualified Elderly Development ; 750 square feet for a two Bedroom Unit in a Qualified Elderly Development;
- (iv) 1,050 square feet for a three Bedroom Unit; and
- (v) 1,250 square feet for a four Bedroom Unit.

(B) **Quality of the Units** (14 points). Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xvi) of this subparagraph. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation (excluding Reconstruction) or Single Room Occupancy may receive 1.5 points for each point item (do not round).

- (i) Covered entries (1 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
- (iii) Microwave ovens (1 point);
- (iv) Self-cleaning or continuous cleaning ovens (1 point);
- (v) Refrigerator with icemaker (1 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
- (vii) Laundry equipment (washers and dryers) for each individual Unit including a front loading washer and dryer in required UFAS compliant Units (3 points);
- (viii) Thirty (30) year architectural shingle roofing (1 point);
- (ix) Covered patios or covered balconies (1 point);
- (x) Covered parking (including garages) of at least one covered space per Unit (2 points);
- (x) 100% masonry on exterior (3 points) (Applicants may not select this item if clause (xi) of this subparagraph is selected);
- (xii) Greater than 75% masonry on exterior (1 point) (Applicants may not select this item if clause (x) of this subparagraph is selected);
- (xiii) Structural Insulated Panel construction with wall insulation at a minimum of R-20 and roof at a minimum R-30 (3 points);
- (xiv) R-15 Walls / R-30 Ceilings (rating of wall/ceiling system) (3 points);
- (xv) 14 SEER HVAC (or greater) or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction) (3 points); or
- (xvi) High Speed Internet service to all Units (2 points).

(5) **The Commitment of Development Funding by Units of General Local Government.** (§2306.6710(b)(1)(E)) Applications may qualify to receive up to 18 points under this paragraph.

(A) **Submission Requirements.** Evidence of the following must be submitted in accordance with the application checklist in the Tax Credit (Procedures) Manual.

(i) The loans, grant(s) or in-kind contribution(s) must be attributed to the total number of Units in the Development.

(ii) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form.

(iii) An Applicant may substitute any source in response to an Administrative Deficiency Notice or after the Application has been submitted to the Department.

(iv) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).

(v) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to §49.8(a)(8)(A) of this chapter to qualify. The value of in-kind contributions may only include the time period between award, or August 2, 2011 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph will be counted. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.

(vi) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Governing Body of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Governing Body of the Unit of General Local Government authorizing the Applicant to act on behalf of the Unit of General Local Government in applying for HOME Funds from TDHCA for the particular Application.

(vii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract remaining as of December 31st of the application year is submitted from the Unit of General Local Government. The value of the contract does not include past subsidies.

(viii) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity; or a letter from the funding entity indicating that the award of funds with respect to the funding cycle for which the Applicant intends to apply for will be made by August 1, 2011. This letter does not have to confirm that the funds will be awarded to the subject Application, but that awards with respect to the Applications under consideration for the funding cycle will be announced by the previously stated deadline. A statement from the Applicant with respect to the loan amount to be applied for and the specific terms requested or to be requested must be submitted. For in-kind contributions, evidence must be submitted in the Application from Unit of General Local Government substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.

(ix) If not already provided, at the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the Governing Body of the Unit of General Local Government for the Development Funding to the Department. If the funding commitment from the Unit of General Local Government has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Unit of General Local Government's Development Funding, the Commitment will be rescinded and the credits reallocated.

(x) Funding commitments from a Unit of General Local Government will not be considered final unless the Unit of General Local Government attests to the fact that any funds committed were not first provided to the Unit of General Local Government by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government or subsidiary.

(B) **Scoring.** Points will be determined on a sliding scale based on the amount of funds to be made available to the Development on a per unit basis, based on the total number of Units in the Development. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying

loan(s), grants or in-kind contributions from a Unit of General Local Government pursuant to subparagraph (A) of this paragraph.

(i) A total contribution of at least \$900 (or \$450 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 6 points; or

(ii) A total contribution of at least \$2,250 (or \$1,125 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 12 points;

(iii) A total contribution equal to or greater than \$4,500 (or \$2,250 for Rural Developments or Developments located in non-participating jurisdictions) per unit receives 18 points.

(6) **Community Support from State Representative or State Senator.** (§2306.6710(b)(1)(F) and §2306.6725(a)(2)) Applications may qualify to receive 14 points for this item. Letters must identify the specific Development, must clearly state support for or opposition to the specific Development and must be from the State Representative or State Senator that represents the district containing the proposed Development Site. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before the Input from State Senator or Representative Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). A State Representative or State Senator may withdraw (in writing), but may not change or replace a letter that is submitted by the April 1st deadline on or before the Withdraw Deadline for State Senator or Representative Letters as identified in §49.3 of this chapter (relating to the Program Calendar) but may not submit a new letter. After the Withdraw Deadline such letters may not be withdrawn. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Support letters are +14 points; neutral letters, or letters that do not specifically refer to the Development, will receive 0 points; Opposition letters (must state reason for opposition) will receive -14 points. If one letter is received in support and one letter is received in opposition the score would be 0 points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.

(7) **The Rent Levels of the Units.** (§2306.6710(b)(1)(G)) Applications may qualify to receive up to 12 points for this item provided the Application has qualified for points under paragraph (3) of this subsection, relating to Income Levels of Tenants of the Development. An Application may qualify for points under this subsection by providing additional Low-Income Units at 30% and 50% of AMGI (must round up to the next whole Unit, not less than one Unit), as follows:

(A) An Application may receive 2 points for every 5% of Low-Income Units at rents and incomes at 50% of AMGI; or

(B) An Application may receive 6 points for every 5% of Low-Income Units at rents and incomes at 30% of AMGI.

(8) **The Cost of the Development by Square Foot.** (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) Applications may qualify to receive 10 points for this item. For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development with an elevator or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed \$95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in §42(i)(3)(B)(iii) and (iv) of the Code), unless located in a "First Tier County" in which case their costs do not exceed \$97 per square foot; and \$85 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed \$87 per square foot. The First Tier counties are identified in the Tax Credit

(Procedures) Manual. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the Development Site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte.

(9) **Tenant Services.** (§2306.6710(b)(1)(I) and §2306.6725(a)(1)) Applications may qualify to receive up to 8 points for this item. The Applicant must certify that the Development will provide a combination of supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The same service may not be used for more than one scoring item. Applications will be awarded points for selecting services listed in subparagraphs (A) - (S) of this paragraph:

(A) Joint use library center, as evidenced by a written agreement with the local school district (2 points);

(B) Weekday afterschool program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics (i.e. teen dating violence, drug prevention, teambuilding, internet dangers, stranger danger, etc.) (3 points);

(C) Daily transportation (2 point);

(D) Counseling services (only Supportive Housing Developments eligible) (1 point);

(E) Food pantry/common household items (only Supportive Housing Developments eligible) (1 point);

(F) GED preparation classes (shall include a certified instructor providing on-site coursework and exam) (1 point);

(G) English as a second language classes (shall include a certified instructor providing on-site coursework and exam) (1 point);

(H) Quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.) (1 point);

(I) Annual health fair (1 point);

(J) Quarterly health and nutritional courses (1 point);

(K) Organized team sports programs or youth programs (1 point);

(L) Scholastic tutoring (1 point);

(M) Notary Public Services during regular business hours (§2306.6710(b)(3)) (1 point);

(N) Weekly exercise classes (2 points);

(O) Monthly arts and crafts (1 point);

(P) Annual income tax preparation services (1 point);

(Q) Monthly transportation to community/social events (i.e. lawful gaming sites, mall trips, community theatre, bowling, organized tours, etc.) (1 point); and

(R) Monthly on-site social events (i.e. potluck dinners, game night, etc.) (1 point);

(S) 1 point for any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.

(10) **Declared Disaster Areas.** (§2306.6710(b)(1)) Applications may receive 7 points, if by the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar) or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared a disaster under Texas Government Code §418.014.

(11) **Community Input other than Quantifiable Community Participation.** If an Application was awarded 18 or 12 points under paragraph (2) of this subsection, then that Application may receive up to 6 points for letters that qualify for points under subparagraph (A), (B) or (C) of this paragraph. An Application may not receive points under more than one of the subparagraphs (A) - (C) of this paragraph. All letters must be submitted within the Application. At no time will the Application receive a score lower than zero for this item.

(A) An Application may receive two points (maximum of 6 points) for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its

existence in the community in which the Development is located including, but not limited to, 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 will not be counted. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers a PTA or PTO would qualify. Should an Applicant elect this option and the Application receives letters in opposition, then 2 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community.

(B) An Application may receive 6 points for a letter of support, from a property owners association created for a master planned community whose boundaries include the development site that does not meet the requirements of a Neighborhood Organization for points under paragraph (2) of this subsection.

(C) An Application may receive 6 points for a letter of support from a Special Management District, whose boundaries, as of the Full Application Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar), include the Development Site and for which there is not a Neighborhood Organization on record with the county or state.

**(12) Housing Needs Characteristics.** (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 6 points (if the Development Site is located in a Place with a certain Affordable Housing Need Score). Each Application may receive a score if correctly requested in the Self Score form based on objective measures of housing need in the Place where the Development is located. This Affordable Housing Need Score for each Place will be published in the 2011 Site Demographic Characteristics Report. For purposes of this item a Place is defined as the geographic area contained within the boundaries of:

(i) An incorporated place; or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census. For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Place characteristics of the incorporated place or CDP whose boundary is nearest to the Development Site.

**(13) Community Revitalization, (§42(m)(1)(C)(iii)) Historic Preservation or Rehabilitation.** Applications may qualify to receive 6 points under subparagraphs (A) - (C) of this paragraph or 3 points under subparagraph (D) of this paragraph.

(A) The Development includes the use of an Existing Residential Development and proposes any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.; or

(B) The Development includes the use of an existing building that is designated as historic by a federal or state Entity and proposes Rehabilitation (including Reconstruction) or Adaptive Reuse. The Development itself must have the designation; points in this subparagraph are not available for Developments simply located within historic districts or areas that do not have a designation on the building. The Development must include the historic building. Evidence will include proof of the historic designation from the appropriate Governmental Entity.

(C) The Development is New Construction and is proposed to be located in an area that has existing housing that is part of a Community Revitalization Plan.

(D) Rehabilitation (includes Reconstruction). Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), solely Reconstruction (excluding New Construction of non-residential buildings), or solely Adaptive Reuse qualify for 3 points.

**(14) Pre-application Participation Incentive Points.** (§2306.6704) Applicants that submitted a pre-application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the pre-application;

(B) Have met the Pre-application Threshold Criteria;

(C) Include, as part of this exhibit, a certification signed by the principal(s) that signed the site control at pre-application confirming they are the same principal(s) at Application.

(C) Be serving the same target population (general or elderly) as in the pre-application;

(D) Be applying for the same Set-Asides as indicated in the pre-application (Set-Asides can be dropped between pre-application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at pre-application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (11) of this subsection. The Application score used to determine whether the Application score is 5% greater or less than the number of points awarded at pre-application will also include all point losses under §49.7(a)(2)(A) of this chapter (relating to Administrative Deficiencies). An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the pre-application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from pre-application to Application; or

(ii) To request that the pre-application points be forfeited and that the Department evaluate the Application as requested in the Self-Score Form.

(15) **Green Building Initiatives.** Application may qualify to receive up to 6 points for this item provided that points under this paragraph are not be requested for the same items utilized for points under §49.8(a)(5)(A) of this chapter. Rehabilitation Developments (excluding Reconstruction) and Single Room Occupancy Developments will receive 1.5 points for each point requested under this paragraph.

(A) **Development Energy Savings** (1 point for each item):

(i) Collected water (at least 50%) for irrigation purposes;

(ii) Selection of native trees and plants that are appropriate to the site's soils and microclimate; or

(iii) The Development qualifies for and receives Renewable Energy Tax Credits. The Application will be required to include an architect's letter or contractor bid as evidence that the Applicant will be eligible to request Renewable Energy Tax Credits in its income tax filings. Applicant will be required to show proof of receipt of the Renewable Energy Tax Credits at the time of Cost Certification.

(B) **Tenant Energy Savings** (2 points for each item):

(i) Passive solar heating/cooling:

(I) If the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west; or

(II) If the east-west axis of the building oriented within 15 degrees of due east-west utilizes a narrow floor plate (less than 40 feet), and single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation; or

(III) Solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, (applies only to rehabilitation where windows are not replaced with Energy Star rated windows); or

(IV) 100% of HVAC condenser units are located so they are fully shaded 75% of the time during summer months (May through August);

(ii) Water conserving features:

(I) Install low-floor or high efficiency toilets that exceed State requirements; or

(II) Install bathroom lavatory faucets, showerheads and kitchen faucets that exceed the State standard at the time of Application. All fixtures throughout development must meet the standard. Rehabilitation Developments may install compliant faucet aerators instead of replacing entire faucets; or

(III) Provide Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire Development; or

(iii) Sub-metered utility meters on Rehabilitation Developments without existing sub-meters;

(iv) Energy efficiency:

(I) If the Development includes Energy-Star qualified windows and glass doors exclusively; and insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and Energy Star rated HVAC and domestic hot water heaters, and insulation that exceeds Energy Star standards; or

(II) If the Development by demonstrating a certified HERS score of 85 or lower;

(v) Thermally and draft efficient doors (SHGC of 0.40 or lower (for doors with glass) and U-value specified by climate zone according to the 2006 IECC) are used;

(vi) On-site photovoltaic panels or wind-driven turbines for generating at least 5kW of electricity that are incorporated into the engineered structural design of the roof(s) and neither of which protrude from any roof structure by more than 8 feet and are designed and wired to supplement the Development's electric power. Photographs and data sheets of the proposed equipment must be submitted with the Application;

(vii) Recycling service provided throughout the compliance period.

**(C) Other Green Features/Indoor Health** (1 point for each item):

(i) Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation; or

(ii) Healthy flooring, provide at least one of the following for 50% of flooring. Finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty; or

(iii) Healthy finish materials, use paints, stains, adhesives and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards.

**(D) LEED (Leadership in Energy and Environmental Design) Certification.** (6 points) If at the time of Cost Certification a LEED Certification (Certified, Silver, Gold or Platinum levels) for the Development is obtained then the maximum points allowed under this paragraph will be awarded and none of the green building amenities selected under this paragraph will need to be substantiated. Conversely, if at the time of Cost Certification a LEED Certification has not been obtained then the Applicant will be required to prove up 6 points under this subparagraph.

**(16) Development Location.** (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points under this item. Evidence must not be more than six (6) months old from the first day of the Application Acceptance Period. An Application may only receive points under one of the subparagraphs (A) - (F) of this paragraph.

(A) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census) that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available to the Department as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(B) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. An elementary attendance zone does not include magnet school or elementary schools with district-wide possibility of enrollment or no defined attendance zones. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

(C) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(D) Evidence that the proposed Development has documented and committed Third-Party funding sources and the Development is located outside of a Qualified Census Tract serving 10% of households at 30% AMGI or less. (§2306.6710(e)(1)) The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the

Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the Third-Party funding source and must be equal to or greater than 2% (do not round) of the Total Development Costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. Funding sources and amounts used for points under paragraph (5) of this subsection may not be used for this point item.

(E) The proposed Development is located in an urban core, on a site where the proposed use is not prohibited by the Unit of General Local Government via ordinance or regulation. For purposes of this item, an urban core is defined as a compact and contiguous geographical area that is located in a Metropolitan Statistical Area within the city limits with a population of no less than 150,000 composed of adjacent block groups of which is zoned to accommodate a mix of medium or high density residential and commercial uses and at least 50% of such land is actually being used for such purposes based on high density residential structures and/or commercial structures already constructed. Evidence must be submitted in the form of zoning maps and a certification provided in the Application.

(F) The proposed Development is located in a high opportunity area as identified in §49.5(d)(2)(D)(i) - (iii) of this chapter.

**(17) Economic Development Initiatives.** An Application may qualify to receive 4 points under subparagraphs (A) - (D) of this paragraph. For the purpose of this paragraph, "area" shall mean the boundaries of any zone or community in subparagraph (A) of this paragraph or the area in which funds in subparagraph (B) of this paragraph must be used:

(A) A Designated State or Federal Empowerment/Enterprise Zone, Urban Enterprise Community, or Urban Enhanced Enterprise Community. To be eligible for these points, Applicants must submit a letter and a map of the zoned area from a city/county official stating that the proposed Development is located within such a designated zone or area. The letter should be no older than six (6) months from the first day of the Application Acceptance Period. (§2306.127); or

(B) An area that has received an award within the three year period prior to the beginning of the Application Acceptance Period, from the Texas Capital Fund, Texas or Federal Enterprise Zone Fund, Texas Leverage Fund, Industrial Revenue Bond Program, Emerging Technologies, Skills Development, Rural Business Enterprise Grants, Certified Development Company Loans, or Micro Loan Program or other state or federally funded economic development initiatives approved by the Department (This excludes limited highway improvement and roadwork projects, but does include broader regional transportation initiatives targeted to expanding economic development); or

(C) A geographical area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (these census tracts are designated in the 2011 Housing Tax Credits Site Demographics Characteristics Report (§2306.127); or

(D) The Development is located in a county that has received an award within the three (3) years prior to the beginning of the Application Acceptance Period, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(E) Points under subparagraphs (A), (B) and (C) of this paragraph will not be granted if more than 3 Developments received an award of Housing Tax Credits in the applicable area in the seven (7) years prior to the beginning of the Application Acceptance Period. The Applicant must provide receipt of funds to the area by evidence of a map of the designated area for such funding and documentation of the recipient of the award of funds or a letter from the entity granting such funds stating that funds were awarded in the designated area.

**(18) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits.** (§2306.6725(b)(2)) Applications may receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments supported by Housing Tax Credits that serve the same type of household, regardless of whether the Development serves the general or elderly populations. Evidence of the census tract in which the Development is located must be submitted. These census tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

**(19) Tenant Populations with Special Housing Needs.** (§42(m)(1)(C)(v)) Applications may qualify to receive 4 points for this item. The Department will award these points to Applications in which at least 5% of the Units



are set aside for Persons with Special Needs. For purposes of this section, Persons with Special Needs is defined as persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require a minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant. The twelve-month period will begin on the date each building receives its Certificate of Occupancy. For buildings that do not receive a Certificate of Occupancy, the twelve-month period will begin on the placed in service date as provided in the Cost Certification manual. After the twelve-month period, the Development Owner will no longer be required to hold Units vacant for households with special needs, but will be required to continue to affirmatively market Units to household with special needs.

(20) **Length of Affordability Period.** (§§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)) Applications may qualify to receive up to 4 points. In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the thirty (30) years required in the Code may receive points as follows:

(A) Add five (5) years of affordability after the extended use period for a total affordability period of thirty-five (35) years (2 points); or

(B) Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (4 points).

(21) **Site Characteristics.** Development Sites, including scattered sites, may qualify to receive up to 4 points for this item. Developments Sites must be located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three (3) services appropriate to the target population. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has another form of transportation, including, but not limited to, special transit service or specialized elderly transportation for Qualified Elderly Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or funding a comparable service, then this will be a requirement of the LURA. Only one service of each type listed in clauses (i) - (xii) of this subparagraph will count towards the points. A map must be included identifying the Development Site and the location of the services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be under active construction, post pad by the date the Application is submitted.

(i) Full service grocery store or supermarket.

(ii) Pharmacy.

(iii) Convenience Store/Mini-market.

(iv) Department or Retail Merchandise Store.

(v) Bank/Credit Union.

(vi) Restaurant (including fast food).

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries.

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools.

(ix) Hospital/medical clinic.

(x) Medical offices (physician, dentistry, optometry).

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments).

(xii) Senior Center.

(22) **Development Size.** The Development consists of not more than 36 Units (3 points).

(23) **Sponsor Characteristics.** Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) The Applicant has submitted a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Applicant will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609; or

(B) There is a HUB that does not meet the experience requirements under §49.8(a)(4) of this chapter, as certified by the Texas Comptroller of Public Accounts, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Comptroller of Public Accounts that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits.

(24) **Qualified Census Tracts with Revitalization.** (§42(m)(1)(B)(ii)(III)) Applications may qualify to receive 1 point for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan must be in the form of a letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan or only if the Community Revitalization Plan has specific boundaries, a copy of the plan, adopted by the jurisdiction or its designee and a map showing that the Development is within the area covered by the Community Revitalization Plan.

(25) **Developments Intended for Eventual Tenant Ownership--Right of First Refusal.** Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two (2) years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two (2) years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department;

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department;

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two (2) years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of one hundred twenty (120) days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

**(26) Leveraging of Private, State, and Federal Resources.** Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Funding sources used for points under paragraph (5) of this subsection, may be used for this point item; however, funding amounts may not be duplicative.

(A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (do not round) of the Total Housing Development Costs reflected in the Application.

(B) For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies.

(C) Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. If qualifying funds awarded through local entities are used for this item, a statement from the local entity must be provided that identifies the original source of funds.

(D) Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost.

(E) The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Unit of General Local Government.

(F) The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, identified in the Application, or qualifying substitute source, has not been received by the date the Department's Commitment is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the

recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA.

(G) To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all Low-Income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

**(27) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))**

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of the Carryover or 10% Test deadline, and did not meet the original submission deadline, relating to Developments receiving a Housing Tax Credit Commitment made in the Application Round preceding the current round. For each extension request made, unless the person approving the extension (the Board or the 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, the Applicant will receive a 5 point deduction. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TRDO-USDA as a lender if TRDO-USDA or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to §49.12(a) of this chapter.

**(b) Tie Breaker Factors.**

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per square foot of Net Rentable Area (the lower credits per square foot has preference).

(D) Developments that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the Development is intended to convert to tenant ownership at the end of the 15-year compliance period.

(2) This paragraph identifies how ties will be handled when dealing with the restrictions on location identified in §49.8(a)(2)(B) of this chapter (relating to the One Mile Three Year Rule), and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the Certificate of Reservation docket number issued by the Texas Bond Review Board (TBRB) in making its determination. When two Competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a Competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their Certificate of Reservation from the TBRB on or before April 29, 2011 will take precedence over the Housing Tax Credit Applications in the 2011 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2011 will take precedence over the Tax-Exempt Bond Developments that received their Certificate of Reservation from the TBRB on or between May 2, 2011 and July 29, 2011; and

(C) After July 29, 2011, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the 2011 Application Round on the

waiting list. However, if no Certificate of Reservation has been issued by the date the Board approves an allocation to a Development from the waiting list of Applications in the 2011 Application Round or a forward commitment, then the waiting list Application or forward commitment will be eligible for its allocation.

(c) **Staff Recommendations.** (§2306.1112 and §2306.6731) In accordance with the QAP and other applicable Department rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. Recommendations of staff to the Board will be the recommendations of that Committee except as otherwise disclosed.

(d) **Tax Credits Financed Under American Recovery and Reinvestment Act of 2009.** (§2306.6736)

(1) To the extent the Department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the Department to award the federal funds in the same manner and subject to the same limitation as the awards of the housing tax credits, the following provisions apply.

(2) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds except:

(A) the Department may, as approved by the Board, establish a separate application procedure for such funds, outside of the uniform application cycle referred to in §2306.111, Texas Government Code, and the deadlines established in §2306.6724, Texas Government Code, and any reference herein to the application period shall refer to the period beginning on the date the Department begins accepting applications for such funds and continuing until all such available funds are awarded;

(B) unless reauthorized, this section is repealed on August 31, 2011.

#### §49.10. Board Decisions.

(a) The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and other applicable Department rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv))

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. The discretionary factors include: (§2306.111(g)(3))

(A) The Developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing Developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as found by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. Department staff shall provide to the Board a written report regarding the results of the assessments. The

Board has established a rule for the materiality of noncompliance in Chapter 60 of this title to address noncompliance associated with the Development, Applicant or Affiliate.

(b) **Waiting List.** (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of the Commitment, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the waiting list provided that it takes into account the need to assure adherence to regional allocation requirements. If at any time prior to the end of the Application Round, one or more Commitments expire or a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation, 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under §42(h)(5) of the Code. At the end of each calendar year, all Applications which have not received a Commitment shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) **Forward Commitments.** The Board may determine to issue Commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this chapter and the application checklist provided in the Tax Credit (Procedures) Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors.

(1) Unless otherwise provided in the Commitment with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the State Housing Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of §42(h)(1)(C) of the Code.

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

(d) **Appeals Process.** (§2306.6715) An Applicant may appeal decisions made by the Department as follows:

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

- (i) Eligibility Requirements;
- (ii) Disqualification or debarment criteria;
- (iii) Pre-application or Application Threshold Criteria;
- (iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria;

(C) A recommendation as to the amount of Housing Tax Credits to be allocated to the Application; and

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant;

(3) An Applicant must file its appeal in writing with the Department not later than the seventh calendar day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.7 of this chapter. The appeal must be in writing, signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. The Appeal must be addressed to the Department to the attention of the Director of Multifamily Finance. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this QAP. If the appeal relates to the amount of Housing Tax Credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request;

(4) The Executive Director of the Department shall respond in writing to the appeal not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department in its offices. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh calendar day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third calendar day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph;

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is the final decision of the Department;

(6) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

**(e) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application.** The Department will address information or challenges received from unrelated entities to a specific 2011 active Application, utilizing a preponderance of the evidence standard, as stated in paragraphs (1) - (4) of this subsection, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge and must be received by the Department no later than the Application Challenges Deadline as identified in §49.3 of this chapter (relating to the Program Calendar):

(1) Within fourteen (14) business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website;

(2) Within seven (7) business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven (7) business days to respond to all information and challenges provided to the Department; and

(3) Within fourteen (14) business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(4) Nothing herein shall serve to limit the authority of the Board to apply discretion for good cause to the fullest extent lawfully permitted.

#### **§49.11. Tax-Exempt Bond Developments.**

**(a) Filing of Applications.** Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2011 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 30, 2010. Such filing must be accompanied by the Application fee described in §49.14 of this chapter;

(2) Applicants which receive advance notice of a Program Year 2011 Certificate of Reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.14 of this chapter prior to the Applicant's Certificate of Reservation date as assigned by the TBRB. Those Applications designated as Priority 3 by the TBRB must submit Volumes I and II within fourteen (14) days of the Certificate of Reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least sixty (60) days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is requested by the Applicant. The Department staff will have limited discretion to recommend an Application with appropriate justification of the late submission;

(3) Multiple site applications will be considered to be one Application as identified in Chapter 1372, Texas Government Code.

**(b) Applicability of Rules.** Tax-Exempt Bond Development Applications are subject to all rules in this chapter, with the only exceptions being the following sections: §49.4(c)(12) (relating to the One Mile Same Year Rule); §49.5(b) (relating to the Credit Amount); §49.6 (relating to the Allocation Process); §49.7(b), (c) and (d) (relating to Pre-application); §49.7(g) (relating to Methodology for Awards); §49.7(k) (relating to Rural Rescue Applications); §49.9 (relating to Selection); §49.10(b) and (c) (relating to Waiting List and Forward Commitments); and §49.12(e), (f) and (g) (relating to Carryover, 10% Test and Substantial Construction).

**(c) Tenant Services.** Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of supportive services that would otherwise not be available for the tenants. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided. The provision of these services will be included in the LURA. Acceptable services include those described in §49.9(a)(9) of this chapter.

**(d) Financial Feasibility Evaluation for Tax-Exempt Bond Developments.** Section 42(m)(2)(D), Internal Revenue Code, requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department may request such underwriting report and may upon review make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in §49.14 of this chapter (relating to Program Related Fees).

**(e) Certification of Tax Exempt Applications with New Docket Numbers.** Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the Certificate of Reservation expiration date, and subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the TBRB and one of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four (4) months from the date the original application was withdrawn from the TBRB. The application must remain unchanged. This means that at a minimum, the following cannot have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or TBRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §49.8(a)(9) of this chapter are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. This



certification must be submitted no later than thirty (30) days after the date the TBRB issues the new docket number; or

(2) If there are changes to the Application as referenced in paragraph (1) of this subsection or if there is public opposition, the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

#### **§49.12. Post Award Activities.**

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

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

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

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

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

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

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

#### **(b) Commitments and Determination Notices.**

(1) **Commitments.** If the Application is for a commitment from the State Housing Credit Ceiling, the Department shall issue a Commitment to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in this chapter, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This Commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the Commitment by executing the Commitment, pays the required fee specified in §49.14(f) of this chapter, and satisfies any other conditions set forth therein by the Department. The Commitment expiration date may not be extended;

(2) **Determination Notices.** If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP and other applicable Department rules in accordance with the §42(m)(1)(D) of the Code. Applications that receive a Certificate of Reservation from the TBRB on or before November 15, 2010 will be required to satisfy the

requirements of the 2010 QAP; Applications that receive a Certificate a Reservation from the TBRB on or after January 1, 2011 will be required to satisfy the requirements of the 2011 QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in §49.11 of this chapter (relating to Tax-Exempt Bond Developments) and compliance by the Development Owner with all applicable requirements of this chapter and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §49.14(f) of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. Furthermore, no later than sixty (60) days following closing on the bonds, the Development Owner must submit a Management Plan and an Affirmative Marketing Plan (as further described in the carryover procedures as identified in the Tax Credit (Procedures) Manual and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours. Certifications must not be older than two (2) years;

(3) The Department shall notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable;

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and other applicable Department rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented;

(6) The executed Commitment or Determination Notice must be returned to the Department no later than thirty (30) days after the effective date of the Notice provided that for Commitments under the State Housing Credit Ceiling that date is not later than December 31.

(7) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(A) The Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(B) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(C) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.4 of this chapter if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(D) The Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

**(c) Agreement and Election Statement.** The Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage with respect to a building or buildings for the month in which the Carryover Allocation was accepted (or the month the bonds were closed for Tax-Exempt Bond Developments), as provided in the §42(b)(2) of the Code. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development (receiving credits from the State Housing Credit Ceiling), the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable; to assure that the Carryover Allocation Document can be so executed.

**(d) Documentation Submission Requirements at Commitment of Funds.** No later than the date the Commitment or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment or Determination Fee as further described in §49.14(f) of this chapter, the following documents must also be provided to the Department. Failure to provide these documents may cause the

Commitment or Determination Notice to be rescinded. For each Applicant all of the following must be provided:

- (1) For entities formed outside the state of Texas, evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;
- (2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Amendment from the Texas Office of the Secretary of State if the name reserved at Application has changed;
- (3) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;
- (4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;
- (5) Evidence that the Applicant has and will maintain Site Control through 10% Test; and
- (6) Any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment.

(e) **Carryover.** All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation to the Department no later than the Carryover Documentation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month.

(2) If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) The Carryover Allocation must be properly completed and delivered to the Department as prescribed by the carryover procedures identified in the Tax Credit (Procedures) Manual.

(4) All Carryover Allocations will be contingent upon the Development Owner providing evidence that the Development Site is still under control of the Development Owner. For purposes of this paragraph, site control must be identical to the same Development Site that was submitted at the time of Application submission.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 3, 2011.

(f) **10% Test.** No later than six (6) months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code (as amended by The Housing and Economic Recovery Act of 2008) and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10% Test Documentation Delivery Date as identified in §49.3 of this chapter (relating to the Program Calendar). The Development Owner must submit, in the form prescribed by the Department, documentation evidencing items (1) - (6) of this paragraph. The 10% Test Documentation will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment:

(1) Evidence that the Development Owner has purchased, transferred, leased or otherwise has ownership of, the Development Site;

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the carryover procedures of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Tax Credit (Procedures) Manual;

(3) For all Developments involving New Construction or Adaptive Reuse, evidence of the availability of all necessary utilities/services to the Development Site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter should not be older than three (3) months from the first day of the Application Acceptance Period and must clearly

state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost necessary to obtain service, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development Site;

(4) A Management Plan and an Affirmative Marketing Plan as further described in the carryover procedures identified in Tax Credit (Procedures) Manual;

(5) Evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five (5) hours and the Development architect and engineer at Department-approved Fair Housing training relating to design issues for at least five (5) hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10% Test Documentation; and

(6) A Certification from the Architect that the Development will be equipped with Energy Saving Devices that meet the standard statewide energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation.

**(g) Commencement of Substantial Construction.** No later than July 1 of the year following the execution of the Carryover Allocation Document the Development Owner must submit evidence of having commenced and continued substantial construction activities as defined in Chapter 60 of this title (relating to the Department's Compliance Rules).

**(h) Land Use Restriction Agreement (LURA).** The Development Owner must request a LURA from the Department no later than the date specified in Chapter 60 of this title (relating to the Department's Compliance Rules.) The Development Owner must complete, date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be included, accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, as approved by the Board. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

**(i) Cost Certification.** The cost certification procedures as identified in the Tax Credit (Procedures) Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) Required cost certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment or Determination Notice that fails to submit its cost certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.13(c) of this chapter (relating to Extension Requests);

(2) The Department will perform an initial evaluation of the cost certification documentation and notify the Development Owner in a deficiency letter of all additional required documentation. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be copied to the syndicator;

(3) For the Department to release IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; December 31 of the second year following the year the Carryover Allocation Agreement was executed; or approved Placed in Service deadline;

(B) Submitted all Cost Certification documentation as more fully described in the cost certification procedures identified in the Tax Credit (Procedures) Manual, including:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Owner's Statement of Certification;

(iii) Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary;

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year Proforma;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements; and

(xxii) TDHCA Compliance Workshop Certificate;

(C) Complied with the requirements set forth in the Cost Certification Procedures Manual;

(D) Received written notice from the Department that all deficiencies noted during the final inspection have been resolved in accordance with Chapter 60 of this title, (relating to the Department's Compliance Monitoring Policies and Procedures);

(E) Informed the Department of and received written approval for all Development amendments in accordance with §49.13(b) of this chapter;

(F) Informed the Department of and received written approval for all ownership transfers in accordance with §49.13(d) of this chapter;

(G) Submitted to the Department the LURA in accordance with subsection (h) of this section;

(H) Paid all applicable Department fees; and

(I) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject property, as described in Chapter 60 of this title (relating to the Department's Compliance Monitoring Policies and Procedures).

#### **§49.13. Board Reevaluation. (§2306.6731(b))**

(a) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be based on those items identified in subsection (b)(4) of this section. The Board may revoke any Commitment or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

#### **(b) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))**

(1) If a proposed modification would materially alter a Development approved for an allocation of a Housing Tax Credit, or if the Applicant has altered any Selection Criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application and such request shall include a proposed form of amendment prepared at the Applicant's sole expense by an

attorney licensed to practice law in the State of Texas and the applicable fee as identified in §49.14(l) of this chapter. The amendment request will not be considered received unless accompanied with the corresponding fee.

(2) The Executive Director of the Department shall require the appropriate Department staff to evaluate the amendment and provide an analysis and written recommendation to the Board. The appropriate party monitoring compliance during construction in accordance with (h) of this subsection shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments not requiring Board approval, the amendment will be deemed approved if the Executive Director does not approve or deny within thirty (30) days from the date on which the Department has acknowledged it has received all additional information that it has, in writing, requested of the Applicant to enable the Department to evaluate the amendment request. For amendments which require Board approval, the amendment request must be received by the Department at least sixty (60) days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment that is material. The Executive Director may administratively approve an amendment that is not material. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment or terminate the allocation of Housing Tax Credits and reallocate the credits to other Applicants on the waiting list if the Board determines that the modification proposed in the amendment:

- (A) Would materially alter the Development in a negative manner; or
- (B) Would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

- (A) A significant modification of the site plan;
- (B) A modification of the number of units or bedroom mix of units;
- (C) A substantive modification of the scope of tenant services;
- (D) A reduction of 3% or more in the square footage of the units or common areas;
- (E) A significant modification of the architectural design of the Development;
- (F) A modification of the residential density of the Development of at least 5%;
- (G) An increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and
- (H) Any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

- (A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant. An amendment will be disapproved if the circumstances were reasonably foreseeable and preventable unless there is a finding of good cause for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the Real Estate Analysis Report at the time of the Commitment Notice issuance, as approved by the Board, the following procedure will apply:

(A) For amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any level of AMGI, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development; and

(B) If it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(c) **Extension Requests.** All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee as identified in §49.14(l) of this chapter. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than six (6) months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least fifteen (15) business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee as identified in §49.14 of this chapter must be received by the Department to qualify for issuance of Forms 8609.

(d) **Housing Tax Credit and Ownership Transfers.** (§2306.6713) A Development Owner may not transfer an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any Person including an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers (other than an Affiliate included in the ownership structure) will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the credit amount further described in §49.5(b) of this chapter, the credit amount will not be applied in the following circumstances:

(A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) In cases where the General Partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(e) **Sale of Certain Tax Credit Properties.** Consistent with §2306.6726, Texas Government Code, not later than two (2) years before the expiration of the Compliance Period, a Development Owner who agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code, and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §49.9(a) of this chapter (relating to Selection Criteria), a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7) of the Code, and the Department declines to purchase the Development.

(f) **Withdrawals.** An Applicant may withdraw an Application prior to receiving a Commitment, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(g) **Alternative Dispute Resolution (ADR) Policy.** In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2010, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(h) **Compliance Monitoring and Material Noncompliance.** Section 42(m)(1)(B)(iii) of the Code, requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of §42 of the Code and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Chapter 60 of this title.

#### **§49.14. Program Related Fees.**

(a) **Timely Payment of Fees.** All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than ten (10) business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, Commitment or Allocation to be terminated.

(b) **Pre-application Fee.** Each Applicant that submits a Pre-application shall submit to the Department, along with such Pre-application, a non refundable Pre-application fee, in the amount of \$10 per Unit. Units for the calculation of the Pre-application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-applications without the specified Pre-application Fee in the form of a check will not be accepted. Pre-applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, Bond Counsel), and \$5,000 (payable to the Texas Bond Review Board).

(c) **Application Fee.** Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a pre-application which met Pre-application Threshold and for which a pre-application fee was paid, the Application fee will be \$20 per Unit. For Applicants not having submitted a pre-application, the Application fee will be \$30 per Unit. Units for the



calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (§2306.6716(d)) For Tax Exempt Bond Developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of \$30 per unit and bond application fee of \$10,000. Those Applications utilizing a local issuer only need to submit the tax credit application fee. For Tax-Exempt Bond Development refunding Applications, with the Department as the issuer, the Application Fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

**(d) Refunds of Pre-application or Application Fees.** (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a pre-application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on pre-applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

**(e) Third Party Underwriting Fee.** Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §49.7(h) of this chapter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment Fee established in subsection (f) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

**(f) Commitment or Determination Notice Fee.** Each Development Owner that receives a Commitment or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination Notice, a Commitment or Determination Fee equal to 5% of the annual Housing Credit Allocation amount. The Commitment or Determination Fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2011, the Development Owner may receive a refund of 50% of the Commitment Fee. If a Development Owner of an Application awarded Housing Tax Credits associated with Tax-Exempt Bonds has paid a Determination Fee and is not able close on the bond transaction within ninety (90) days of the issuance date of the Determination Notice, the Development Owner may receive a refund of 50% of the Determination Fee. The Determination Fee will not be refundable after ninety (90) days of the issuance date of the Determination Notice.

**(g) Compliance Monitoring Fee.** Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. For Tax-Exempt Bond Developments with the Department as the issuer, the annual tax credit compliance fee will be paid annually in advance (for the duration of the compliance or affordability period) and is equal to \$40/Unit beginning two (2) years from the first payment date of the bonds; the asset management fee, if applicable is paid in advance and is equal to \$25/Unit beginning two (2) years from the first payment date. Compliance fees may be adjusted from time to time by the Department.

**(h) Building Inspection Fee.** The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is \$750. Inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.

(i) **Tax-Exempt Bond Credit Increase Request Fee.** As further described in §49.11 of this chapter (relating to Tax-Exempt Bond Developments), requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 5% of the amount of the credit increase for one (1) year.

(j) **Public Information Requests.** Public information requests are processed by the Department in accordance with the provisions of the Texas Government Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(k) **Periodic Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) **Extension and Amendment Fees.**

(1) All extension requests relating to the Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of \$2,500. Such extension requests must be submitted to the Department in accordance with §49.13(c) of this chapter.

(2) Amendment requests must be submitted in accordance with §49.13(b) of this chapter and be accompanied by a mandatory non-refundable amendment fee in the form of a check in the amount of \$2,500.

(3) The Board may waive extension or amendment fees for good cause.

(m) **Penalties.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Department will impose a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate of that Applicant for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending the Round immediately following the return of credits unless otherwise exempted in accordance with the Board's policy pursuant to the implementation of The Housing and Economic Recovery Act of 2008, H.R. 3221, in September 2008. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20%.

#### **§49.15. Manner and Place of Filing All Required Documentation.**

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this chapter shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this chapter to be given, delivered or sent by any party may be delivered in person or may be

sent by courier, telecopy, express mail, telex, telegraph, electronic submission or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's website to provide necessary data to the Department.

#### **§49.16. Waiver and Amendment of Rules.**

(a) The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) The Department may amend this chapter contained herein at any time in accordance with Chapter 2001, Texas Government Code.

#### **§49.17. Department Responsibilities.**

(a) The Department shall make all required notifications pursuant to Chapter 2306 of the Texas Government Code.

(b) In accordance with §2306.6724, §2306.67022 and §42(m)(1) regarding the deadlines for allocating Housing Tax Credits the following shall apply:

(1) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program;

(2) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year;

(3) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year;

(4) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for Housing Tax Credits;

(5) Applications for Housing Tax Credits to be issued a Commitment during the Application Round in a calendar year must be submitted to the Department not later than March 1;

(6) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30; and

(7) The Board shall approve final commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final Commitments for allocations of Housing Tax Credits each year in accordance with the QAP not later than September 30. Department staff will subsequently issue Commitments based on the Board's approval. Final Commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

(c) With respect to site demographics information, the general rule is for the Department to use current State Demographer information. If the State Demographer information is not available as of the date the Application Acceptance Period opens the Executive Director may approve the use of prior year site demographics.

## Attachment 2 Proposed Repeal Chapter 49

The Texas Department of Housing and Community Affairs (Department) proposes the repeal of 10 TAC Chapter 49, §§49.1 - 49.23, concerning the Qualified Allocation Plan. This repeal is proposed in order to enact new sections.

Michael Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Mr. Gerber has also determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on this repeal and public hearings will be held. More information on the public hearings can be found at <http://www.tdhca.state.tx.us>. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2010 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

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

§49.2. Coordination with Rural Agencies

§49.3. Definitions

§49.4. State Housing Credit Ceiling

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

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

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

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

§49.9. Application: Submission; Ex Parte Communications; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2010 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations

§49.10. Board Decisions; Waiting List; Forward Commitments

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants;  
Viewing of Pre-Applications and Applications; Confidential Information

§49.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements

§49.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements

§49.14. Carryover; 10% Test; Commencement of Substantial Construction

§49.15. LURA, Cost Certification

§49.16. Housing Credit Allocations

§49.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution

§49.18. Compliance Monitoring and Material Noncompliance

§49.19. Department Records; Application Log; IRS Filings

§49.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties

§49.21. Manner and Place of Filing All Required Documentation

§49.22. Waiver and Amendment of Rules

§49.23. Deadlines for Allocation of Housing Tax Credits (§2306.6724)

**MULTIFAMILY FINANCE PRODUCTION DIVISION**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

**RESOLVED**, that the proposed repeal and proposed new rule for the Multifamily Housing Revenue Bond Rules, 10 TAC, Chapter 35, is hereby ordered and is approved, together with the preambles presented to this meeting, for publishing in the *Texas Register*.

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

**Background**

Changes to the draft rules include language that makes the 2011 Multifamily Housing Revenue Bond Rules (the “Bond Rules”) consistent with the other multifamily program rules. These rules will provide greater flexibility and choices to improve the overall quality of multifamily developments. These rules contain language that mirrors the 2011 Qualified Allocation Plan (the “QAP”) and explains that the 2011 QAP, once approved by the Board, may have changes that would affect the Housing Tax Credit applications that coincide with the Bond program, and the QAP would therefore take precedence over the 2011 Bond Rules where applicable. The draft rules will be posted to the Department’s website and published in the *Texas Register*. Public comment will be taken via mail, email or facsimile. There will be consolidated public hearings between September 24th and October 23rd to garner public comment. The rule will be brought before the Board in November for final approval.

The primary changes proposed are made to ensure consistency with other multifamily rules and provide more clarity. Listed below is a summary of the significant proposed changes.

1. **§35.3 – Definitions (Pages 2-5 of 21)**. The majority of the definitions in this section have been moved to the Departments General Administrative Rule as found in 10 TAC §1.1. Some of these definitions have been modified and a few new definitions were added. The definitions that remain in the Bond Rules are those that staff identified as specific to the Multifamily Housing Revenue Bond program and therefore should remain in the Bond Rule. Any changes that were made to the definitions in the General Administrative Rule or the Bond Rules have been blacklined.
2. **§35.5(e) – Pre-Application Scoring Criteria (Quality of Units) (Pages 10-13 of 21)**. This section is revised to reflect those changes made in the QAP.
3. **§35.5(e) - Pre-Application Scoring Criteria (Zoning) (Page 13 of 21)**. This item is removed from Scoring Criteria and is instead a requirement of the Pre-Application Threshold.
4. **§35.5(e) - Pre-Application Scoring Criteria (Site Control) (Page 13 of 21)**. This item is removed from Scoring Criteria and is instead a requirement of the Pre-Application Threshold.
5. **§35.5(h)(1) – Full Application (Public Notification Sign) (Page 15 of 21)**. This section is revised to reflect those changes made in the QAP.

6. **§35.5(i) – Administrative Deficiencies (Page 16 of 21)** – This section is revised to reflect those changes made in the QAP.
7. **§35.6(h) – Tenant Services (Pages 20 of 21)** – This section is revised to reflect those changes made in the QAP.

## Attachment 1 Proposed New Chapter 35

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 35 §§ 35.1 - 35.9, concerning the 2011 Multifamily Housing Revenue Bond Rules. The new sections are proposed in order to implement changes that will improve the 2011 Private Activity Bond Program.

Mr. Michael Gerber, Executive Director, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result will be to permit the adoption of new rules for multifamily housing revenue bonds, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on these rules and public hearings will be held. More information on the public hearings can be found at <http://www.tdhca.state.tx.us>. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.





Private Activity Bond Program~~Multifamily Finance Production Division~~

2010-2011 MULTIFAMILY HOUSING REVENUE BOND RULES

~~TITLE 10, PART 1, CHAPTER 33, TEXAS ADMINISTRATIVE CODE~~

<del>§3335.1</del>	INTRODUCTION	2
<del>§3335.2</del>	AUTHORITY	2
<del>§3335.3</del>	DEFINITIONS	2
<del>§33.4</del>	<del>POLICY OBJECTIVES &amp; ELIGIBLE DEVELOPMENTS</del>	<del>4</del>
<del>§3335.54</del>	BOND RATING AND INVESTMENT LETTER	4
<del>§3335.65</del>	APPLICATION PROCEDURES, EVALUATION AND APPROVAL	4
<del>§3335.76</del>	REGULATORY AND LAND USE RESTRICTIONS	14
<del>§3335.87</del>	FEES	15
<del>§3335.98</del>	WAIVER OF RULES	16
<del>§3335.409</del>	NO DISCRIMINATION	16

TITLE 10, ~~COMMUNITY DEVELOPMENT~~

PART I. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER ~~3335~~. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§~~3335~~.1 - ~~3335~~.10

~~§3335~~.1. Introduction.

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the ~~20192011~~ Private Activity Bond Program ~~Year~~. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ~~and Rules~~ ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in ~~thethis~~ chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

~~§3335~~.2. Authority.

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this ~~chapter~~title).

~~§3335~~.3. Definitions.

~~The following words and terms, when used in the chapter, shall have the following meaning, unless context clearly indicates otherwise. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§42, 141 and 145 of the Internal Revenue Code, and 10 TAC §1.1 (related to Definitions) and repeated in the Tax Credit (Procedures) Manual.~~

~~(1) Administrative Deficiency—As defined in §50.3(2) of this title.~~ [Moved to General Rule and modified]

~~(2) Applicant—As defined in §50.3(7) of this title.~~ [Moved to General Rule]

~~(3) Application—As defined in §50.3(8) of this title.~~ [Moved to General Rule]

~~(4) Board—The Governing Board of the Department.~~ [Moved to General Rule]

~~(5) Bond—An evidence of indebtedness or other obligation, regardless of the sources of payment, issued by the Department under the Act, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable, or nonnegotiable, in bearer or~~

~~registered form, in certified or book entry form, in temporary or permanent form, or with or without interest coupons.~~ [Deleted - defined in statute - 2306.004]

~~(6) Code~~ The U.S. Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued by the United States Department of the Treasury or the Internal Revenue Service. [Deleted - defined in the QAP]

~~(7) Development~~ As defined in §50.3(32) of this title. [Deleted - defined in statute - 2306.6702]

~~(8) Development Owner~~ As defined in §50.3(35) of this title. [Moved to General Rule]

~~(9)~~ Eligible Tenants--

(A) individuals and families of Extremely Low, Very Low and Low Income;

(B) individuals and families of Moderate Income or

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

~~(10) Extremely Low Income~~ The income received by an individual or family whose income does not exceed 30% of the area median income or applicable federal poverty line, as determined by the Act. [Deleted - defined in statute - 2306.004]

~~(11) Family of Moderate Income~~ A family:

~~(A) that is determined by the Board to require assistance taking into account:~~

~~(i) the amount of total income available for the housing needs of the individuals and family;~~

~~(ii) the size of the family;~~

~~(iii) the cost and condition of available housing facilities;~~

~~(iv) the ability of the individuals and family to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and~~

~~(v) standards established for various federal programs determining eligibility based on income; and~~

~~(B) that does not qualify as a family of Low Income.~~ [Deleted - defined in statute - 2306.004]

~~(12) Ineligible Building Type~~ As defined in §50.3(58) of this title. [Moved to §35.5(b) with reference to the applicable section of the QAP]

~~(13)~~ Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

~~(14) Intergenerational Housing~~ As defined in §50.3(59) of this title. [Deleted]

~~(15) Low Income~~ The income received by an individual or family whose income does not exceed 80% of the area median income or applicable federal poverty line, as determined by the Act. [Deleted - defined in statute - 2306.004]

~~(16) Land Use Restriction Agreement (LURA)~~ An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702) [Moved to General Rule and modified]

~~(17) Material Deficiency~~ As defined in §50.3(65) of this title. [Moved to General Rule and modified]

~~(18) New Construction~~ As defined in §50.3(70) of this title. [Moved to General Rule and modified]

(193) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(204) Persons with Special Needs--Persons who:

- (A) Are considered to be disabled under a state or federal law;
- (B) Are elderly;
- (C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or
- (D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

~~(21) Private Activity Bonds--Any Bonds described by §141(a) of the Code.~~ [Deleted - defined in §141 of the Code]

(225) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §3335.65(e) of this ~~title~~chapter.

(236) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §3335.65(d) of this ~~title~~chapter.

(247) Program--The Department's Multifamily Housing Revenue Bond Program.

~~(25) Proper Site Control--Regarding the legal control of the land to be used for the Development, means the earnest money contract is in the name of the Applicant (principal or member of the General Partner); fully executed by all parties and escrowed by the title company.~~ [Deleted - defined in Threshold section]

~~(26) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.~~ [Moved to General Rule]

~~(27) Qualified 501(c)(3) Bonds--Any Bonds described by §145(a) of the Code.~~ [Deleted - defined in §145(a) of the Code]

~~(28) Rehabilitation--As defined in §50.3(86) of this title.~~ [Moved to General Rule and modified]

~~(29) Rural Area--An area that is located (this definition is not the same as Rural Projects as defined in §520 of the Housing Act of 1949 for purposes of determining rural income as described in H.R 3221):~~

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

~~(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or~~

~~(C) In an Area that is eligible for funding by Texas Rural Development Office of the United States Department of Agriculture (TRDO-USDA), other than an area that is located in a municipality with a population of more than 50,000. (§2306.004)~~ [Moved to General Rule and modified]

~~(30) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural new construction Developments with more than 80 units.~~ [Deleted - defined in statute - 2306.004]

~~(31) Tenant Income Certification--A certification as to income and other matters executed by the household members of each tenant in the Development, in such form as reasonably may be required by the Department in satisfaction of the criteria prescribed by the Secretary of Housing and Urban Development under §8(f)(3) of the Housing Act of 1937 ("the Housing Act") (42 U.S.C. 1437f) for purposes of determining whether a family is a lower income family within the meaning of the §8(f)(1) of the Housing Act.~~ [Deleted -not referenced anywhere in the Rule]

~~(328)~~ Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §601 et seq.), and other similar services.

~~(339)~~ Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

~~(3410)~~ Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

~~(35) TRDO USDA~~ As defined in §50.3(104) of this title. [Moved to General Rule and modified]

~~(36) Unit~~ As defined in §50.3(105) of this title. [Deleted - defined in statute - 2306.6702]

~~(37) Very Low Income~~ The income received by an individual or family whose income does not exceed 60% of the area median income or applicable federal poverty line as determined under the Act. [Deleted - defined in statute - 2306.004]

#### ~~§33.4. Policy Objectives & Eligible Developments.~~

~~The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. [Moved to the Authority section]~~

#### ~~§3335.54. Bond Rating and Investment Letter.~~

(a) **Bond Ratings.** All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

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

#### ~~§3335.65. Application Procedures, Evaluation and Approval.~~

(a) **Application Costs, Costs of Issuance, Responsibility and Disclaimer.** The Applicant shall pay all costs associated with the preparation and submission of the ~~Pre-App~~ application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) **Pre-application.** An Applicant who requests financing from the Department for a Development shall submit a pre-application in [athe](#) format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department [pursuant to §49.4 of this title](#), the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.

(1) The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.

(2) After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an [inducement](#) resolution declaring the Department's initial intent to issue Bonds ~~(the "inducement resolution")~~ with respect to the Development. ~~After Board approval of the inducement resolution, the induced Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing in rank order. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order provided by the Department based on rank. The criteria by which a Development may be deemed to be eligible or ineligible are explained in subsection (j) of this section, entitled Eligibility Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website.~~ [Will be outlined in the procedures manual]

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. ~~The TDHCA Board reviews the Development as a whole for adherence to timelines and notification rules in the Qualified Allocation Plan and Rules, the need for the Development, compliance with local government rules and procedures, financial feasibility and the input of local and state officials and interested community members. These factors and others will be used to make the final determination at the appropriate time.~~ Because each Development is unique, making the final determination is often dependent on the issues presented at the time the [full](#) Application is presented to the Board.

(d) **Pre-Application Threshold Requirements.**

(1) As the Department reviews the Application, the Department will use the [following](#) assumptions [as reflected in §1.32 of this title \(relating to Underwriting Rules and Guidelines\)](#), even if not reflected by the Applicant in the Application. ~~Prequalification Assumptions:~~

~~(A) Development Feasibility:~~

~~(i) Debt Coverage Ratio must be greater than or equal to 1.15;~~

~~(ii) Deferred Developer Fees are limited to 80% of Developer's Fees;~~

~~(iii) Contractor Fee, Overhead and General Requirements are limited to 14% of direct costs plus site work cost; and~~

~~(iv) Developer Fees cannot exceed 15% of the project's Total Eligible Basis. [Deleted - REA Rules being referenced]~~

(BA) Construction Costs Per Unit Assumption. Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (~~Acquisition/Rehab~~Rehabilitation developments are exempt from this requirement);

(CB) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;

(DC) Size of Units as reflected in §49.8(a)(5)(B) of this title (~~Acquisition/Rehab~~Rehabilitation developments are exempt from this requirement);

~~(i) Efficiency Units must be at least 550 square feet;~~

~~(ii) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units;~~

~~(iii) Two bedroom Unit must be greater than or equal to 900 square feet for family and 700 square feet for senior Units;~~

~~(iv) Three bedroom Unit must be greater than or equal to 1,000 square feet;~~

~~(v) Four bedroom Unit must be greater than or equal to 1,200 square feet.~~

(2) ~~Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision; must be provided as referenced in §49.8(a)(8)(B) of this title.~~

(3) ~~Executed Proper~~ Site Control. Properly executed and escrow receipted ~~s~~Site ~~e~~Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the ~~bond~~Certificate of ~~r~~Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

(4) Current Market Information (must support affordable rents);

(5) Completed current TDHCA Bond Pre-Application;

~~(6) Completed Multifamily Rental Worksheets;~~

~~(7) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information;~~[Deleted - these forms are part of the pre-application]

(8) Completed ~~2010~~2011 Bond Review Board Residential Rental Attachment;

~~(9) Signed letter of Responsibility for All Costs Incurred;~~[Deleted - these forms are part of the pre-application]

~~(10) Signed Mortgage Revenue Bond Program Certification Letter;~~[Deleted - these forms are part of the pre-application]

(11) Evidence of ~~P~~paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Bond Review Board);

(12) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;

(13) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map);

~~(14) Utility Allowance documented from the appropriate Local Housing Authority;~~[Deleted - required as an attachment to the utility allowance form which is part of the pre-application]

(15) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State; and

~~(1611)~~ Required Notification. Evidence of notification is required in the form of the "Certification of Notifications" form provided in the pre-application, stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list on it. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses) of all the recipients. Proof of delivery of the notification, though not required to be submitted with the Application, must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (if the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - ~~(FG)~~ of this paragraph, then the QAP and Rules will override the notification process listed in subparagraphs (A) - ~~(FG)~~ of this paragraph):

- (A) State Senator and Representative that represents the district containing the development;
- (B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);
- (C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);
- (D) School District Superintendent of the school district containing the development;
- (E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

~~(F) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under clause (i) of this subparagraph must be made by the deadlines described in that clause. Evidence of notification must meet the requirements identified in clause (ii) of this subparagraph to all of the individuals and entities identified in clause (iii) of this subparagraph.~~

~~(F)~~ The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:

~~(i)~~ No later than fourteen (14) days prior to the date the Pre-Aapplication is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-Aapplication materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (the "ETJ") of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request nNeighborhood eOrganizations from that source in the same format;

~~(ii)~~ If no reply letter is received from the local elected officials by seven (7) days prior to the Pre-Aapplication submission, then the Applicant must certify to that fact with the "Pre-Application Notification Certification Form" provided in the Pre-Aapplication materials; and

~~(iii)~~ The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on record with the county or state) as of the Pre-Aapplication submission in the "Certification of Notification Form" provided in the Pre-Aapplication.

~~(G)~~ No later than the date the Pre-Aapplication is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") in the format required in the "Pre-Aapplication Notification Template" provided in the Pre-Aapplication materials. Developments located in an ETJExtra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials; however the county officials are required to be notified. Evidence of Notification is required in the form of a certification in the "Certification of



~~Notification Form" provided in the Pre-Application materials.~~ It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in ~~subclauses (i) - (ix)~~ of this ~~clauseparagraph~~ in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

- ~~(i)~~ Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in ~~subparagraph clause (f) (iii)~~ of this ~~sub~~paragraph;
- ~~(ii)~~ Superintendent of the school district containing the Development;
- ~~(iii)~~ Presiding officer of the board of trustees of the school district containing the Development;
- ~~(iv)~~ Mayor of any municipality containing the Development;
- ~~(v)~~ All elected members of the governing body of any municipality containing the Development;
- ~~(vi)~~ Presiding officer of the governing body of the county containing the Development;
- ~~(vii)~~ All elected members of the governing body of the county containing the Development;
- ~~(viii)~~ State representative of the district containing the Development; and
- ~~(ix)~~ State senator of the district containing the Development.

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

- ~~(i)~~ The Applicant's name, address, individual contact name and phone number;
- ~~(ii)~~ The Development name, address, city and county;
- ~~(iii)~~ A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;
- ~~(iv)~~ Statement of whether the Development proposes New Construction or Rehabilitation;
- ~~(v)~~ The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (~~familygeneral, Intergenerational Housing,~~ or elderly);
- ~~(vi)~~ The approximate total number of Units and approximate total number of low-income Units;
- ~~(vii)~~ The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate; and
- ~~(viii)~~ The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur;
- ~~(ix)~~ The expected completion date if credits and/or bonds are awarded.

~~(17) All New Construction or Reconstruction units must provide the amenities in subparagraphs (A) - (H) of this paragraph. Rehabilitation (excluding Reconstruction) must provide the amenities in subparagraphs (B) - (H) of this paragraph unless expressly identified as not required. (§2306.187)~~

- ~~(A) All new construction units must be wired with RG 6 COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;~~
- ~~(B) Blinds or window coverings for all windows;~~
- ~~(C) Disposal and Energy Star or equivalently rated dishwasher (not required for TRDO USDA Developments);~~
- ~~(D) Energy Star or equivalently rated Refrigerator (not required for SRO Developments);~~

- ~~(E) Oven/Range (not required for SRO Developments);~~
- ~~(F) Exhaust/vent fans (vented to the outside) in bathrooms;~~
- ~~(G) Energy Star or equivalently rated ceiling fans in living areas and bedrooms; and~~
- ~~(H) Energy Star or equivalently rated lighting in all Units which may include compact fluorescent bulbs.~~ [Under Ineligible Developments as referenced in §49.4 of the QAP]

(e) ~~Pre-~~Application Scoring Criteria.

(1) Income and ~~r~~Rent ~~l~~Levels of the ~~t~~Tenants: Applications submitted as a Priority 1 applications will receive 10 points, Priority 2 ~~applications~~ will receive 7 points and Priority 3 ~~applications~~ will receive 5 points.

(2) ~~Construction Cost Per Unit includes~~Cost of the Development by Square Foot: for this item, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA), direct hard costs, site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. ~~Costs M~~ust be greater than or equal to \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (~~Acquisition/Rehab~~Rehabilitations will automatically receive (1 point)).

(3) Size of Units-: The Average size of all Units combined in the ~~d~~Development must be greater than or equal to 950 square foot for ~~family~~general and must be greater than or equal to 750 square foot for elderly (5 points). (~~Rehabilitations~~Acquisition/Rehab developments will automatically receive 5 points).

(4) Period of Guaranteed Affordability for Low Income Tenants-: Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (1 point).

(5) Quality of the Units as referenced in §49.9(a)(4)(B) of this title.

~~and Amenities Substitutions in amenities will be allowed as long as the overall score is not affected. Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows: Acquisition/Rehab developments will receive 1.5 points for each item.~~

- ~~(A) Laundry Connections (2 points);~~
- ~~(B) Self-cleaning or continuous cleaning ovens (1 point);~~
- ~~(C) Microwave Ovens (in each Unit) (1 point);~~
- ~~(D) Refrigerator with icemaker (1 point);~~
- ~~(E) Laundry equipment (washer and dryers) for each individual Unit including a front load washer and dryer in required UFAS compliant Units (3 points);~~
- ~~(F) Storage Room of approximately 9 square feet or greater (does not include bedroom, entryway or linen closets (does not have to be in the unit but must be on the property site) (1 point);~~
- ~~(G) Covered entries (1 point);~~
- ~~(H) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);~~
- ~~(I) Covered patios or covered balconies (1 point);~~
- ~~(J) Covered Parking (including garages) of at least one covered space per Unit (2 points);~~
- ~~(K) High speed internet service to all Units at no cost to residents (2 points);~~
- ~~(L) Fire sprinklers in all Units (2 points);~~
- ~~(M) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (3 points). Applicants may not select this item if subparagraph (N) of this paragraph is selected);~~

- ~~(N) Greater than 75% Masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry; excludes EIFS synthetic stucco (1 point); Applicants may not select this item if subparagraph (M) of this paragraph is selected);~~
- ~~(O) Thirty (30) year architectural shingle roofing (1 point);~~
- ~~(P) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);~~
- ~~(Q) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);~~
- ~~(R) 14 SEER HVAC or evaporative coolers in dry climates for new construction, adaptive reuse and reconstruction or radiant barrier in the attic for the rehabilitation (3 points);~~
- ~~(S) One Children's Playscape Equipped for 5 to 12 years olds, or one Tot Lot (1 point);~~
- ~~(T) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (2 points);~~
- ~~(U) Sport Court (Tennis, Basketball or Volleyball) (2 points);~~
- ~~(V) Enclosed sun porch or covered community porch/patio (2 points);~~
- ~~(W) BBQ Grills and Tables (at least one each per 50 Units) (1 point);~~
- ~~(X) Accessible walking path/jogging path separate from a sidewalk (1 point);~~
- ~~(Y) Full Perimeter Fencing (2 points);~~
- ~~(Z) Controlled access gate (1 point);~~
- ~~(AA) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, and 1 printer for every 3 computers (with a minimum of one printer), and 1 fax machine (2 points);~~
- ~~(BB) Furnished and staffed children's activity center (3 points);~~
- ~~(CC) Horseshoe pit, putting green or shuffleboard court (1 point);~~
- ~~(DD) Furnished Fitness Center equipped with a minimum of two of the following fitness equipment options with at least one per every 40 Units or partial increment of 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, stationary weight bench, sauna, stair climber, etc. The maximum number of equipment options required for any Development, regardless of number of Units, shall be five (2 points);~~
- ~~(EE) Library with an accessible sitting area (separate from the community room) (1 point);~~
- ~~(FF) Gazebo with sitting area (1 point);~~
- ~~(GG) Covered Pavilion that includes barbeque grills and tables (2 points);~~
- ~~(HH) Swimming pool (3 points);~~
- ~~(II) Community laundry room (with at least one front loading washer) (1 point);~~
- ~~(JJ) Furnished Community room (1 point);~~
- ~~(KK) Service coordinator office in addition to leasing offices (1 point);~~
- ~~(LL) Senior Activity Room (Arts and Crafts, etc.) (2 points);~~
- ~~(MM) Health Screening Room (1 point);~~
- ~~(NN) Secured Entry (elevator buildings only) (1 point);~~
- ~~(OO) Community Dining Room with full or warming kitchen (3 points);~~
- ~~(PP) Community Theatre Room equipped with a 52 inch or larger screen with surround sound equipment, DVD player; and theatre seating (3 points);~~
- ~~(QQ) Green Building amenities: (Rehabilitation Developments will receive 1.5 points for each point requested for the green building amenities);~~

~~(i) passive solar heating/cooling (3 points maximum):-~~

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

~~(II) One point if in addition to subclause (I) of this clause, if the project utilizes a narrow floor plate (less than 40 feet) and single loaded corridors to optimize daylight penetration and passive ventilation; and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.~~

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

~~(I) Install high efficiency toilets using less than or equal to 1.28 gallons/flush or WaterSense certified;~~

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

~~(iii) Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development (2 points);~~

~~(iv) irrigation and landscaping (2 points):-~~

~~(I) collected water (at least 50%) for irrigation purposes;~~

~~(II) selection of native trees and plants that are appropriate to the site's soils and microclimate;~~

~~(v) sub-metered utility meters (2 points maximum):-~~

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

~~(II) sub-metered utility meters on new construction project (excluding new construction senior project) (1 point);~~

~~(vi) energy efficiency (4 points maximum):-~~

~~(I) Three points if the development uses Energy Star qualified windows and glass doors exclusively insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, and domestic hot water heater, or insulation that exceeds Energy Star standards; or~~

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

~~(vii) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);~~

~~(viii) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum):-~~

~~(I) Photovoltaic panels that total 10 kW (1 point);~~

~~(II) Photovoltaic panels that total 20 kW (2 points);~~

~~(III) Photovoltaic panels that total 30 kW (3 points);~~

~~(ix) construction waste management to divert a minimum of 50% of construction waste from landfills (1 point);~~

~~(x) implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);~~

~~(xi) recycling service provided throughout the compliance period (1 point);~~

~~(xii) water permeable paving and walkways (at least 20% of walkways and parking) (1 point);~~

~~(xiii) renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation (1 point)~~

~~(ixx) healthy flooring, provide at least one of the following for 50% of flooring finished concrete, ceramic tile, or a resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (1 point)~~

~~(xx) healthy finish materials; use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards. (1 Point) [Deleted - applicable section in the QAP referenced]~~

(6) Common Amenities as referenced in §49.8(a)(5)(A)(ii) of this title.

~~(67) Tenant Services. (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);~~

~~(A) \$10.00 per Unit per month (10 points);~~

~~(B) \$7.00 per Unit per month (5 points);~~

~~(C) \$4.00 per Unit per month (3 points).~~

~~(7) Zoning appropriate for the proposed use or no zoning required for the intended use must be in place at the time of the Application submission date, which is listed on the Department's website for Applications submitted for waiting list and carryforward, in order to receive points (5 points). [Deleted - requirement of pre-application Threshold section]~~

~~(8) Proper Site Control (as defined in §33.3(25) of this title). Site control must be through the scheduled Board meeting inducement and at full application must be ninety (90) days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting. For Applications submitted for waiting list and carryforward all information must be correct at the time of the Application submission date, listed on the Department's website in order to receive points (5 points). [Deleted - requirement of pre-application Threshold section]~~

~~(98) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. The letter must specifically indicate support or opposition otherwise the letter will be considered neutral. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. A letter that does not directly express support by expresses it indirectly by inference, (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).~~

~~(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);~~

~~(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);~~

~~(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);~~

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

~~(109) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located, identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under active construction post pad, by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale. (Acquisition/Rehabilitation developments will receive 1.5 points for each item in subparagraphs (A) - (O) of this paragraph.)~~

~~(A) Full service grocery store or supermarket (1 point);~~

~~(B) Pharmacy (1 point);~~

~~(C) Convenience store/mini-market (1 point);~~

~~(D) Department or Retail Facilities Merchandise Store (Target, Wal-Mart, Home Depot, Bookstores, etc.) (1 point);~~

~~(E) Bank/Financial Institution Credit Union (1 point);~~

~~(F) Restaurant (including fast food) (1 point);~~

~~(G) Indoor public recreation facilities, such as civic centers, community centers, and libraries, (community center, civic center, YMCA, museum) (1 point);~~

~~(H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools, (park, golf course, public swimming pool) (1 point);~~

~~(I) Fire/Police Station (1 point);~~

~~(J) Hospital/Mmmedical Facilities clinic (hospitals, minor emergency, medical offices) (1 point);~~

~~(K) Public Library Medical offices (physician, dentistry, optometry) (1 point);~~

~~(L) Public Transportation (1/2 mile from site) (1 point);~~

~~(M) Public School (only one school required for point and only eligible with general population developments) (1 point);~~

~~(N) Dry Cleaners Senior Center (1 point); [updated to mirror the QAP]~~

~~(O) Family Video Rental (i.e. Blockbuster, Hollywood Video, Movie Gallery) (1 point).~~

~~(11) Proximity to Negative Features adjacent to or within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed in subparagraphs (A) - (F) of this paragraph within the stated area if that is correct (maximum 6 points).~~

~~(A) Junkyards (1 point deducted);~~

~~(B) Active Railways (excluding light rail) (1 point deducted);~~

~~(C) Heavy industrial/manufacturing plants (1 point deducted);~~

~~(D) Solid Waste/Sanitary Landfills (1 point deducted);~~

~~(E) Within the "fall line" of High Voltage Transmission Power Lines (1 point deducted); and/or~~

~~(F) Accident zones or clear zones for commercial or military airports (1 point deducted). [moved to the Ineligible Developments section as referenced in §49.4 of the QAP]~~

(120) Acquisition/Rehabilitation Developments will receive 30 points. This will include the demolition of old buildings and a New eConstruction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(131) Preservation Developments will receive 10 points. This includes rRehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two

years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.

(142) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development ~~Site~~ is located in ~~an declared area declared to be a disaster under §418.014 of the Texas Government Code~~ Disaster Area. This includes federal, state and Governor declared disaster areas.

(153) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing ~~d~~developments that were awarded housing tax credits in the last five (5) years and 3 points if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These ~~e~~Census ~~t~~Tracts are outlined in the ~~2010~~2011 Housing Tax Credit Site Demographic Characteristics Report.

(164) Notary Public Services for Tenants. Applications will receive 1 point for this item. (§2306.6710(b)(3)) To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants during regular business hours at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) **Multiple Site Applications.** For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) **Financing Commitments.** After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) **Final Application.** An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a Certificate of Reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The ~~final full a~~Application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full ~~a~~Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority ~~as described in §49.8(a)(9)(B) of this title,~~ within thirty (30) days of the Department's receipt of Volumes I and II. The applicant must certify to the fact that the sign was installed within thirty (30) days of Volume I and II submission and the date, time and location of the bond Tax Exempt Fiscal Responsibility Act (TEFRA) Public Hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing date. The sign must be at least 4 feet by 8 feet in size and be located within 20 feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the Development. The information and lettering on the sign must meet the minimum requirements identified

~~in the Application. In areas where the Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, an alternative to installing a Public Notification Sign and at the same required time, the Applicant shall, mail written notification to those addresses described in subsection (d) (16) (A) (E) and (F) (i) (III) of this section. This written notification must include the information otherwise required for the sign as provided in the Application. The final Application must include a map of the proposed Development Site and mark the distance required by local zoning ordinances, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If Public Notification Sign is prohibited by local ordinance or code or restrictive covenant, evidence of the applicable ordinance or code or restrictive covenant must be submitted in the Application.~~

~~The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, a decrease in the number of market rate units, or a change in the population being served (elderly, general population or transitional);~~

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website;

(i) **Administrative Deficiencies.** ~~If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as described in §49.7(a)(2)(B) of this title. ~~Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made during any of these reviews. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt of the email within twenty four (24) hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five (5) business days. Failure to resolve all outstanding deficiencies within five business days will result in a penalty fee of \$500 for each day the deficiency remains unresolved. Any Application with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of any fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.~~~~

(j) **Eligibility Criteria.** The Department, in addition to those items described in §49.4 of this title, will evaluate the Development for eligibility at the time of pre-application, and at the time of final/full Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the Certificate of #Reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) ~~and (62)~~ of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

~~(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final~~



~~Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).~~

~~(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.~~

~~(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.~~

~~(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:~~

~~(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or~~

~~(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or~~

~~(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or~~

~~(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Administration Rule (Chapter 60 of this title); or~~

~~(E) otherwise disqualified or debarred from participation in any of the Department's programs; and~~

~~(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.~~

~~(7) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:~~

~~(A) in a county with a population of less than 75,000; or~~

~~(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites. (§1372.002)~~

(k) **Bond Documents.** After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) **Public Hearings; Board Decisions.** For every Bond issuance, the Department will hold a public hearing in accordance ~~with §2306.0661, Texas Government Code and with~~ §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is an ~~an acquisition/~~Rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's

decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The ~~e~~D developer market study;
- (2) The location;
- (3) The compliance history of the ~~e~~D Developer;
- (4) The financial feasibility;
- (5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (6) The Development's proximity to other low-income housing Developments;
- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts;
- (9) Zoning and other land use considerations;
- (10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
- (11) Other good cause as determined~~found~~ by the Board.

**(m) Approval of the Bonds.**

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. To the extent applicable to each specific bond issuance, ~~the~~ Department's conduit housing transactions will be processed in accordance with 34 TAC, Part 9, Chapter 181, Subchapter A (the Texas Bond Review Board rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

**(n) Local Permits.** Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

**(o) Closing.** If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained including final approval by the Board and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title (relating to Asset Resolution and Enforcement). Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§335.76. Regulatory and Land Use Restrictions.

(a) **Filing and Term of LURA.** A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. ~~For Developments involving new construction, the term of the LURA will be the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development or until the end of the remaining term of the existing federal government assistance pursuant to §2306.185, the period of guaranteed affordability or the period for which Bonds are outstanding. For the financing of an existing Development, the term of the LURA will be the longer of the longest period which is economically feasible in accordance with the Act, or the period for which Bonds are outstanding.~~

(b) **Development Occupancy.** The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner ~~of the Development~~. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) **Set Asides.**

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

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

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

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

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

(d) **Global Income Requirement.** All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds shall be

occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.

(e) **Qualified §501(c)(3) Bonds.** Developments which are financed from the proceeds of Qualified §501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) **Taxable Bonds.** The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) **Fair Housing.** All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

~~(h) **Tenant Services.** The LURA will require that the Development Owner offer a variety of services for residents of the Development through a Tenant Services Program Plan which is subject to annual approval by the Department. These services may include but are not limited to the following: joint use library center, as evidenced by a written agreement with the local school district, child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, homebuyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs or youth programs, scholastic tutoring, and any other programs described under Title IV-A of the Social Security Act (42 U.S.C §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of-wedlock pregnancies; and encourages the formation and maintenance of two parent families; or any other services approved in writing by the Department. Acceptable services include those found in §49.9(a)(9) of this title.~~

~~(i) **Land Use Restriction Agreement.** Requirements as defined in Chapter 60, Subchapter A of this title. [Moved to General Rule and modified]~~

**§3335.87. Fees.**

(a) **Pre-Application Fees.** The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, the Department's ~~B~~bond ~~C~~counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).

(b) **Application and Issuance Fees.** At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to

\$25/unit and a tax credit compliance fee equal to \$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

(c) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements.

(1) Administration. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid as long as the bonds are outstanding.

(2) Compliance Monitoring Fees. The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing. Compliance monitoring fees may be adjusted from time to time by the Department.

(3) Asset Management. The asset management fee is paid in advance and is equal to \$25/unit beginning two years from the closing date on the bonds. This fee is based on voluntary participation in the asset management program. Those who elect to participate are encouraged to contact the Texas State Affordable Housing Corporation (TSAHC) for information on billing and services offered.

#### §3335.98. Waiver of Rules.

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in ~~§§3335.3—3335.87~~ of this ~~title~~chapter relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

#### §3335.109. No Discrimination.

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.



## Private Activity Bond Program

### 2011 MULTIFAMILY HOUSING REVENUE BOND RULES

§35.1	INTRODUCTION	2
§35.2	AUTHORITY	2
§35.3	DEFINITIONS	2
§35.4	BOND RATING AND INVESTMENT LETTER	3
§35.5	APPLICATION PROCEDURES, EVALUATION AND APPROVAL	3
§35.6	REGULATORY AND LAND USE RESTRICTIONS	11
§35.7	FEES	12
§35.8	WAIVER OF RULES	13
§35.9	NO DISCRIMINATION	13

TITLE 10. COMMUNITY DEVELOPMENT

PART I. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

**§35.1. Introduction.**

The purpose of this chapter is to state the Texas Department of Housing and Community Affairs (the "Department") requirements for issuing Bonds, the procedures for applying for multifamily housing revenue Bond financing, and the regulatory and land use restrictions imposed upon Developments financed with the issuance of Bonds for the 2011 Private Activity Bond Program year. The rules and provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit Program. Applicants seeking a housing tax credit allocation should consult the Department's Qualified Allocation Plan ("QAP"), in effect for the program year for which the Housing Tax Credit application will be submitted. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages the participation in the Multifamily Bond programs by working directly with Applicants, lenders, trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner. The Department has simplified the process, within the limitation of statute, to affirmatively support and create affordable housing throughout the State of Texas.

**§35.2. Authority.**

The Department receives its authority to issue Bonds from Chapter 2306 of the Texas Government Code. All Bonds issued by the Department must conform to the requirements of the Act. The Department will issue Bonds to finance the rehabilitation, preservation or construction of decent, safe and affordable housing throughout the State of Texas. Eligible Developments may include those which are constructed, acquired, or rehabilitated and which provide housing for individuals and families of Low Income, Very Low Income, or Extremely Low Income, and Families of Moderate Income. Notwithstanding anything herein to the contrary, tax-exempt Bonds which are issued to finance the Development of multifamily rental housing are specifically subject to the requirements of the laws of the State of Texas, including but not limited to Chapter 2306 and Chapter 1372 of the Texas Government Code relating to Private Activity Bonds, and to the requirements of the Code (as defined in this title).

**§35.3. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, §§42, 141 and 145 of the Internal Revenue Code, and 10 TAC §1.1 (related to Definitions) and repeated in the Tax Credit (Procedures) Manual.

(1) Eligible Tenants--

(A) individuals and families of Extremely Low, Very Low and Low Income;

(B) individuals and families of Moderate Income or

(C) Persons with Special Needs, in each case, with an Anticipated Annual Income not in excess of 140% of the area median income for a four-person household in the applicable standard metropolitan statistical area; provided that all Low-Income Tenants shall count as Eligible Tenants.

(2) Institutional Buyer--

(A) An accredited investor as defined in Regulation D promulgated under the Securities Act of 1933, as amended (17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)); or

(B) A qualified institutional buyer as defined by Rule 144A promulgated under the Securities Act of 1935, as amended (17 CFR §230.144A).

(3) Owner--An Applicant that is approved by the Department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a Development subject to the regulatory powers of the Department and other terms and conditions required by the Department and the Act.

(4) Persons with Special Needs--Persons who:

(A) Are considered to be disabled under a state or federal law;

(B) Are elderly;

(C) Are designated by the Board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(D) Are legally responsible for caring for an individual described by subparagraph (A), (B) or (C) of this paragraph and meet the income guidelines established by the Board.

(5) Private Activity Bond Program Scoring Criteria--The scoring criteria established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.5(e) of this chapter.

(6) Private Activity Bond Program Threshold Requirements--The threshold requirements established by the Department for the Department's Multifamily Housing Revenue Bond Program, §35.5(d) of this chapter.

(7) Program--The Department's Multifamily Housing Revenue Bond Program.

(8) Tenant Services--Social services, including child care, transportation, and basic adult education, that are provided to individuals residing in low income housing under Title IV-A, Social Security Act (42 U.S.C. §§601 et seq.), and other similar services.

(9) Tenant Services Program Plan--The plan, subject to approval by the Department, which describes the Tenant Services to be provided by the Development Owner in a Development.

(10) Trustee--A national banking association organized and existing under the laws of the United States, as trustee (together with its successors and assigns and any successor trustee).

#### §35.4. Bond Rating and Investment Letter.

(a) **Bond Ratings.** All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, which approval shall be evidenced by adoption by the Board of a resolution authorizing the issuance of the credit-enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.

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

#### §35.5. Application Procedures, Evaluation and Approval.



(a) **Application Costs, Costs of Issuance, Responsibility and Disclaimer.** The Applicant shall pay all costs associated with the preparation and submission of the Pre-application--including costs associated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) **Pre-application.** An Applicant who requests financing from the Department for a Development shall submit a pre-application in the format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department pursuant to §49.4 of this title, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (e) of this section.

(1)The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (d) of this section.

(2)After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development.

(c) Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. Because each Development is unique, making the final determination is often dependent on the issues presented at the time the full Application is presented to the Board.

(d) **Pre-Application Threshold Requirements.**

(1) As the Department reviews the Application, the Department will use the assumptions as reflected in §1.32 of this title (relating to Underwriting Rules and Guidelines), even if not reflected by the Applicant in the Application.

(A) Construction Costs Per Unit Assumption. Costs not to exceed \$85 per square foot for general population developments and \$95 for elderly developments (Rehabilitation developments are exempt from this requirement); (B) Anticipated Interest Rate and Term. As stated in the Summary of Financing Participants in the pre-application;(C) Size of Units as reflected in §49.8(a)(5)(B) of this title (Rehabilitation developments are exempt from this requirement).

(2) Zoning. Evidence of appropriate zoning must be provided as referenced in §49.8(a)(8)(B) of this title.

(3)Proper Site Control. Properly executed and escrow receipted Site Control in the name of the Applicant (principal or member of the General Partner) valid through the inducement Board meeting at pre-application and ninety (90) days from the date of the Certificate of Reservation with the option to extend through the scheduled TDHCA Board meeting at full application. The potential expiration of site

control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

- (4) Current Market Information (must support affordable rents);
- (5) Completed current TDHCA Bond Pre-Application;
- (6) Completed 2011 Bond Review Board Residential Rental Attachment;
- (7) Evidence of paid Application Fees (\$1,000 to TDHCA, \$2,000 to Vinson and Elkins, as the Department's bond counsel, and \$5,000 to Bond Review Board);
- (8) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;
- (9) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius (radius ring or scale must be present on the map);
- (10) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Office of the Secretary of State; and
- (11) Required Notification. Evidence of notification is required in the form provided in the pre-application. The "Public Information Form" must be completed and include a list of all of the recipients (including names and complete addresses). Proof of delivery, though not required to be submitted with the Application, must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (if the QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed in subparagraphs (A) - (G) of this paragraph, then the QAP will override the notification process listed in subparagraphs (A) - (G) of this paragraph):
  - (A) State Senator and Representative that represents the district containing the development;
  - (B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);
  - (C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);
  - (D) School District Superintendent of the school district containing the development;
  - (E) Presiding Officer of the School Board of Trustees of the school district containing the development; and
  - (F) The Applicant must request Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as follows:
    - (i) No later than fourteen (14) days prior to the date the Pre-application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located in an area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (the "ETJ") of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
    - (ii) If no reply letter is received from the local elected officials by seven (7) days prior to the Pre-application submission, then the Applicant must certify to that fact in the Pre-application materials; and
    - (iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as provided by the local elected officials, or that the Applicant has knowledge of (regardless of whether the organization is on

record with the county or state) as of the Pre-Application submission in the "Certification of Notification Form" provided in the Pre-application.

(G) No later than the date the Pre-application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt (email or fax to be "receipt confirmed") in the format required in the "Pre-application Notification Template" provided in the Pre-Application materials. Developments located in an ETJ of a city are not required to notify city officials; however the county officials are required to be notified. It is strongly encouraged that Applicants retain proof of delivery of the notifications to the persons or entities prescribed in clauses (i) - (ix) of this paragraph in the event the Department requires proof of Notification. Evidence of proof of delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of receipt by recipient for facsimile and electronic mail. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

- (i) Neighborhood Organizations on record with the state or county whose boundaries contain the proposed Development Site as identified in subparagraph (F)(iii) of this paragraph;
- (ii) Superintendent of the school district containing the Development;
- (iii) Presiding officer of the board of trustees of the school district containing the Development;
- (iv) Mayor of any municipality containing the Development;
- (v) All elected members of the governing body of any municipality containing the Development;
- (vi) Presiding officer of the governing body of the county containing the Development;
- (vii) All elected members of the governing body of the county containing the Development;
- (viii) State representative of the district containing the Development; and
- (ix) State senator of the district containing the Development.

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

- (i) The Applicant's name, address, individual contact name and phone number;
- (ii) The Development name, address, city and county;
- (iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;
- (iv) Statement of whether the Development proposes New Construction or Rehabilitation;
- (v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (general, or elderly);
- (vi) The approximate total number of Units and approximate total number of low-income Units;
- (vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate; and
- (viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur;
- (ix) The expected completion date if credits and/or bonds are awarded.

**(e) Pre-application Scoring Criteria.**

(1) Income and Rent Levels of the Tenants: Applications submitted as a Priority 1 will receive 10 points, Priority 2 will receive 7 points and Priority 3 will receive 5 points.

(2) Cost of the Development by Square Foot: for this item, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general

requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of Net Rentable Area (NRA). Costs must be greater than or equal to \$85 per square foot for general population Developments and \$95 per square foot for elderly Developments (1 point) (Rehabilitations will automatically receive (1 point)).

(3) Size of Units: The average size of all Units combined in the Development must be greater than or equal to 950 square foot for general and must be greater than or equal to 750 square foot for elderly (5 points). (Rehabilitations will automatically receive 5 points).

(4) Period of Guaranteed Affordability for Low Income Tenants: Add ten (10) years of affordability after the extended use period for a total affordability period of forty (40) years (1 point).

(5) Quality of the Units as referenced in §49.9(a)(4)(B) of this title.

(6) Common Amenities as referenced in §49.8(a)(5)(A)(ii) of this title.

(7) Tenant Services. (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);

(A) \$10.00 per Unit per month (10 points);

(B) \$7.00 per Unit per month (5 points);

(C) \$4.00 per Unit per month (3 points).

(8) Development Support/Opposition. Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, seven (7) business days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the Application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. A letter that does not directly express support but expresses it indirectly by inference, (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(9) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included identifying the Development Site and the location of services by name. If the services are not identified by name, points will not be awarded. All services must exist or, if under active construction post pad, by the date pre-application is submitted. The map must include either a three (3) mile radius ring or a scale. (Rehabilitation developments will receive 1.5 points for each item in subparagraphs (A) - (N) of this paragraph.)

(A) Full service grocery store or supermarket (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Department or Retail Merchandise Store (1 point);

- (E) Bank/Credit Union (1 point);
- (F) Restaurant (including fast food) (1 point);
- (G) Indoor public recreation facilities, such as civic centers, community centers, and libraries, (1 point);
- (H) Outdoor public recreation facilities, such as parks, golf courses, and swimming pools, (1 point);
- (I) Fire/Police Station (1 point);
- (J) Hospital/medical clinic (1 point);
- (K) Medical offices (physician, dentistry, optometry) (1 point); (L) Public Transportation (1/2 mile from site) (1 point);
- (M) Public School (only one school required for point and only eligible with general population developments) (1 point);
- (N) Senior Center (1 point);

(10) Rehabilitation Developments will receive 30 points. This will include the demolition of old buildings and New Construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(11) Preservation Developments will receive 10 points. This includes Rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past ten (10) years. Evidence must be provided.

(12) Declared Disaster Areas. Applications will receive 7 points, if at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in a declared Disaster Area. This includes federal, state and Governor declared disaster areas.

(13) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits. Applications will receive 6 points if the proposed Development is located in a census tract in which there are no other existing Developments that were awarded housing tax credits in the last five (5) years and 3 points if there are no other existing developments that were awarded housing tax credits in the last three (3) years. The applicant must provide evidence of the census tract in which the Development is located. These Census Tracts are outlined in the 2011 Housing Tax Credit Site Demographic Characteristics Report.

(14) Notary Public Services for Tenants. Applications will receive 1 point for this item. (§2306.6710(b)(3)) To receive this point, the Applicant must submit a certification that the Development will provide notary public services to the tenants during regular business hours at no cost to the tenant. This provision will be included in the Land Use Restriction Agreement and Regulatory Agreement.

(f) **Multiple Site Applications.** For the purposes of scoring, applicants must submit the required information as outlined in the Pre-Application Submission Manual. Each individual property will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(g) **Financing Commitments.** After approval by the Board of the inducement resolution, and as part of the submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(h) **Full Application.** An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a Certificate of Reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the Certificate of Reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the

Rules for that program for Application submission requirements. The full Application must adhere to the Department's QAP in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in the full Application shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board.

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority as described in §49.8(a)(9)(B) of this title.

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department as posted to the Department's website;

(i) **Administrative Deficiencies.** If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as described in §49.7(a)(2)(B) of this title.

(j) **Eligibility Criteria.** The Department, in addition to those items described in §49.4 of this title, will evaluate the Development for eligibility at the time of pre-application, and at the time of full Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) and (2) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) An application may include either the rehabilitation or new construction, or both the rehabilitation and new construction, of qualified residential rental facilities located at multiple sites and with respect to which 51% or more of the residential units are located:

(A) in a county with a population of less than 75,000; or

(B) in a county in which the median income is less than the median income for the state, provided that the units are located in that portion of the county that is not included in a metropolitan statistical area containing one or more projects that are proposed to be financed, in whole or in part, by an issuance of bonds. The number of sites may be reduced as needed without affecting their status as a project for purposes of the application, provided that the final application for a reservation contains at least two sites. (§1372.002)

(k) **Bond Documents.** After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(l) **Public Hearings; Board Decisions.** For every Bond issuance, the Department will hold a public hearing in accordance with §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is a Rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in

combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

- (1) The Developer market study;
- (2) The location;
- (3) The compliance history of the Developer;
- (4) The financial feasibility;
- (5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;
- (6) The Development's proximity to other low-income housing Developments;
- (7) The availability of adequate public facilities and services;
- (8) The anticipated impact on local school districts;
- (9) Zoning and other land use considerations;
- (10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and
- (11) Other good cause as found by the Board.

**(m) Approval of the Bonds.**

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. To the extent applicable to each specific bond issuance, the Department's conduit housing transactions will be processed in accordance with 34 TAC, Part 9, Chapter 181, Subchapter A (the Texas Bond Review Board rules) and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

**(n) Local Permits.** Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

**(o) Closing.** If there are changes to the Application prior to closing that have an adverse effect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained including final approval by the Board and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.20(g) of this title (relating to Asset Resolution and Enforcement). Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

### §35.6. Regulatory and Land Use Restrictions.

(a) **Filing and Term of LURA.** A Regulatory and Land Use Restriction Agreement or other similar instrument (the "LURA"), will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the LURA will be the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development or until the end of the remaining term of the existing federal government assistance pursuant to §2306.185.

(b) **Development Occupancy.** The LURA will specify occupancy restrictions for each Development based on the income of its tenants, and will restrict the rents that may be charged for Units occupied by tenants who satisfy the specified income requirements. Pursuant to §2306.269, Texas Government Code, the LURA will prohibit a Development Owner from excluding an individual or family from admission to the Development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (the "Housing Act"), and from using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than two and one half (2.5) times the individual's or family's share of the total monthly rent payable to the Development Owner. Development occupancy requirements must be met on or prior to the date on which Bonds are issued unless the Development is under construction. Adequate substantiation that the occupancy requirements have been met, in the sole discretion of the Department, must be provided prior to closing. Occupancy requirements exclude Units for managers and maintenance personnel that are reasonably required by the Development.

(c) **Set Asides.**

(1) Developments which are financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified 501(c)(3) Bonds must be restricted under one of the following two minimum set-asides:

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

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

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with §1372.0321, Texas Government Code. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

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

(d) **Global Income Requirement.** All of the Units that are available for occupancy in Developments financed from the proceeds of Private Activity Bonds or from the proceeds of Qualified §501(c)(3) Bonds shall be occupied or held vacant (in the case of new construction) and available for occupancy at all times by persons or families whose income does not exceed 140% of the area median income for a four-person household.



(e) **Qualified §501(c)(3) Bonds.** Developments which are financed from the proceeds of Qualified §501(c)(3) Bonds are further subject to the restriction that at least 75% of the Units within the Development that are available for occupancy shall be occupied (or, in the case of new construction, held vacant and available for occupancy until such time as initial lease-up is complete) at all times by individuals and families of Low Income (less than or equal to 80% of AMFI).

(f) **Taxable Bonds.** The occupancy requirements for Developments financed from the issuance of taxable Bonds will be negotiated, considered and approved by the Department on a case by case basis.

(g) **Fair Housing.** All Developments financed by the Department must comply with the Fair Housing Act which prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities.

(h) **Tenant Services.** Acceptable services include those found in §49.9(a)(9) of this title.

### §35.7. Fees.

(a) **Pre-Application Fees.** The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,000 (payable to Vinson & Elkins, the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB)). These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code).

(b) **Application and Issuance Fees.** At the time of full application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications \$10,000 or \$30/unit, whichever is greater, for the bond application fee.) At the closing of the bonds the following fees are required: an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a Private Activity Bond compliance fee equal to \$25/unit and a tax credit compliance fee equal to \$40/unit. For refunding Applications the Application fee will be \$10,000 unless the refunding is not required to have a TEFRA public hearing, in which case the fee will be \$5,000.

(c) **Annual Administration, Portfolio Management and Compliance, and Asset Management Fees.** The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements.

(1) **Administration.** The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid as long as the bonds are outstanding.

(2) **Compliance Monitoring Fees.** The annual tax credit compliance fee is paid in advance (for the duration of the compliance or affordability period) and is equal to \$40/unit beginning two years from the closing date on the bonds. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the

month the first building is placed in service. The Private Activity Bond compliance fee is paid in advance at closing (for as long as the bonds are outstanding) and is equal to \$25/unit beginning two years from the closing date on the bonds for payment to be applied to the third year following closing. Compliance monitoring fees may be adjusted from time to time by the Department.

(3) Asset Management. The asset management fee is paid in advance and is equal to \$25/unit beginning two years from the closing date on the bonds. This fee is based on voluntary participation in the asset management program. Those who elect to participate are encouraged to contact the Texas State Affordable Housing Corporation (TSAHC) for information on billing and services offered.

#### **§35.8. Waiver of Rules.**

Provided all requirements of the Act, the Code, and any other applicable law are met, the Board may waive any one or more of the Rules set forth in this chapter relating to the Multifamily Housing Revenue Bond Program in order to further the purposes and the policies of Chapter 2306, Texas Government Code; to encourage the acquisition, construction, reconstruction, or rehabilitation of a Development that would provide decent, safe, and sanitary housing, including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for Persons with Special Needs; or for other good cause, as determined by the Board.

#### **§35.9. No Discrimination.**

The Department and its staff or agents, Applicants, Development Owners, and any participants in the Program shall not discriminate under this Program against any person or family on the basis of race, creed, national origin, age, religion, handicap, family status, or sex, or against persons or families on the basis of their having minor children, except that nothing herein shall be deemed to preclude a Development Owner from selecting tenants with Special Needs, or to preclude a Development Owner from selecting tenants based on income in renting Units to comply with the set asides under the provisions of this chapter.

## Attachment 2 Proposed Repeal Chapter 35

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 35 §§ 35.1 - 35.10, concerning the 2009 Multifamily Housing Revenue Bond Rules. The sections are proposed to be repealed in order to enact new sections.

Michael G. Gerber, Executive Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Gerber has also determined that for each year of the first five-years are in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new rules for multifamily housing revenue bonds, thereby enhancing the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

The public comment period will be held between September 24, 2010 to October 23, 2010 to receive input on these rules and public hearings will be held. More information on the public hearings can be found at <http://www.tdhca.state.tx.us>. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY OCTOBER 23, 2010.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statute is affected by this proposed repeal.

§35.1. Introduction.

§35.2. Authority.

§35.3. Definitions.

§35.4. Policy Objectives and Eligible Developments.

§35.5. Bond Rating and Investment Letter.

§35.6. Application Procedures, Evaluation and Approval.

§35.7. Regulatory and Land Use Restrictions.

§35.8. Fees.

§35.9. Waiver of Rules.

§35.10. No Discrimination.

**BOARD ACTION SUMMARY**

**MULTIFAMILY FINANCE DIVISION**

**SEPTEMBER 9, 2010**

**Recommended Action**

Presentation, Discussion and Possible Approval to publish a draft of proposed new 10 TAC Chapter 1 §1.1 concerning Definitions for Housing Program Activities for comment in the *Texas Register*.

**RESOLVED**, that the proposed new rule for the Definitions for Housing Program Activities, 10 TAC, Chapter 1 §1.1, together with the preamble presented to this meeting, is approved for publication in the *Texas Register* for public comment.

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

**Background**

Attached behind this Board Action Item is the newly created Rule for Definitions for Housing Program Activities proposed to be found in 10 TAC Chapter 1 §1.1. This Rule is proposed to contain those definitions currently in the 2010 Qualified Allocation Plan (“QAP”) that could be applicable to other Departmental multifamily programs (i.e., HOME and HTF). The document is shown as a “blackline” of the definitions in the 2010 QAP – additions are shown as underlined text and deletions are shown as marked through text. There are changes to several of the definitions and new definitions for Appropriate Local Official, Efficiency Unit, Reconstruction and Site Control have been added.

## Attachment 1 Proposed New Chapter 1

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 1, Subchapter A, §1.11, concerning Definitions for Housing Program Activities. The new section is proposed in order to create a centralized rule with definitions that could be applicable to other Departmental multifamily programs.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The proposed section will not impact local employment.

The public comment period will be held between September 24, 2010 to April October 23, 2010 to receive input on this section. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2011 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM OCTOBER 23, 2010.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

The proposed new section affects no other code, article or statute.

§1.1. Definitions for Housing Program Activities.



(5) Application--~~An application, A request for funds, housing tax credits or other financial assistance submitted to the Department in a the form prescribed by the Department, filed with the Department by an Applicant,~~ including any exhibits or other supporting material. (§2306.6702)

(6) Appropriate Local Official--~~With respect to a municipality or area within an extraterritorial jurisdiction (ETJ), means either the mayor, the city manager, or another official of the body operating under valid, written confirmation of authority signed by the mayor or city manager. With respect to an area not within the municipality or its ETJ, Appropriate Local Official means a county commissioner or another official authorized by the county commissioner to act.~~

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

(8) Board--The ~~g~~Governing Board of the Department.

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

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

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

(10) Commitment~~Notice~~--~~A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants or other sources of funds or financial assistance will be made available. A notice issued by the Department to a Development Owner pursuant to §50.13 of this chapter and also referred to as the "commitment."~~

(11) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")~~---the power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. Controlling entities of a partnership include the general partners but not investor limited partners. Controlling entities of a limited liability company include the managing members, and any members with 10% or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership. Multiple Persons may be deemed to simultaneously have control. The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing member of a limited liability company.~~

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

(13) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services ~~(which fee cannot exceed the limits identified in §50.9(d)(6)(B) of this chapter)~~ and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

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

(15) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department. (§2306.6702)

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

(17) Efficiency Unit--A Unit without a separately enclosed bedroom.

(18) Executive Award and Review Advisory Committee ("The Committee")--~~A~~The Departmental committee created under Texas Government Code, §2306.112, as set forth in Chapter 2306 of the Texas Government Code. ~~(§2306.112)~~

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

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

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

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

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



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

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

(26) Historically Underutilized Businesses (HUB)--~~Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.~~ A business that is a Corporation, Sole Proprietorship, Partnership, or Joint Venture in which at least 51% of the business is owned, operated, and actively controlled and managed by a minority or woman in which the owner(s):

(A) have a proportionate interest and demonstrate active participation in the control, operation, and management of the entities' affairs; and

(B) are economically disadvantaged because of their identification as members of the following groups:

(i) Black Americans--Includes persons having origins in any of the Black racial groups of Africa;

(ii) Hispanic Americans--Includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) American Women--Includes all women of any ethnicity except those specified in clauses (i), (ii), (iv), and (v) of this subparagraph;

(iv) Asian Pacific Americans--Includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, the Northern Marianas, and Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Sri Lanka, Bhutan or Nepal; and

(v) Native Americans--Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; and

(C) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph; or

(D) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraphs (A) and (B) of this paragraph; or

(E) a partnership formed for the purpose of making a profit in which 51% of the assets and interest in the partnership is owned by one or more persons who are described by subparagraphs (A) and (B) of this paragraph; or

(F) a joint venture in which each entity in the joint venture is a HUB under this subdivision; or

(G) a supplier contract between a HUB under this subdivision and a prime contractor/vendor under which the HUB is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies;

(H) a business other than described in subparagraphs (D), (F), and (G) of this paragraph, which is formed for the purpose of making a profit and is otherwise a legally recognized business organization under the laws of the State of Texas, provided that at least 51% of the assets and 51% of any classes of

stock and equitable securities are owned by one or more persons described by subparagraphs (A) and (B) of this paragraph.

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

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

~~(A) Have separate and specific buildings exclusively for the age restricted Units;~~

~~(B) Have specific leasing offices and leasing personnel for the age restricted Units;~~

~~(C) Have separate and specific entrances and other appropriate security measures for the age restricted Units;~~

~~(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;~~

~~(E) Share the same Development Site;~~

~~(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and~~

~~(G) Meet the requirements of the federal Fair Housing Act.~~

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

(29) Land Use Restriction Agreement or LURA--An agreement between the Department and the Development Owner which is a binding covenant upon the Development Owner's successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. this chapter, Chapter 2306, Texas Government Code, and the requirements of §42 of the Code. (§2306.6702)

(30) Local Political Subdivision Unit of General Local Government--A city, town, county, village, tribal reservation or other general purpose political subdivision of the State. A county or municipality (city or tribal reservation) in Texas. For purposes of §50.9(i)(5) of this chapter, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(31) Low Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department. sometimes referred to as a tax credit Unit, that is a Unit that is income and rent restricted at no greater than 60% of AMGI and is included in the Applicable Fraction for the Housing Tax Credit program.

(32) Managing General Partner--A general partner of a partnership that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also be used for a Managing Member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

(33) Material Deficiency--~~As referenced in §§50.5, 50.6, 50.8 and 50.9, is defined as any~~Any individual Application deficiency ~~Administrative Deficiency~~ or group of Administrative Deficiencies which, if addressed, would require, in the Department's reasonable judgment, a substantial reassessment or re-evaluation of the Application or which, are so numerous and pervasive that they indicate a failure by the Applicant to submit a substantively complete and accurate Application. (~~§2306.6708~~)

(34) Material Noncompliance--Defined as:

(A) A Housing Tax Credit (HTC) Development located within the state of Texas will be classified by the Department as being in Material Noncompliance status if the noncompliance score for such Development is equal to or exceeds a threshold of 30 points in accordance with the Material Noncompliance provisions, methodology, and point system in §60.121 of this title.

(B) Non-HTC Developments monitored by the Department with 1 - 50 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 30 points. Non-HTC Developments monitored by the Department with 51 - 200 Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 50 points. Non-HTC Developments monitored by the Department with 201 or more Low Income Units will be classified as being in Material Noncompliance status if the noncompliance score is equal to or exceeds a threshold of 80 points.

(C) For all programs, a Development will be in Material Noncompliance if the noncompliance is stated in §60.121 of this title to be Material Noncompliance.

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

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

(37) New Construction--Any construction of a Development or a portion of a Development that does not meet the definition of Rehabilitation. ~~(which includes Reconstruction). §2306.004(23-b)~~

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

(39) Persons with Disabilities--~~A person who:~~--With respect to an individual:

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

(B) a record of such an impairment; or

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

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

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

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

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

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

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

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

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

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

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

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

(42) Qualified Allocation Plan--~~This Plan as adopted. means a~~ plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with §2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third party funding sources, serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan and this subchapter.

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

(A) Provided under any state or federal program that the HUD Secretary determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(BA) Is intended for, and solely occupied by, individuals sixty-two (62) years of age or older; or

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

(44) Reconstruction--Includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of an equal number of Units on the Development Site.

(45) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)). More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential developments. includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Reconstruction, for these purposes, includes the demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing Adaptive Reuse or proposing to increase the total number of Units in the Existing Residential Development are not considered Rehabilitation or reconstruction. (§2306.004(26-a))

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

(A) The following individuals or entities:

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

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

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

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

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

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

(iv) A grantor and fiduciary of any trust;

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

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

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

(I) The trust; or

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

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

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

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

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

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

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

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

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

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

~~(47) Rural Area--An Area that is located (this definition is not the same as Rural Projects as defined in §520 of the Housing Act of 1949 for purposes of determining rural income as described in H.R. 3221):~~

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

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

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

(48) Selection Criteria--Criteria used to determine housing funding priorities of the State under the specific housing program as defined in the rules or funding notices of that program. ~~Housing Tax Credit Program as specifically defined in §50.9(i) of this chapter.~~

(49) Single Room Occupancy (SRO)--An single-efficiency unit that meets all the requirements of a Unit except that it may be rented on a month-to-month basis. ~~contains sanitary facilities but may or may not include food preparation facilities and is intended for occupancy by one person.~~

(50) Site Control--Means ownership or a current contract that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to require conveyance to the Applicant.

(51) Texas Department of Rural Affairs (TDRA)--As established by Chapter 487 of the Texas Government Code.

(52) Third Party--A Third Party is a Person who is not:

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

(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor; or

(C) Receiving any portion of the fees from the Development.

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

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

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Requested Action**

Approve the requests and authorize the Executive Director to approve to ensure timely progress and to meet federal deadlines, of the Extensions of the Closing dates, Dates for 10% Test and Dates of Commencement of Substantial Construction; and

Ratification of the previous Executive Director approval of Abilene Senior; and

Conditionally approve or authorize the Executive Director to approve the award of the next available application for use of the remaining Exchange funds.

**WHEREAS**, the Board adopted a Housing Tax Credit Exchange Policy on July 30, 2009 to implement the Exchange Program authorized under the American Recovery and Reinvestment Act of 2009 (the Act), and

**WHEREAS**, due to delays in receiving and processing documents, the Board extended the deadline for closing at the November 9, 2009 meeting, the March 11, 2010 meeting, the May 13, 2010 meeting, and subsequently the July 29, 2010 meeting; and

**WHEREAS**, the Department has closed seventy-one of the existing eighty-six Developments awarded funds, and

**WHEREAS**, an additional non-refundable \$2,500 extension fee per development will be required to be submitted, along with any prior extension fee still outstanding and due and payment of any other past due fees before an additional extension is provided, and

**WHEREAS**, the Board has previously authorized the award of Exchange funds subject to Ratification by the Board, and

**WHEREAS**, \$13,083,980 remains unallocated and additional funds may become available from previous awarded applicants that returned funds, and

**WHEREAS**, the Board recognizes the urgency of closing these developments and completing construction in furtherance of the goals of the Policy and the Act.



It is hereby:

RESOLVED, that the Executive Director shall for good cause extend the Dates for 10% Test, Dates of Commencement of Substantial Construction and 50% Construction Completion, up to ninety (90) days, upon payment of an additional \$2,500 extension fee and payment of any other past due fees.

FURTHER RESOLVED, that the award of Abilene Senior Apartments is hereby ratified in the form presented to this meeting.

FURTHER RESOLVED, that the Executive Director is authorized to award funds to the next available application from the waiting list to utilize all remaining Exchange funds. Any such allocation will be subsequently presented to the Board for ratification.

FURTHER RESOLVED, that Principals of Exchange applicants who did not close by July 28, 2010 will receive a five point deduction on any application in the next subsequent application round pursuant to §50.9(i)(30)(A) and (C).

### **Background**

The Department has closed seventy-one of the eighty-six awards as of the publication of this presentation. The remaining fifteen owners have specific issues that have caused or may cause their developments to be further delayed.

Although staff has worked diligently with every applicant to close, there are a few applicants that have been unable to meet the deadlines. Staff has significant concerns with the abilities of these applicants to complete the developments by the required placement in service deadline of December 31, 2011 as well as meet the applicable 1602 Exchange Program funds distribution requirements. The following have requested extensions to their closing deadlines and request the Board's approval.

<b>TDHCA #</b>	<b>Development Name</b>	<b>City</b>	<b>Applicant</b>
09901	Las Palmas Gardens	San Antonio	David Marquez
09903	West End Baptist	San Antonio	David Marquez
09904	LULAC Hacienda	Corpus Christi	David Marquez
09909	Champion Homes at La Joya	La Joya	Saleem Jafar
09951	Canyons Retirement Community	Amarillo	Jan Thompson
09957	Woodland Park at Decatur	Decatur	Mark Feaster
09965	Peachtree Senior	Dallas	Ron Pegram

There are eight USDA transactions that are remaining to be closed that are requesting additional time to close.

<b>TDHCA #</b>	<b>Development Name</b>	<b>City</b>	<b>Applicant</b>
09353	Hyatt Manor I and II	Gonzales	Dennis Hoover
09955	Oakwood Apartments	Brownwood	Patrick Barbolla
09974	Courtwood Apartments	Eagle Lake	Ronald Potterpin

09992	Northgate Apts and Rhomberg Apts	Burnet	Dennis Hoover
09995	Village Place Apartments	Lorena	Patrick Barbolla
09997	Autumn Villas	Lorena	Patrick Barbolla
09998	Prairie Village Apartments	Rogers	Patrick Barbolla
09999	Cherrywood Apartments	West	Ronald Potterpin

Staff is requesting the ratification of the Executive Director's approval of the final award of \$8,668,329 in Exchange funds to Abilene Senior, #09956.

There is approximately \$13,087,980 available in Exchange funds. There are two remaining applications from the Exchange waiting list. The next applications in line for recommendation are:

<b>TDHCA #</b>	<b>Development Name</b>	<b>City</b>	<b>Requested Amount</b>
09316	Champion Homes at Bay Walk	Galveston	\$10,987,246
09312	Villas at El Dorado	Houston	\$15,533,595

The following applications will have penalty points assessed to the principals of the applications in the subsequent application round for failure to close the respective Exchange transactions by the July 28, 2010 deadline imposed by the Board and as presented to the Board at the July 29<sup>th</sup> meeting.

<b>TDHCA #</b>	<b>Development Name</b>	<b>City</b>	<b>Applicant</b>
09901	Las Palmas Gardens	San Antonio	David Marquez
09903	West End Baptist	San Antonio	David Marquez
09904	LULAC Hacienda	Corpus Christi	David Marquez
09909	Champion Homes at La Joya	La Joya	Saleem Jafar
09951	Canyons Retirement Community	Amarillo	Jan Thompson
09957	Woodland Park at Decatur	Decatur	Mark Feaster
09965	Peachtree Senior	Dallas	Ron Pegram

Staff will continue to report the status of the Exchange program application to the Board on a monthly basis and advising the Board of any issues that need Board resolution.

**HTC No. 09974/09000, Courtwood Apartments (USDA/Exchange/HOME Application) Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	PK Courtwood Apartments, LP.
General Partner:	Megan & Associates III, LLC
Developer:	Megan & Associates III, LLC
Principals/Interested Parties:	Ronald Potterpin
City/County:	West/McLennan
Set-Aside:	USDA
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Elderly
Units:	50
2009 Allocation:	\$266,619
Allocation per HTC Unit:	\$5332
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

August 25, 2010

**VIA E-MAIL**

Teresa Shell  
Robbye Meyer  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Courtwood Apartments (Eagle Lake)  
TDHCA Nos. 09974/09000  
**Request for Extension of Exchange Closing Deadline**

Dear Teresa and Robbye:

We represent PK Courtwood Apartments, LP (the "**Development Owner**"), which is the Development Owner with respect to the referenced development (the "**Project**"). The Project is a recipient of Exchange funds and HOME funds from TDHCA and is also currently financed with a USDA Rural Development loan, which will be assumed by the Development Owner in connection with its acquisition of the Project. The Project's current Exchange closing deadline is August 31, 2010. We are submitting this letter to request an extension of the Exchange closing deadline on behalf of the Development Owner. A check in the amount of \$2,500 for the extension fee will be delivered to the Department under separate cover.

The Development Owner requires this extension to finalize USDA approval of the transfer and financing for the Project. We understand that Teresa had previously spoken with representatives of the USDA office who had advised that USDA was anticipating being able to close in August. However, the necessary approval from USDA's national office has still not been received. Consequently, the Project will not be in a position to close this month, although the Development Owner has been advised by USDA that the approval should be forthcoming very soon.

In light of the foregoing, we respectfully request that the closing deadline for the Project be extended until **September 30, 2010** for the Exchange funds. We note that a corresponding extension to the HOME closing deadline has also been requested and is pending with the Department. If you require any additional information to process this request, please let us know.

Thank you for your assistance.

Sincerely,



Christine R. Richardson

**HTC No. 09955, Oakwood Apartments**  
**(USDA/Tax Credit Exchange Program App)**  
**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	Brownwood Fountainhead, LP
General Partner:	Fountainhead Affiliates, Inc.
Developer:	Fountainhead Affiliates, Inc.
Principals/Interested Parties:	Patrick A Barbolla
City/County:	Brownwood/Brown
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	47
2009 Allocation:	\$275,731
Allocation per HTC Unit:	\$5,867
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

**FOUNTAINHEAD MANAGEMENT, INC.**

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

August 30, 2010

Ms. Teresa Shell  
Tax Credit Exchange Administrator  
Texas Department of Housing  
and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, Texas 78701

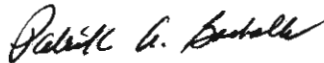
Re: Request for Extension of Closing  
Oakwood Apartments – Exchange ID# 09955

Dear Ms. Shell:

The applicant is requesting an extension Until September 30, 2010 to close the Exchange transaction. I have enclosed Brownwood Fountainhead, L.P. check number 1008 in the amount of \$2,500 check payable to TDHCA for the extension. I have been informed by USDA that the National Office of USDA has approved the transaction and I am merely awaiting written notice to set up a closing date.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,



Patrick A. Barbolla

**HTC No. 09353, Hyatt Manor I & II Apartments**  
**(USDA/Tax Credit Exchange Program App)**  
**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	HVM Gonzales County, Ltd.
General Partner:	HVM Ventures, LLC
Developer:	Dennis Hoover
Principals/Interested Parties:	Benjamin Farmer, Paul Farmer, Dennis Hoover, Dana Hoover, and John Hoover
City/County:	Gonzales/Gonzales
Set-Aside:	USDA
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	65
2009 Allocation:	\$331,342
Allocation per HTC Unit:	\$5,098
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareno  
Tom H. Gann  
Lowell A. Keig  
Juan S. Munoz, Ph.D.

### HOUSING TAX CREDIT EXCHANGE EXTENSION REQUEST

Development Owner: HVM Gonzales County, Ltd.

Contact Person: Dennis Hoover

Contact Address: P.O. Box 190

City: Burnet State: TX Zip: 78611

Contact Phone / Facsimile: 512-756-9885

Email Address: [Dennishoover@hamiltonvalley.com](mailto:Dennishoover@hamiltonvalley.com) or [kimtreiber@hamiltonvalley.com](mailto:kimtreiber@hamiltonvalley.com)

TDHCA ID#: 09353

Development Name: Hyatt Manor I and II Apts

Development Address: 1701 Waco St.

City: Gonzales State: TX Zip: 78629

**Development Owner: HVM Gonzales County, Ltd. Date: 8/30/10**

Anticipated Closing Date: **September 30, 2010**

Expiration Date of Site Control: 2/20/2011

Extension Requested: Yes  No  Date Requested 8/30/10

Reason for Extension: (USDA property) Owner's are waiting on a final commitment and closing date from USDA. All exchange documents were submitted to TDHCA on 8-17-10 for review. Owners have worked through the revisions and deficiency's in a timely manner but cannot close until USDA-RD National Officesubmitsclosingdocuments.



**HTC No. 09992, Northgate and Rhomberg Apartments**

**(USDA/Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above.. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	HVM Burnet N & R, Ltd.
General Partner:	HVM Ventures, LLC
Developer:	Dennis Hoover
Principals/Interested Parties:	Benjamin Farmer, Paul Farmer, Dennis Hoover, Dana Hoover, and John Hoover
City/County:	Burnet/Burnet
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	60
2009 Allocation:	\$319,092
Allocation per HTC Unit:	\$5318
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

Michael Gerber  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
C. Kent Conine, *Chair*  
Gloria Ray, *Vice Chair*  
Leslie Bingham Escareno  
Tom H. Gann  
Lowell A. Keig  
Juan S. Munoz, Ph.D.

### HOUSING TAX CREDIT EXCHANGE EXTENSION REQUEST

Development Owner: HVM Burnet N & R, Ltd.

Contact Person: Dennis Hoover

Contact Address: P.O. Box 190

City: Burnet State: TX Zip: 78611

Contact Phone / Facsimile: 512-756-9885

Email Address: [Dennishoover@hamiltonvalley.com](mailto:Dennishoover@hamiltonvalley.com) or [kintreiber@hamiltonvalley.com](mailto:kintreiber@hamiltonvalley.com)

TDHCA ID#: 09992

Development Name: Northgate Apts and Rhomberg Apts

Development Address: 105 Northgate Circle & 806 N. Rhomberg

City: Burnet State: TX Zip: 78611

Development Owner: **HVM Burnet N & R, Ltd.** Date: **8/30/10**

Anticipated Closing Date: **September 30, 2010**

Expiration Date of Site Control: 7/27/2011

Extension Requested: Yes  No  Date Requested 8/30/10

Reason for Extension: (USDA Property) Owner's are waiting on a final commitment and closing date from USDA. All exchange document were submitted to TDHCA on 8-13-10 for review. Owners have worked through the revisions and deficiency's in a timely manner but cannot close until USDA-RD National Office submits closing documents.

**HTC No. 09995, Village Place Apartments**  
**(USDA/Tax Credit Exchange Program App)**  
**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	Lorena Fountainhead, LP
General Partner:	Fountainhead Affiliates, Inc.
Developer:	Fountainhead Affiliates, Inc.
Principals/Interested Parties:	Patrick A Barbolla
City/County:	Lorena/McLennan
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	32
2009 Allocation:	\$205,533
Allocation per HTC Unit:	\$6,423
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

**FOUNTAINHEAD MANAGEMENT, INC.**

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

August 30, 2010

Ms. Teresa Shell  
Tax Credit Exchange Administrator  
Texas Department of Housing  
and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, Texas 78701

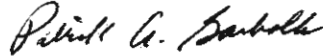
Re: Request for Extension of Closing  
Village Place Apartments – Exchange ID# 09995

Dear Ms. Shell:

The applicant is requesting an extension until September 30, 2010 to close the Exchange transaction. I have enclosed Lorena Fountainhead, L.P. check number 1008 in the amount of \$2,500 payable to TDHCA for the extension. I have been informed that the transaction has been submitted to the National Office of Rural Development, USDA for approval. I anticipate approval shortly.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,



Patrick A. Barbolla

**HTC No. 09997, Autumn Villas Apartments**

**(USDA/Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	Lorena Fountainhead, LP
General Partner:	Fountainhead Affiliates, Inc.
Developer:	Fountainhead Affiliates, Inc.
Principals/Interested Parties:	Patrick A Barbolla
City/County:	Lorena/McLennan
Set-Aside:	USDA/At-Risk
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Elderly
Units:	16
2009 Allocation:	\$106,245
Allocation per HTC Unit:	\$6,640
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

**FOUNTAINHEAD MANAGEMENT, INC.**

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

August 30, 2010

Ms. Teresa Shell  
Tax Credit Exchange Administrator  
Texas Department of Housing  
and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, Texas 78701

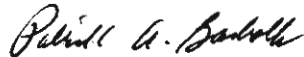
Re: Request for Extension of Closing  
Autumn Villas – Exchange ID# 09997

Dear Ms. Shell:

The applicant is requesting an extension until September 30, 2010 to close the Exchange transaction. I have enclosed Lorena Autumn Fountainhead, L.P. check number 1008 in the amount of \$2,500 payable to TDHCA for the extension. I have been informed by USDA that the National Office of USDA has approved the transaction and I am merely awaiting written notice to set up a closing date.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,



Patrick A. Barbolla

**HTC No. 09998, Prairie Village Apartments**

**(USDA/Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	Bell Fountainhead, LP
General Partner:	Fountainhead Affiliates, Inc.
Developer:	Fountainhead Affiliates, Inc.
Principals/Interested Parties:	Patrick A Barbolla
City/County:	Rogers/Bell
Set-Aside:	USDA/At-Risk/Preservation
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	24
2009 Allocation:	\$150,471
Allocation per HTC Unit:	\$6,270
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**            **Approve the extension as requested.**

**FOUNTAINHEAD MANAGEMENT, INC.**

4000 OLD BENBROOK ROAD

FORT WORTH, TEXAS 76116

TELEPHONE (817) 732-1055; FAX (817) 732-7716

August 30, 2010

Ms. Teresa Shell  
Tax Credit Exchange Administrator  
Texas Department of Housing  
and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin, Texas 78701

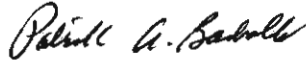
Re: Request for Extension of Closing  
Prairie Village – Exchange ID# 09998

Dear Ms. Shell:

The applicant is requesting an extension until September 30, 2010 to close the Exchange transaction. I have enclosed Bell Fountainhead, L.P. check number 1015 in the amount of \$2,500 payable to TDHCA for the extension. I have been informed by USDA that the National Office of USDA has approved the transaction and I am merely awaiting written notice to set up a closing date.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,



Patrick A. Barbolla



**HTC No. 09165/09999, Cherrywood Apartments**

**(USDA/ HOME/Exchange App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this additional request is because the owner needs approval from the national USDA office to transfer the property. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	PK Cherrywood Apartments, LP.
General Partner:	Megan & Associates III, LLC
Developer:	Megan & Associates III, LLC
Principals/Interested Parties:	Ronald Potterpin
City/County:	West/McLennan
Set-Aside:	USDA
Type of Area:	Rural
Type of Development:	Acq/Rehab
Population Served:	Elderly
Units:	44
2009 Allocation:	\$289,254
Allocation per HTC Unit:	\$6574
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**            **Approve the extension as requested.**



Locke Lord Bissell & Liddell LLP

Attorneys & Counselors

100 Congress Avenue, Suite 300  
Austin, Texas 78701-2748  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Christine R. Richardson  
Direct Telephone: 512-305-4754  
Direct Fax: 512-391-4754  
crichardson@lockelord.com

August 25, 2010

**VIA E-MAIL**

Teresa Shell  
Robbye Meyer  
Texas Department of Housing  
and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Cherrywood Apartments (West)  
TDHCA Nos. 10507/09999/09165  
**Request for Extension of Exchange Closing Deadline**

Dear Teresa and Robbye:

We represent PK Cherrywood Apartments, LP (the "**Development Owner**"), which is the Development Owner with respect to the referenced development (the "**Project**"). The Project is a recipient of Exchange funds and HOME funds from TDHCA and is also currently financed with two USDA Rural Development loans, which will be assumed by the Development Owner in connection with its acquisition of the Project. The Project's current Exchange closing deadline is August 31, 2010. We are submitting this letter to request an extension of the Exchange closing deadline on behalf of the Development Owner. A check in the amount of \$2,500 for the extension fee will be delivered to the Department under separate cover.

The Development Owner requires this extension to finalize USDA approval of the transfer and financing for the Project. We understand that Teresa had previously spoken with representatives of the USDA office who had advised that USDA was anticipating being able to close in August. However, the necessary approval from USDA's national office has still not been received. Consequently, the Project will not be in a position to close this month, although the Development Owner has been advised by USDA that the approval should be forthcoming very soon.

In light of the foregoing, we respectfully request that the closing deadline for the Project be extended until **September 30, 2010** for the Exchange funds. If you require any additional information to process this request, please let us know.

Thank you for your assistance.

Sincerely,

Christine R. Richardson

**HTC No. 09901, Las Palmas Gardens Apartments**

**(Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this request is that the applicant had to search for a new lender because their previous lender pulled out with no notice; therefore, they were unable to submit all necessary closing documentation by the original deadline. The applicant has indicated that all necessary documentation has been submitted to the Department legal division for review and approval. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	TX Las Palmas Gardens Housing, LP.
General Partner:	TX Las Palmas Gardens Development, LLC
Developer:	Urban Progress Corporation
Principals/Interested Parties:	Valdemar Perez
City/County:	San Antonio/Bexar
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	100
2009 Allocation:	\$732,217
Allocation per HTC Unit:	\$7322
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

TX Las Palmas Gardens Housing, LP

1215 Castroville Road  
San Antonio, Texas 78237

August 26, 2010

Michael Gerber, Executive Director  
*Thru Teresa Shell*  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: *Extension Request for Construction Closing*  
Las Palmas Gardens Apartments, TDHCA # 09901

Dear Mr. Gerber:

At this time we are respectfully requesting an extension through the end of September for Construction Closing for the Las Palmas Gardens Apartments, 1215 Castroville, San Antonio, TX 78237. Enclosed is the check for \$7,500.00; this is for 09901, 09903, and 09904.

We are working with Stearns Bank; the majority of the documents have been submitted to the TDHCA system. In speaking with Stearns, they anticipate closing no later than the end of September.

Fortunately, we are working with a bank, Stearns Bank, and attorney, John Shackelford, who have closed Exchange projects with TDHCA. We feel this team will get these projects closed timely.

If you need additional information, please feel free to call me at 210.228.0560 (office) or 210.216.5611 (mobile).

Sincerely,  
David A. Marquez

David Marquez  
Development Partner

## Kent Bedell

---

**From:** David Marquez [cdmarquez@sbcglobal.net]  
**Sent:** Tuesday, August 31, 2010 6:57 AM  
**To:** Kent Bedell  
**Cc:** Teresa Shell; Lisa Fehr  
**Subject:** Re: Exchange Closing Extension Request for 09901, 09903, and 09904

Mr. Bedell,

Las Palmas 09901, West End Baptist, 09903, LULAC Hacienda, 09904 - We have currently submitted all of the necessary documentation and I believe we were told by our attorney, John Shackelford, that it would be submitted to legal. My understanding is that once it is submitted to legal and after review, we will receive a closing date. We were unable to submit all bank documentation before August 31, therefore we submitted a request for extension until Sept. 30 to give both attorneys from TDHCA and Shackelford time to review documents. Please note we had to search for another lender and submit their due diligence when our previous lender pulled out without notice.

On or before September 30 is fine.

Thank you!

david  
210-216-5611

--- On **Mon, 8/30/10**, **Kent Bedell** <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

**From:** Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
**Subject:** Exchange Closing Extension Request for 09901, 09903, and 09904  
**To:** "David Marquez" <[cdmarquez@sbcglobal.net](mailto:cdmarquez@sbcglobal.net)>  
**Cc:** "Teresa Shell" <[teresa.shell@tdhca.state.tx.us](mailto:teresa.shell@tdhca.state.tx.us)>, "Lisa Fehr" <[lisa.fehr@tdhca.state.tx.us](mailto:lisa.fehr@tdhca.state.tx.us)>  
**Date:** Monday, August 30, 2010, 4:30 PM

David,

Please provide a specific reason why the Exchange closing has been delayed for each deal. The explanation does not have to be long or too detailed; however, I do need to have a specific reason for the delay in closing for each project.

Additionally, Teresa has informed me that you are allowed to request a closing deadline for each project to September 30<sup>th</sup>. Please confirm if this is the date you want to extend the closing to for each project?

Thanks,

**HTC No. 09903, West End Baptist Manor Apartments**

**(Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this request is that the applicant had to search for a new lender because their previous lender pulled out with no notice; therefore, they were unable to submit all necessary closing documentation by the original deadline. The applicant has indicated that all necessary documentation has been submitted to the Department legal division for review and approval. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	TX West End Baptist, LP.
General Partner:	TX West End Baptist Development, LLC
Developer:	West End Baptist Church
Principals/Interested Parties:	John Smith
City/County:	San Antonio/Bexar
Set-Aside:	At Risk/Non-Profit
Type of Area:	Urban
Type of Development:	Acq/Rehab
Population Served:	Family
Units:	50
2009 Allocation:	\$378,157
Allocation per HTC Unit:	\$7,563
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

TX West End Baptist Housing, LP  
924 SW 35<sup>th</sup> Street  
San Antonio, Texas 78237

August 26, 2010

Michael Gerber, Executive Director  
*Thru Teresa Shell*  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: *Extension Request for Construction Closing*  
West End Baptist Manor, TDHCA # 09903

Dear Mr. Gerber:

At this time we are respectfully requesting an extension through the end of September for Construction Closing for the West End Baptist Manor, 934 SW 35<sup>th</sup> Street, San Antonio, Texas 78237. Enclosed is the check for \$7,500.00; this is for 09901, 09903, and 09904.

We are working with Stearns Bank; the majority of the documents have been submitted to the TDHCA system. In speaking with Stearns, they anticipate closing no later than the end of September.

Fortunately, we are working with a bank, Stearns Bank, and attorney, John Shackelford, who have closed Exchange projects with TDHCA. We feel this team will get these projects closed timely.

If you need additional information, please feel free to call me at 210.228.0560 (office) or 210.216.5611 (mobile).

Sincerely,  
David A. Marquez

David Marquez  
Development Partner

## Kent Bedell

---

**From:** David Marquez [cdmarquez@sbcglobal.net]  
**Sent:** Tuesday, August 31, 2010 6:57 AM  
**To:** Kent Bedell  
**Cc:** Teresa Shell; Lisa Fehr  
**Subject:** Re: Exchange Closing Extension Request for 09901, 09903, and 09904

Mr. Bedell,

Las Palmas 09901, West End Baptist, 09903, LULAC Hacienda, 09904 - We have currently submitted all of the necessary documentation and I believe we were told by our attorney, John Shackelford, that it would be submitted to legal. My understanding is that once it is submitted to legal and after review, we will receive a closing date. We were unable to submit all bank documentation before August 31, therefore we submitted a request for extension until Sept. 30 to give both attorneys from TDHCA and Shackelford time to review documents. Please note we had to search for another lender and submit their due diligence when our previous lender pulled out without notice.

On or before September 30 is fine.

Thank you!

david  
210-216-5611

--- On **Mon, 8/30/10**, **Kent Bedell** <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

From: Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
Subject: Exchange Closing Extension Request for 09901, 09903, and 09904  
To: "David Marquez" <[cdmarquez@sbcglobal.net](mailto:cdmarquez@sbcglobal.net)>  
Cc: "Teresa Shell" <[teresa.shell@tdhca.state.tx.us](mailto:teresa.shell@tdhca.state.tx.us)>, "Lisa Fehr" <[lisa.fehr@tdhca.state.tx.us](mailto:lisa.fehr@tdhca.state.tx.us)>  
Date: Monday, August 30, 2010, 4:30 PM

David,

Please provide a specific reason why the Exchange closing has been delayed for each deal. The explanation does not have to be long or too detailed; however, I do need to have a specific reason for the delay in closing for each project.

Additionally, Teresa has informed me that you are allowed to request a closing deadline for each project to September 30<sup>th</sup>. Please confirm if this is the date you want to extend the closing to for each project?

Thanks,



**HTC No. 09904, LULAC Hacienda Apartments**

**(Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this request is that the applicant had to search for a new lender because their previous lender pulled out with no notice; therefore, they were unable to submit all necessary closing documentation by the original deadline. The applicant has indicated that all necessary documentation has been submitted to the Department legal division for review and approval. The approval is forthcoming and the owner anticipates closing by the end of September.

Owner:	TX LULAC Hacienda Housing, LP.
General Partner:	TX LULAC Hacienda Development, LLC
Developer:	Apartments of the Village
Principals/Interested Parties:	Nicholas Adame and Henry Gorham
City/County:	Corpus Christi/Nueces
Set-Aside:	At Risk/Non-Profit
Type of Area:	Urban
Type of Development:	Reconstruction
Population Served:	Elderly
Units:	60
2009 Allocation:	\$624,474
Allocation per HTC Unit:	\$10,408
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

TX LULAC Hacienda Housing, LP

2625 Greenwood Drive  
Corpus Christi, Texas 78405

August 26, 2010

Michael Gerber, Executive Director  
*Thru Teresa Shell*  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701-2410

RE: *Extension Request for Construction Closing*  
LULAC Hacienda Apartments, TDHCA # 09904

Dear Mr. Gerber:

At this time we are respectfully requesting an extension through the end of September for Construction Closing for the LULAC Hacienda Apartments, 2625 Greenwood, Corpus Christi, TX 78405. Enclosed is the check for \$7,500.00; this is for 09901, 09903, and 09904.

We are working with Stearns Bank; the majority of the documents have been submitted to the TDHCA system. In speaking with Stearns, they anticipate closing no later than the end of September.

Fortunately, we are working with a bank, Stearns Bank, and attorney, John Shackelford, who have closed Exchange projects with TDHCA. We feel this team will get these projects closed timely.

If you need additional information, please feel free to call me at 210.228.0560 (office) or 210.216.5611 (mobile).

Sincerely,  
**David A. Marquez**

David Marquez  
Development Partner

## Kent Bedell

---

**From:** David Marquez [cdmarquez@sbcglobal.net]  
**Sent:** Tuesday, August 31, 2010 6:57 AM  
**To:** Kent Bedell  
**Cc:** Teresa Shell; Lisa Fehr  
**Subject:** Re: Exchange Closing Extension Request for 09901, 09903, and 09904

Mr. Bedell,

Las Palmas 09901, West End Baptist, 09903, LULAC Hacienda, 09904 - We have currently submitted all of the necessary documentation and I believe we were told by our attorney, John Shackelford, that it would be submitted to legal. My understanding is that once it is submitted to legal and after review, we will receive a closing date. We were unable to submit all bank documentation before August 31, therefore we submitted a request for extension until Sept. 30 to give both attorneys from TDHCA and Shackelford time to review documents. Please note we had to search for another lender and submit their due diligence when our previous lender pulled out without notice.

On or before September 30 is fine.

Thank you!

david  
210-216-5611

--- On Mon, 8/30/10, Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)> wrote:

From: Kent Bedell <[kent.bedell@tdhca.state.tx.us](mailto:kent.bedell@tdhca.state.tx.us)>  
Subject: Exchange Closing Extension Request for 09901, 09903, and 09904  
To: "David Marquez" <[cdmarquez@sbcglobal.net](mailto:cdmarquez@sbcglobal.net)>  
Cc: "Teresa Shell" <[teresa.shell@tdhca.state.tx.us](mailto:teresa.shell@tdhca.state.tx.us)>, "Lisa Fehr" <[lisa.fehr@tdhca.state.tx.us](mailto:lisa.fehr@tdhca.state.tx.us)>  
Date: Monday, August 30, 2010, 4:30 PM

David,

Please provide a specific reason why the Exchange closing has been delayed for each deal. The explanation does not have to be long or too detailed; however, I do need to have a specific reason for the delay in closing for each project.

Additionally, Teresa has informed me that you are allowed to request a closing deadline for each project to September 30<sup>th</sup>. Please confirm if this is the date you want to extend the closing to for each project?

Thanks,

**HTC No. 09909, Champion Homes at La Joya**  
**(Tax Credit Exchange Program App)**  
**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to October 15, 2010.

The reason given for this request is that the applicant is waiting on approval of their application for HUD mixed financing. The applicant has indicated that the HUD mixed financing approval process takes approximately 180 days; therefore, their current requested extension should give them enough time to receive all of their required approvals and close on their Exchange funds.

Owner:	Chicory Court VIII, LP.
General Partner:	Chicory GP-VIII, Inc.
Developer:	Odyssey Residential Holdings, LP and La Joya Housing Authority
Principals/Interested Parties:	Saleem Jafar and James R. Fisher
City/County:	La Joya/Hidalgo
Set-Aside:	N/A
Type of Area:	Rural
Type of Development:	Acq/Rehab & Reconstruction
Population Served:	Family
Units:	50
2009 Allocation:	\$552,761
Allocation per HTC Unit:	\$11,055
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	October 15, 2010
<b>New Deadline Recommended:</b>	<b>October 15, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

ODYSSEY RESIDENTIAL HOLDINGS, L.P.

August 31, 2010

TDHCA  
221 E 11<sup>th</sup> Street  
Austin, TX 78701

RE: La Joya Exchange Request #09909/07227

Ms. Shell:

We formally request a 45 day extension (October 15, 2010) to close this deal while we wait on HUD approval. HUD could not begin their process until the underwriting report was published. La Joya was the last development underwritten in March 2010. The HUD mixed financing process is 180 days. We are pushing for 9/30/10, but 10/15/10 is a more reasonable date for their required approvals.

The extension fee for \$2,500 was delivered under separate cover via Robert Onion, earlier today.

Your consideration of our request is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "J. R. Fisher".

James R. Fisher  
[Bfisher8@airmail.net](mailto:Bfisher8@airmail.net)

**HTC No. 09951, Canyons Retirement Community**

**(Tax Credit Exchange Program App)**

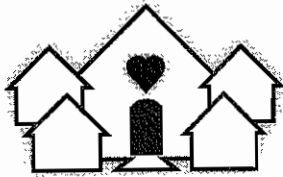
**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to October 30, 2010.

The reason given for this request is that the applicant needs more time to finalize the construction and permanent loan under the HUD 221(d)(4) Mortgage Insurance program. The applicant has indicated that HUD is currently processing their application for a commitment and indicated that their review will be completed by October 5, 2010. The applicant has stated that they will be ready to proceed with the Exchange closing as soon as a HUD commitment is issued.

Owner:	Canyons Senior Living, LP.
General Partner:	Sears Methodist Senior Housing, LLC
Developer:	Sears Methodist Retirement System, Inc.
Principals/Interested Parties:	Sears Methodist Retirement System, Inc.
City/County:	Amarillo/Potter
Set-Aside:	N/A
Type of Area:	Urban
Type of Development:	Acq/Rehab
Population Served:	Elderly
Units:	105
2009 Allocation:	\$1,025,960
Allocation per HTC Unit:	\$9,771
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	October 30, 2010
<b>New Deadline Recommended:</b>	<b>October 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**            **Approve the extension as requested.**



A Not For Profit Corporation

# Sears Methodist Retirement System, Inc.

AUSTIN  
EXECUTIVE OFFICE

ABILENE  
CORPORATE OFFICE

SERVICE LOCATIONS:

ABILENE

Mesa Springs  
Retirement Village

Sears Methodist  
Community Services

Sears Home Health  
Southwest Therapy Associates  
Sears Specialty Services  
Sears Methodist Hospice

August 20, 2010

Ms. Robbye Meyer  
Director of Multifamily  
Texas Department of Housing  
& Community Affairs  
221 East 11th Street  
Austin, Texas 78701

RE: Canyons Retirement Community/#09951  
TCEP Closing Extension Request

Wesley Court  
Methodist Retirement Community

Windcrest Alzheimer's  
Care Center

AMARILLO

The Canyons  
Retirement Community

The J. Paul & Polly Craig  
Methodist Retirement  
Community

LUBBOCK

Mildred & Shirley L. Garrison  
Geriatric Education and  
Care Center

ODESSA

Parks Methodist  
Retirement Village

Desert Haven

TYLER

Meadow Lake,  
A Senior Living Community  
(under development)

WACO

Wesley Woods  
Alzheimer's Care Center

Dear Ms. Meyer,

Canyons Senior Living, L.P., formally requests that the extension to close the award of Tax Credit Exchange funds granted for the Canyons Retirement Community be extended until October 30, 2010. The extension is required in order to allow adequate time for us to obtain a construction and permanent loan under the HUD 221(d)(4) Mortgage Insurance program. As was proposed in the application for Exchange funds, this development is only financially feasible with the HUD 221(d)(4) permanent loan program.

HUD is currently processing our Application for Firm Commitment and has indicated its review will be completed on or before October 5, 2010. We will be able to close on the HUD financing by October 30, 2010. We have uploaded all of the applicable exchange documents and are ready to proceed with the exchange funds closing once the HUD commitment is issued. We have permits and firm commitments of all other required financing components.

If the board grants this extension, we will be able to comply with deadlines imposed by the federal program.

*30% Exchange Fund Expenditure by December 31, 2010:* This deadline requires the Owner to expend \$2,369,987 in exchange funds by December 31, 2010. This can be accomplished by using exchange funds to acquire the building for \$1,378,553, and reimburse the owner for \$991,344 professional fees and soft costs which will be drawn on the first exchange draw estimated to fund in October 2010.

*10% Test (Carryover Part II) by December 1, 2010:* As Canyons was a 2007 funded tax credit project, it previously met the 10% Test in June 2008 and additional eligible basis expenses have been expended by the developer since that time. To date, Sears Methodist has expended more than \$850,000 in eligible predevelopment expenses, and acquired the building at a cost of \$1,900,000.

*50% Completion Within Eight Months of Closing:* Assuming construction start date of November 1, 2010 and a 14-month construction schedule, 50% completion will be achieved by June 1, 2011, approximately one month prior to the estimated July 1, 2011 deadline.

*Placed-In Service Date by December 31, 2011:* The owner will meet the placed in service deadline by adhering to the construction schedule agreed to by the contractor. The current 14-month construction schedule shows all units completed and final certificates of occupancy available by December 31, 2011. The renovations will occur floor by floor, two floors at a time, and temporary certificates of occupancy will be issued as each floor is completed. The general contractor is confident that a 14-month schedule is more than adequate to complete current scope of renovations. Western Builders has provided the attached letter confirming their ability to meet the construction deadlines.

Because we will be able to meet the federal deadlines for the exchange program, we respectfully request that TDHCA grant an extension of the state deadlines. The HUD 221(d)(4) program has delays but is the only financially feasible loan program for the Canyons.

Thank you for your continued support of our efforts to renovate the Canyons Retirement Community. Please contact me at should you have questions or want to discuss any issue in greater detail.

Sincerely,



D. Keith Perry  
President/CEO

cc: JoEllen Smith, DMA  
Jan Thompson, Sr. VP/General Counsel, Sears Methodist  
Scott Marks, Coats Rose  
Randy Mason, D. Ansley Company





August 20, 2010

Ms. Robbye Meyer  
Director of Multifamily Finance Production  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

*RE: The Canyons Retirement Community  
TDHCA # 09951*

Dear Ms. Meyer:

The construction schedule developed by Western Builders is based on the current scope of rehabilitation work identified in the plans and specifications for The Canyons Retirement Community. The duration of construction schedule is 14 months.

Western Builders is confident that with a construction start date of November 1, 2010, and barring any unforeseen catastrophic construction issues, the current 14 month construction schedule showing completion by December 31, 2011 is achievable and that final Certificates of Occupancy will be available prior to December 31, 2011.

Additionally, Western Builders is confident that it can meet the 50% Completion Deadline of 8 months from closing, which is July 1, 2011.

Sincerely,

*Raymond Boynton*

Raymond Boynton

**HTC No. 09957, Woodland Park at Decatur**

**(Tax Credit Exchange Program App)**

**Closing Deadline**

Summary of Request: The owner of this development is requesting approval for an extension of the deadline to close on Tax Credit Exchange funds for the Development named above. The extension requested a change in the deadline from August 31, 2010 to September 30, 2010.

The reason given for this request is that the applicant needs more time to finalize the construction and permanent debt for the Development. The applicant has indicated that the closing process is proceeding; however, the lender needs more time to complete their due diligence and underwriting because they just recently obtained all third party reports.

Owner:	Woodland Park at Decatur, LP.
General Partner:	Hersh Associates 1, LLC
Developer:	Hersh Development Co., LLC
Principals/Interested Parties:	George Hersh, Brian Hersh, and John Hersh
City/County:	Decatur/Wise
Set-Aside:	N/A
Type of Area:	Rural
Type of Development:	New Construction
Population Served:	Elderly
Units:	72
2009 Allocation:	\$576,558
Allocation per HTC Unit:	\$8,008
Extension Request Fee Paid:	\$2,500
Current Deadline:	August 31, 2010
New Deadline Requested:	September 30, 2010
<b>New Deadline Recommended:</b>	<b>September 30, 2010</b>
Previous Extensions:	

**Staff Recommendation:**           **Approve the extension as requested.**

Thanks,  
Misael Arroyo

TDHCA/ Multifamily Finance Division  
P.O. Box 13941 MC 332-10  
Austin, TX 78711-3941  
Phone: (512) 475-2596 Fax: (512)475-0764

-----Original Message-----

From: Robbye Meyer [mailto:robbye.meyer@tdhca.state.tx.us]  
Sent: Monday, August 23, 2010 10:54 AM  
To: Misael Arroyo  
Subject: FW: Woodland Park at Decatur

Will you follow up to see if he paid the fee?

Robbye G. Meyer  
Director of Multifamily Finance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
(512) 475-2213 (V)  
(512) 475-0764 (F)

-----Original Message-----

From: Mark Feaster [mailto:mfeaster@hershdevelopment.com]  
Sent: Sunday, August 22, 2010 9:34 PM  
To: Robbye Meyer  
Subject: Woodland Park at Decatur

Robbye,  
We would like to extend our closing date on the above development to 9/30/10. We would hope that should we be able to close before that date, we would be able to do so. We would also ask to extend our time for our 10% test.  
Thanks and please let me know if you need any further information.  
Mark

Mark Feaster  
Hersh Development Co., L.L.C.  
(785) 286-0642 main  
(785) 286-0645 fax  
(785) 220-8218 mobile

This email may contain information that is confidential or attorney-client privileged and may constitute inside information. The contents of this email are intended only for the recipient(s) listed above. If you are not the intended recipient, you are directed not to read, disclose, distribute or otherwise use this transmission. If you have received this email in error, please notify the sender immediately and delete the transmission. Delivery of this message is not intended to waive any applicable privileges.

**MULTIFAMILY FINANCE PRODUCTION DIVISION**

**BOARD ACTION REQUEST**

**September 9, 2010**

**Recommended Action**

Approve or deny, with or without conditions, or take other action regarding the request for amendment on HTC 01042, Fountains at Tidwell.

**Whereas**, the tax credit award relating to HTC 01042, Fountains at Tidwell, was supported by the public and the award was made by the Board based on certain premises, including the development of a 5.5048 acre tract, using 4 acres thereof for a sports complex, and

**Whereas** the sports complex as originally proposed, was not constructed, leaving 4 acres of the tract undeveloped, and

**Whereas**, the Board has previously considered this tract and given direction that the entire tract remain subject to the land use restriction agreement (“LURA”) to ensure that the full tract would be used for affordable housing, and

**Whereas**, the owner has received an unsolicited third party offer, but the proposed purchase would require release of the LURA for the 4 acres not used for the current development, and

**Whereas**, the LURA has at all relevant times been of record putting the proposed purchaser on notice that it was in place, and

**Whereas**, the financing for the development, including the tax credit award, was based on assumptions that included the acquisition and development of the entire tract, not merely the portion on which the development was ultimately constructed and

**Whereas**, the proposed release of the LURA for 4 acres out of the entire original tract to enable the owner to sell that property without the requirement that it be developed in accordance with such LURA will not provide any material financial or other value to the development itself

It is hereby

**RESOLVED**, that the Board finds that the interests and concerns of neighborhood, which initially expressed support for the development of affordable housing on this tract, are significant and

**FURTHER RESOLVED**, that this Board requests that in order to provide an appropriate basis for its consideration of the request the developer should provide the Board with evidence of neighborhood support for the proposed change in use.

## **Background**

§2306.6712, Texas Government Code, indicates that the Board should determine the disposition of a requested amendment if the amendment is a “material alteration,” would materially alter the development in a negative manner or would have adversely affected the selection of the application in the application round. The statute identifies certain changes as material alterations and the requests presented below include material alterations.

The requests and pertinent facts about the affected developments are summarized below.

### **HTC No. 01042, Fountains at Tidwell**

**Summary of Request:** The owner seeks approval to release a four acre tract of vacant land from the Housing Tax Credit Land Use Restrictive Agreement (LURA) and Housing Trust Fund LURA of the subject property. The 4 acres of land comprise the western portion of a 5.5048 acre tract that was left vacant when the development was completed. The land was restricted for the development of tax credit units in a Board decision of November 8, 2007 that resolved a prior amendment request. The discussion below is staff’s summary of the facts provided by the owner’s representative in the current letter of request and in the transcript that recorded the Board’s prior action.

The Board’s action on November 8, 2007 resolved the owner’s request to forego the construction of a portion of a sports complex that the application proposed. The plan for the complex failed when the organization originally proposed to operate a youth sports program in the complex was unable to perform. A second organization was proposed to run an alternative program and this plan failed in a similar manner. Meanwhile, Sylvester Turner Park was completed nearby, creating facilities for the development’s children and youth that were similar to the facilities originally proposed on-site. In addition, as stated by the owner in the November 8, 2007 Board meeting, transportation to the new park was among the development’s services. Representative Turner’s letter of support for the development was referenced in the meeting transcript.

The grounds of the sports complex were originally proposed to contain many facilities, including a baseball field, soccer field, open-air basketball court and covered basketball court. In the end, the basketball courts were built but the soccer field and baseball field were not. The development was built with many other recreational facilities, as proposed, including a playground, walking trail, covered pavilion and putting green. The Board accepted the development as completed but restricted the 5.5048 acres of land that were left vacant, to the future development of tax credit units in keeping with the owner’s statement that this use was the use contemplated for this land and supported by the community.

In the current request, the owner indicated that events have undermined the Board's prior action. In particular, the owner's communication with the Federal National Mortgage Association (FNMA) indicated that the agency will not allow development of the restricted tract under a new award of tax credits as the Board contemplated. FNMA's objection was founded on the premise that such development would not entail a third-party purchase of the property involved. However, in keeping with FNMA's objection, the owner subsequently received an unsolicited offer from a third-party buyer, Regency Nursing and Rehabilitation Centers, Inc., to purchase the land for the development of a skilled nursing facility. The facility would target patients on Medicaid with incomes below \$2,022 per month, under a license from the Texas Department of Aging and Disability Services.

In addition to the foregoing matters, the owner noted one other concern that has remained ongoing and unresolved. The owner referenced this problem in addressing the Board for the prior amendment request. The issue was that although the vacant land was fenced, dumping remained a problem. Therefore, damage to the fence as well as litter on the property increased the property's maintenance and detracted from its appearance. The owner noted that developing the four acres would eliminate the illegal dumping.

Owner:	Fountains at Tidwell, Ltd.
General Partner:	IVE Fountains, LLC
Developer:	Hettig Development Group II, LTD.
Principals/Interested Parties:	Isaac & Vera Matthews (Owners of GP); John E. Hettig and W. Barry Kahn (Principals of Developer)
Syndicator:	JER Hudson
Permanent Lender:	Mitchell Mortgage (FNMA)
City/County:	Houston/Harris
Set-Aside:	General Population
Type of Area:	Urban
Region:	6
Type of Development:	New Construction
Population Served:	General Population
Units:	141 HTC units and 47 market rate units
2001 Allocation:	\$830,255
Allocation per HTC Unit:	\$5,888
Prior Board Actions:	7/01 – Approved award of tax credits 11/07 – Approved amendment that allowed 5.5048 acres of land in the development to remain without the amenities originally proposed on it but restricted the land to future tax credit development.
REA Recommendation:	REA determined that the development would remain feasible regardless of the change and that the amount of the award of credits would remain unaffected.



---

## Memorandum

**To:** File

**From:** Audrey Martin, Real Estate Analysis

**cc:** Ben Sheppard, Multifamily Finance Production

**Date:** August 17, 2010

**Re:** Amendment Request for Fountains at Tidwell, TDHCA #01042

### Background

The Development was approved for an allocation of 9% tax credits in 2001 and an award of HTF funds in 2002. The Owner requested an amendment to release a portion of the original site acreage, 5.0548 acres, from the HTC and HTF LURAs in 2007 (referred to as “released acreage”). The Board approved the request on the condition that the land would be released if it was used for a 9% tax credit development. The Owner requested another amendment on August 16, 2010 requesting that four acres of the released acreage be approved to be sold to a third party, which will not develop a 9% HTC development on the site, as required by the Board in 2007. The Development has completed the cost certification process, and has received IRS Forms 8609.

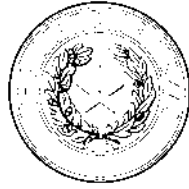
### Analysis

An analysis of the effect of the release of 5.0548 acres of the original 22.803 acres was performed in conjunction with the 2007 amendment request, and was found to have no underwriting impact. Because the current request is related to 4 acres of the 5.0548 acres that was previously evaluated, the previous analysis and recommendation remain unchanged.

If the original acquisition cost was reduced by a proportionate amount for the reduction of the 4 acres that is the subject of the current amendment request, neither the tax credit nor HTF award amounts would have been affected. Further, the Owner has stated that the proceeds from the sale of the 4 acres will likely be used to pay down the existing mortgage, less some amount of operating reserves. This also would not have affected the award amounts.

### Conclusion

The request does not impact the feasibility of the development, nor would the original award amounts have been affected.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

---

**Memorandum**

**To:** Ben Sheppard, Multifamily Finance Production Division  
**From:** Raquel Morales, Real Estate Analysis Division  
**cc:** File  
**Date:** October 15, 2007  
**Re:** Amendment Request for Fountains at Tidwell, #01042

I have reviewed the Owner's request to amend the Application and LURA with respect to the total number of acres restricted for the subject development and the economic impact this request has on the development. The Application originally contemplated two separate tracts of land for this development. Tract 1 (14.85 acres) would contain the housing structures and Tract 2 (7.953 acres) would contain an extensive sports facility to benefit the tenants residing in the property. Unfortunately, due to the lack of a service to facilitate the youth sports programs planned for Tract 2, the Owner had to limit its plans. While basketball courts were installed, a putting green was installed in place of the baseball diamond and soccer fields. The Owner is now asking that 5.0548 acres of Tract 2 be released from the LURA in order to better serve the neighborhood with the development of single family homes.

It should be noted that the subject development has already completed the Cost Certification review process and has received its IRS Forms 8609. However, the Underwriter reviewed the final analysis and adjusted the Owner's final total development costs for the land acquisition based on a prorated amount for the remaining 17.7482 acres to remain encumbered by the LURA. Based on this adjustment it does not appear that there would have been an economic impact to the development and the credit award would have remained the same.

Please let me know if you have further questions.



**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
MULTI FAMILY CREDIT UNDERWRITING ADDENDUM**

DATE: July 19, 2002      PROGRAM: 9% LIHTC      FILE NUMBER: 01042  
HTF      2-02-005

**DEVELOPMENT NAME**

Fountains at Tidwell

**APPLICANT**

Name: Fountains at Tidwell, Ltd.      Type:  For Profit     Non-Profit     Municipal     Other  
Address: 6605 Nuben      City: Houston      State: TX  
Zip: 77091    Contact: Isaac Matthews      Phone: (713) 688-1985    Fax: (713) 688-1880

**PRINCIPALS of the APPLICANT**

Name: IVE Fountains, LLC      (%): 0.6      Title: Managing General Partner  
Name: Hettig Development Group II, LTD      (%): 0.4      Title: Class A Limited Partner  
Name: JER Hudson Housing Capital      (%): 99.0      Title: Initial Limited Partner  
Name: Isaac & Vera Matthews      (%): \_\_\_\_\_      Title: 100% Owner of MGP  
Name: John E. Hettig      (%): \_\_\_\_\_      Title: Principal of Class A L.P.  
Name: W. Barry Kahn      (%): \_\_\_\_\_      Title: Principal of Class A L.P.

**GENERAL PARTNER**

Name: IVE Fountains, LLC      Type:  For Profit     Non-Profit     Municipal     Other  
Address: 6605 Nuben      City: Houston      State: TX  
Zip: 77091    Contact: Isaac Matthews      Phone: (713) 688-1985    Fax: (713) 688-1880

**PROPERTY LOCATION**

Location: South side of 2500 block of Tidwell Road at Rosslyn Road       QCT     DDA  
City: Houston      County: Harris      Zip: 77091

**REQUEST**

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
<b>Previously Awarded</b>			
① \$830,255	N/A	N/A	N/A
<b>Current Request</b>			
② \$225,000	N/A	N/A	N/A
③ \$75,000	N/A	N/A	N/A
<b>Other Requested Terms:</b>	① Annual ten-year allocation of low-income housing tax credits ② HTF Grant ③ HTF/SECO Grant		
<b>Proposed Use of Funds:</b>	<u>New construction</u>	<b>Set-Aside:</b>	<input checked="" type="checkbox"/> General <input type="checkbox"/> Rural <input type="checkbox"/> Non-Profit

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ADDENDUM**

**OTHER SOURCES of FUNDS**

**INTERIM CONSTRUCTION or GAP FINANCING**

**Source:** Mitchell Mortgage **Contact:** Don Hickey  
**Principal Amount:** \$10,400,000 **Interest Rate:** Variable; LIBOR + 225 bps; 6% floor  
**Additional Information:** Loan amount cannot exceed 75% of Property's appraised value; Closing date: 04/30/2002  
**Amortization:** N/A yrs **Term:** 2 yrs **Commitment:**  None  Firm  Conditional

**PERMANENT FINANCING**

**Source:** Fannie Mae Forward Commitment/ Continental Wingate **Contact:** David Levy  
**Principal Amount:** \$7,300,000 **Interest Rate:** 8%  
**Additional Information:** Loan not to exceed 90% of appraised value. A request has been made by the applicant to Fannie Mae to increase the loan amount to \$7,600,000 and the applicant indicated this is the assumption they have used to underwrite this transaction.  
**Amortization:** 30 yrs **Term:** 18 yrs **Commitment:**  None  Firm  Conditional

**LIHTC SYNDICATION**

**Source:** JER Hudson Housing Capital LLC **Contact:** Sam Geneshan  
**Address:** 630 Fifth Avenue **City:** New York  
**State:** NY **Zip:** 10111 **Phone:** (212) 218-4469 **Fax:** (212) 218-4467  
**Net Proceeds:** \$6,558,122 **Net Syndication Rate (per \$1.00 of 10-yr LIHTC)** 79¢  
**Commitment**  None  Firm  Conditional **Date:** 3/ 16/ 2001  
**Additional Information:** Commitment letter reflects proceeds of \$6,501,366 based on credits of \$8,343,430

**APPLICANT EQUITY**

**Amount:** \$197,662 **Source:** Deferred developer fee  
**Amount:** \$1,000 **Source:** Cash equity

**EVIDENCE of SITE or PROPERTY CONTROL**

**Type of Site Control:** Warranty Deed with Vendor's Lien (22.805 acres)  
**Date:** 9/ 30/ 2001 **Acquisition Cost:** \$ 633,143  
**Seller:** The Stanley W. Ray, Jr. Philanthropic and Civic Trust **Related to Development Team Member:** No

**ADDENDUM**

In 2001, Fountains at Tidwell received an annual LIHTC allocation of \$830,255. Currently, the Applicant is requesting HTF funds of \$300,000 in the form of a \$225,000 grant and \$75,000 SECO grant.

A revised underwriting analysis based on the materials submitted with the HTF application indicates that both the Applicant's and the Underwriter's rental income and total operating expense estimates have increased. The original rent schedule submitted with the LIHTC application included sufficient units set-aside at 30% of AMGI to meet HTF program requirements; therefore, the development's anticipated rental income was not affected by the HTF request. Rather, the increase in rental income occurred due to the use of 2002 rent limits versus 2001 limits. However, while the Applicant's net operating income projection also increased, the Underwriter's estimate decreased, but the resulting debt coverage ratio is within the Department's guideline.

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ADDENDUM**

As was the case in the original analysis, the Applicant's total development cost was used to determine the need for permanent funds. The permanent loan provided by Continental Wingate Associates is purported to be in the process of being increased by \$300K to \$7,600,000. The underwriter completed this analysis with the assumption that the higher debt is agreed upon. Failure to obtain the higher debt amount will only increase the gap of need and further support the need for the requested Housing Trust Funds. Receipt review and acceptance of a revised final permanent loan commitment is a condition of this report. The syndication agreement indicates that the Applicant will receive \$6,558,122 in proceeds based on the LIHTC award. These increases plus the requested HTF award result in a significant decrease in required deferred developer fees (\$684K less than anticipated in the original underwriting report).

It is recommended that the development receive the full request for \$300,000 in Housing Trust Funds. However, although the applicant requested \$225,000 in the form of a grant, these funds can be fully amortized and repaid at a zero percent interest rate over 30 year and still result in an acceptable DCR. Therefore the HTF loan should be structured as a loan with 0% interest, fully amortizing over 30 years. The resulting deferred developer fee can be repaid out of cash flow in two years.

**RECOMMENDATION**

- RECOMMEND APPROVAL OF A HTF AWARD NOT TO EXCEED \$300,000, STRUCTURED AS A \$225,000 LOAN AT 0% INTEREST FULLY AMORTIZING OVER A TERM OF 30 YEARS AND A \$75,000 SECO GRANT, SUBJECT TO CONDITIONS.
  
- RECOMMEND CONTINUED APPROVAL OF THE LIHTC ALLOCATION NOT TO EXCEED \$830,255 ANNUALLY FOR TEN YEARS, SUBJECT TO CONDITIONS.

**CONDITIONS**

1. Receipt, review, and acceptance of a final permanent loan commitment with terms materially the same as those outlined in the application.
2. Receipt, review, and acceptance of an executed LURA that evidences the restriction of ten units to both the 30% rent and income calculated limits.

Credit Underwriting Supervisor: \_\_\_\_\_

*Lisa Vecchietti*

Date: July 19, 2001

Director of Credit Underwriting: \_\_\_\_\_

*Tom Gouris*

Date: July 19, 2001

**MULTIFAMILY FINANCIAL ASSISTANCE REQUEST: Comparative Analysis**

**Fountains at Tidwell, Houston, LIHTC 01042/HTF 2-02-005 ADDENDUM**

Type of Unit	Number	Bedrooms	No. of Baths	Size in SF	Gross Rent Lmt.	Net Rent per Unit	Rent per Month	Rent per SF	Tnt Pd Util	Trash Only
LIHTC (30%)	4	1	1	665	\$335	\$265	\$1,061	\$0.40	\$69.68	\$5.32
LIHTC (50%)	4	1	1	665	558	\$488	1,953	0.73	69.68	5.32
LIHTC (60%)	7	1	1	665	670	\$600	4,202	0.90	69.68	5.32
MR	5	1	1	665		\$620	3,100	0.93	69.68	5.32
LIHTC (30%)	3	2	2	916	402	\$321	964	0.35	80.68	5.32
LIHTC (50%)	20	2	2	916	670	\$589	11,786	0.64	80.68	5.32
LIHTC (60%)	22	2	2	916	804	\$723	15,913	0.79	80.68	5.32
MR	15	2	2	916		\$750	11,250	0.82	80.68	5.32
LIHTC (30%)	3	3	2	1,207	465	\$370	1,111	0.31	94.68	5.32
LIHTC (50%)	37	3	2	1,207	775	\$680	25,172	0.56	94.68	5.32
LIHTC (60%)	41	3	2	1,207	930	\$835	34,248	0.69	94.68	6.32
MR	27	3	2	1,207		\$860	23,220	0.71	94.68	7.32
<b>TOTAL:</b>	<b>188</b>		<b>AVERAGE:</b>	<b>1,056</b>	<b>\$578</b>	<b>\$713</b>	<b>\$133,981</b>	<b>\$0.67</b>	<b>\$87.55</b>	<b>\$5.83</b>

**INCOME**

Total Net Rentable Sq Ft: 198,616

**POTENTIAL GROSS RENT**

Secondary Income Per Unit Per Month: \$10.00  
 Other Support Income: (describe)

**POTENTIAL GROSS INCOME**

Vacancy & Collection Loss % of Potential Gross Income: -7.50%  
 Employee or Other Non-Rental Units or Concessions

**EFFECTIVE GROSS INCOME**

**EXPENSES**

	% OF EGI	PER UNIT	PER SQ FT			PER SQ FT	PER UNIT	% OF EGI
General & Administrative	4.74%	\$380	\$0.36	\$71,460	\$38,700	\$0.19	\$206	2.53%
Management	5.00%	401	0.38	75,403	61,079	0.31	325	4.00%
Payroll & Payroll Tax	12.42%	996	0.94	187,234	167,640	0.84	892	10.96%
Repairs & Maintenance	5.51%	442	0.42	\$83,092	86,664	0.44	461	5.67%
Utilities	2.67%	214	0.20	40,196	33,372	0.17	178	2.18%
Water, Sewer, & Trash	1.55%	124	0.12	23,313	36,120	0.18	192	2.36%
Property Insurance	2.11%	169	0.16	31,779	44,028	0.22	234	2.88%
Property Tax 2.90435	10.86%	871	0.82	163,805	194,760	0.98	1,036	12.74%
Reserve for Replacements	2.49%	200	0.19	37,600	37,608	0.19	200	2.46%
Other: Compl. fees & spt svcs	1.83%	147	0.14	27,588	27,588	0.14	147	1.80%
<b>TOTAL EXPENSES</b>	<b>49.17%</b>	<b>\$3,944</b>	<b>\$3.73</b>	<b>\$741,471</b>	<b>\$727,559</b>	<b>\$3.66</b>	<b>\$3,870</b>	<b>47.59%</b>
<b>NET OPERATING INC</b>	<b>50.83%</b>	<b>\$4,078</b>	<b>\$3.86</b>	<b>\$766,588</b>	<b>\$801,311</b>	<b>\$4.03</b>	<b>\$4,262</b>	<b>52.41%</b>

**DEBT SERVICE**

Continental Wingate Associates,	44.37%	\$3,560	\$3.37	\$669,193	\$667,288	\$3.36	\$3,549	43.65%
HTF	0.00%	\$0	\$0.00	0	0	\$0.00	\$0	0.00%
Deferred Developer Fees	0.00%	\$0	\$0.00	0	15,000	\$0.08	\$80	0.98%
<b>NET CASH FLOW</b>	<b>6.46%</b>	<b>\$518</b>	<b>\$0.49</b>	<b>\$97,395</b>	<b>\$119,023</b>	<b>\$0.60</b>	<b>\$633</b>	<b>7.79%</b>
<b>AGGREGATE DEBT COVERAGE RATIO</b>				<b>1.15</b>	<b>1.17</b>			
<b>ALTERNATIVE DEBT COVERAGE RATIO</b>				<b>1.13</b>				

**CONSTRUCTION COST**

Description	Factor	% of TOTAL	PER UNIT	PER SQ FT			PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		5.24%	\$3,986	\$3.77	\$749,446	\$749,446	\$3.77	\$3,986	5.11%
Off-Sites		0.00%	0	0.00	0	0	0.00	0	0.00%
Sitework		8.54%	6,500	6.15	1,222,000	1,243,800	6.26	6,616	8.49%
Direct Construction		51.87%	39,490	37.38	7,424,167	7,681,788	38.68	40,861	52.41%
Contingency	4.97%	3.00%	2,287	2.16	430,000	430,000	2.16	2,287	2.93%
General Reqts	6.00%	3.62%	2,759	2.61	518,770	529,650	2.67	2,817	3.61%
Contractor's G &	2.00%	1.21%	920	0.87	172,923	176,550	0.89	939	1.20%
Contractor's Prof	6.00%	3.62%	2,759	2.61	518,770	529,650	2.67	2,817	3.61%
Indirect Construction		1.89%	1,441	1.36	270,900	270,900	1.36	1,441	1.85%
Ineligible Costs		1.10%	840	0.80	158,000	158,000	0.80	840	1.08%
Developer's G & A	2.00%	1.59%	1,208	1.14	227,031	0	0.00	0	0.00%
Developer's Profit	13.00%	10.31%	7,849	7.43	1,475,699	1,743,000	8.78	9,271	11.89%
Interim Financing		5.55%	4,223	4.00	794,000	794,000	4.00	4,223	5.42%
Reserves		2.45%	1,862	1.76	350,000	350,000	1.76	1,862	2.39%
<b>TOTAL COST</b>		<b>100.00%</b>	<b>\$76,126</b>	<b>\$72.06</b>	<b>\$14,311,706</b>	<b>\$14,656,784</b>	<b>\$73.79</b>	<b>\$77,962</b>	<b>100.00%</b>
<b>Recap-Hard Construction Costs</b>		<b>71.88%</b>	<b>\$54,716</b>	<b>\$51.79</b>	<b>\$10,286,631</b>	<b>\$10,591,438</b>	<b>\$53.33</b>	<b>\$56,337</b>	<b>72.26%</b>

**SOURCES OF FUNDS**

Continental Wingate Associates,	53.10%	\$40,426	\$38.26	\$7,600,000	\$7,600,000	\$7,600,000		
HTF	1.57%	\$1,197	\$1.13	225,000	\$225,000	225,000		
HTF/SECO	0.52%	\$399	\$0.38	75,000	\$75,000	75,000		
LIHTC Syndication Proceeds	45.82%	\$34,884	\$33.02	6,558,122	6,558,122	6,558,122		
IVE Fountains, LLC	0.01%	\$5	\$0.01	1,000	1,000	1,000		
Deferred Developer Fees	1.38%	\$1,051	\$1.00	197,662	197,662	197,662		
Additional (excess) Funds Require	-2.41%	(\$1,836)	(\$1.74)	(345,078)	0	0		
<b>TOTAL SOURCES</b>				<b>\$14,311,706</b>	<b>\$14,656,784</b>	<b>\$14,656,784</b>		

**MULTIFAMILY FINANCIAL ASSISTANCE REQUEST (continued)**  
**Fountains at Tidwell, Houston, LIHTC 01042/HTF 2-02-005 ADDENDUM**

**DIRECT CONSTRUCTION COST ESTIMATE**  
 Residential Cost Handbook  
 Average Quality Multiple Residence Basis

**PAYMENT COMPUTATION**

CATEGORY	FACTOR	UNITS/SQ FT	PER SF	AMOUNT
Base Cost			\$38.18	\$7,583,096
<b>Adjustments</b>				
Exterior Wall Finish	1.07%		\$0.41	\$81,139
9-Foot Ceilings	4.00%		1.53	303,324
Roofing			0.00	0
Subfloor			(0.98)	(194,644)
Floor Cover			1.82	361,481
Porches/Balconies	\$28.10	11,648	1.65	327,309
Plumbing	\$585	504	1.48	294,840
Built-In Appliances	\$1,550	188	1.47	291,400
Stairs/Fireplaces			0.00	0
Floor Insulation			0.00	0
Heating/Cooling			1.41	280,049
Garages/Carports		9,600	0.00	0
Comm &/or Aux Bldgs	\$53.18	5,516	1.48	293,322
Other:			0.00	0
<b>SUBTOTAL</b>			<b>48.44</b>	<b>9,621,315</b>
Current Cost Multiplier	1.04		1.94	384,853
Local Multiplier	0.91		(4.36)	(865,918)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>\$46.02</b>	<b>\$9,140,249</b>
Plans, specs, survy, bld	3.90%		(\$1.79)	(\$356,470)
Interim Construction Int	3.38%		(1.55)	(308,483)
Contractor's OH & Profit	11.50%		(5.29)	(1,051,129)
<b>NET DIRECT CONSTRUCTION COSTS</b>			<b>\$37.38</b>	<b>\$7,424,167</b>

<b>Primary</b>	\$7,600,000	Term	360
Int Rate	8.00%	DCR	1.15

<b>Secondary</b>	\$225,000	Term	
Int Rate	0.00%	Subtotal DCR	1.15

<b>Additional</b>		Term	
Int Rate		Aggregate DCR	1.15

**RECOMMENDED FINANCING STRUCTURE:**

Primary Debt Service	\$669,193
Secondary Debt Service	7,500
Additional Debt Service	0
<b>NET CASH FLOW</b>	<b>\$89,895</b>

<b>Primary</b>	\$7,600,000	Term	360
Int Rate	8.00%	DCR	1.15

<b>Secondary</b>	\$225,000	Term	360
Int Rate	0.00%	Subtotal DCR	1.13

<b>Additional</b>	\$0	Term	0
Int Rate	0.00%	Aggregate DCR	1.13

**OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE**

	at 3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
<b>INCOME</b>										
POTENTIAL GROSS RENT		\$1,607,773	#####	\$1,705,687	\$1,756,857	\$1,809,563	\$2,097,780	\$2,431,902	\$2,819,240	\$3,788,823
Secondary Income		22,560	23,237	23,934	24,652	25,391	29,436	34,124	39,559	53,164
Other Support Income: (des		0	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME		1,630,333	1,679,243	1,729,621	1,781,509	1,834,955	2,127,215	2,466,026	2,858,800	3,841,988
Vacancy & Collection Loss		(122,275)	(125,943)	(129,722)	(133,613)	(137,622)	(159,541)	(184,952)	(214,410)	(288,149)
Employee or Other Non-Rent		0	0	0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME		\$1,508,058	#####	\$1,599,899	\$1,647,896	\$1,697,333	\$1,967,674	\$2,281,074	\$2,644,390	\$3,553,838
<b>EXPENSES</b>	at 4.00%									
General & Administrative		\$71,460	\$74,319	\$77,291	\$80,383	\$83,598	\$101,710	\$123,746	\$150,556	\$222,859
Management		75,403	77,665	79,995	82,395	84,867	98,384	114,054	132,219	177,692
Payroll & Payroll Tax		187,234	194,724	202,513	210,613	219,038	266,493	324,230	394,475	583,919
Repairs & Maintenance		83,092	86,416	89,872	93,467	97,206	118,266	143,889	175,062	259,135
Utilities		40,196	41,804	43,476	45,215	47,024	57,212	69,607	84,687	125,358
Water, Sewer & Trash		23,313	24,245	25,215	26,224	27,273	33,181	40,370	49,117	72,705
Insurance		31,779	33,050	34,372	35,747	37,176	45,231	55,030	66,953	99,106
Property Tax		163,805	170,358	177,172	184,259	191,629	233,146	283,658	345,113	510,852
Reserve for Replacements		37,600	39,104	40,668	42,295	43,987	53,517	65,111	79,218	117,261
Other		27,588	28,692	29,839	31,033	32,274	39,266	47,773	58,124	86,037
TOTAL EXPENSES		\$741,471	\$770,375	\$800,414	\$831,630	\$864,072	\$1,046,406	\$1,267,467	\$1,535,524	\$2,254,925
NET OPERATING INCOME		\$766,588	\$782,925	\$799,485	\$816,266	\$833,261	\$921,269	\$1,013,606	\$1,108,866	\$1,298,914
<b>DEBT SERVICE</b>										
First Lien Financing		\$669,193	\$669,193	\$669,193	\$669,193	\$669,193	\$669,193	\$669,193	\$669,193	\$669,193
Second Lien		7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Other Financing		0	0	0	0	0	0	0	0	0
NET CASH FLOW		\$89,895	\$106,232	\$122,792	\$139,573	\$156,568	\$244,575	\$336,913	\$432,173	\$622,220
DEBT COVERAGE RATIO		1.13	1.16	1.18	1.21	1.23	1.36	1.50	1.64	1.92

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
MULTIFAMILY CREDIT UNDERWRITING ANALYSIS**

**DATE:** July 10, 2001      **PROGRAM:** 9% LIHTC      **FILE NUMBER:** 01042

**DEVELOPMENT NAME**

Fountains at Tidwell

**APPLICANT**

**Name:** Fountains at Tidwell, Ltd.      **Type:**  For Profit     Non-Profit     Municipal     Other  
**Address:** 6605 Nuben      **City:** Houston      **State:** TX  
**Zip:** 77091    **Contact:** Isaac Matthews      **Phone:** (713) 688-1985    **Fax:** (713) 688-1880

**PRINCIPALS of the APPLICANT**

<b>Name:</b> <u>IVE Fountains, LLC</u>	<b>(%):</b> <u>0.6</u>	<b>Title:</b> <u>Managing General Partner</u>
<b>Name:</b> <u>Hettig Development Group II, LTD</u>	<b>(%):</b> <u>0.4</u>	<b>Title:</b> <u>Class A Limited Partner</u>
<b>Name:</b> <u>JER Hudson Housing Capital</u>	<b>(%):</b> <u>99.0</u>	<b>Title:</b> <u>Initial Limited Partner</u>
<b>Name:</b> <u>Isaac &amp; Vera Matthews</u>	<b>(%):</b> _____	<b>Title:</b> <u>100% Owner of MGP</u>
<b>Name:</b> <u>John E. Hettig</u>	<b>(%):</b> _____	<b>Title:</b> <u>Principal of Class A L.P.</u>
<b>Name:</b> <u>W. Barry Kahn</u>	<b>(%):</b> _____	<b>Title:</b> <u>Principal of Class A L.P.</u>

**GENERAL PARTNER**

**Name:** IVE Fountains, LLC      **Type:**  For Profit     Non-Profit     Municipal     Other  
**Address:** 6605 Nuben      **City:** Houston      **State:** TX  
**Zip:** 77091    **Contact:** Isaac Matthews      **Phone:** (713) 688-1985    **Fax:** (713) 688-1880

**PROPERTY LOCATION**

**Location:** South side of 2500 block of Tidwell Road at Rosslyn Road       QCT     DDA  
**City:** Houston      **County:** Harris      **Zip:** 77091

**REQUEST**

<u>Amount</u>	<u>Interest Rate</u>	<u>Amortization</u>	<u>Term</u>
\$834,343	N/A	N/A	N/A
<b>Other Requested Terms:</b> <u>Annual ten-year allocation of low-income housing tax credits</u>			
<b>Proposed Use of Funds:</b> <u>New construction</u> <b>Set-Aside:</b> <input checked="" type="checkbox"/> General <input type="checkbox"/> Rural <input type="checkbox"/> Non-Profit			

**SITE DESCRIPTION**

**Size:** 22.799 acres    993,124 square feet    **Zoning/ Permitted Uses:** No zoning in Houston  
**Flood Zone Designation:** Zone X      **Status of Off-Sites:** Partially improved

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ANALYSIS**

**DESCRIPTION of IMPROVEMENTS**

**Total Units:** 188    **# Rental Buildings:** 47    **# Common Area Bldgs:** 4    **# of Floors:** 2    **Age:** N/A yrs    **Vacant:** N/A at / /

Number	Bedrooms	Bathroom	Size in SF
20	1	1	665
60	2	2	916
108	3	2	1,207

**Net Rentable SF:** 198,616    **Av Un SF:** 1,056    **Common Area SF:** 5,516    **Gross Bldng SF:** 204,132

**Property Type:**     Multifamily     SFR Rental     Elderly     Mixed Income     Special Use

**CONSTRUCTION SPECIFICATIONS**

**STRUCTURAL MATERIALS**

Wood frame on a post-tensioned concrete slab on grade, 1% stone veneer/99% Hardiplank siding exterior wall covering with wood trim, drywall interior wall surfaces, composite shingle roofing

**APPLIANCES AND INTERIOR FEATURES**

Carpeting & vinyl flooring, range & oven, hood & fan, garbage disposal, dishwasher, refrigerator, tile tub/shower, washer & dryer connections, ceiling fans, laminated counter tops, individual water heaters

**ON-SITE AMENITIES**

- 2,304 SF community building with large classroom, kitchen, restrooms, & maintenance facilities ✓
- 1,996 SF clubhouse with management offices, classroom, laundry facilities, restrooms & computer center ✓
- 716 SF activity center & police substation with activity area, storage, security office, & restrooms
- 491 SF laundry building
- Seven acre athletic area with baseball & soccer fields, basketball courts, swimming pool, equipped playground ✓
- Limited access gate, partial perimeter fencing, public telephone, individual air conditioned storage areas

**Uncovered Parking:** 459 spaces    **Carports:** 0 spaces    **Garages:** 0 spaces

**OTHER SOURCES of FUNDS**

**INTERIM CONSTRUCTION or GAP FINANCING**

**Source:** Southwest Bank of Texas    **Contact:** Wendy Maceo

**Principal Amount:** \$10,600,000    **Interest Rate:** Variable, estimated at 8%

**Additional Information:** \$7.3M advanced from perm lender at perm rate less 75 basis points, \$3.3M at LIBOR plus 2.25%

**Amortization:** N/A yrs    **Term:** 2 yrs    **Commitment:**     None     Firm     Conditional

**LONG TERM/PERMANENT FINANCING**

**Source:** Continental Wingate Associates, Inc.    **Contact:** David Levy

**Principal Amount:** \$7,300,000    **Interest Rate:** Fixed, to be set at rate lock, underwritten at 8%

**Additional Information:** \_\_\_\_\_

**Amortization:** 30 yrs    **Term:** 30 yrs    **Commitment:**     None     Firm     Conditional

**Annual Payment:** \$642,778    **Lien Priority:** 1st    **Commitment Date:** 3/ 16/ 01

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ANALYSIS**

**LIHTC SYNDICATION**

Source: JER Hudson Housing Capital LLC Contact: Sam Geneshan  
 Address: 630 Fifth Avenue City: New York  
 State: NY Zip: 10111 Phone: (212) 218-4469 Fax: (212) 218-4467  
 Net Proceeds: \$6,501,366 Net Syndication Rate (per \$1.00 of 10-yr LIHTC) 78¢  
 Commitment  None  Firm  Conditional Date: 3/ 16/ 2001  
 Additional Information: Commitment letter reflects proceeds of \$6,501,366 based on credits of \$8,343,430

**APPLICANT EQUITY**

Amount: \$850,334 Source: Deferred developer fee & \$1K cash equity

**VALUATION INFORMATION**

**ASSESSED VALUE**

Land: \$148,800 Assessment for the Year of: 2000  
 Building: N/A Valuation by: Harris County Appraisal District  
 Total Assessed Value: \$148,800

**EVIDENCE of SITE or PROPERTY CONTROL**

Type of Site Control: Earnest money contract  
 Contract Expiration Date: 9/ 30/ 2001 Anticipated Closing Date: 9/ 15/ 2001  
 Acquisition Cost: \$ 774,874 Other Terms/Conditions: \$10,000 earnest money  
 Seller: The Stanley W. Ray, Jr. Philanthropic and Civic Trust Related to Development Team Member: No

**REVIEW of PREVIOUS UNDERWRITING REPORTS**

No previous reports.

**PROPOSAL and DEVELOPMENT PLAN DESCRIPTION**

**Description:** Fountains at Tidwell is a proposed new construction project of 188 units of mixed income housing located in northwest Houston. The project is comprised of 47 residential buildings as follows:

- (5) one-story Building Style A with four 1-BR/1-BA units
- (15) one-story Building Style B with four 2-BR/2-BA units
- (27) two-story Building Style C with four 3-BR/2-BA units

Based on the site plan the apartment buildings are distributed evenly throughout the central and eastern portions of the site, with the western portion dedicated to athletic fields and associated parking. The community center, clubhouse/leasing office, and swimming pool are located near the main entrance to the site. A 500-square foot laundry building, playground, and stormwater retention pond are to be located near the center of the site. The 2,304-square foot community building is planned to have a large activity room, kitchen, restrooms, and maintenance area. There is also to be a 1,996-square foot club house building with management offices, a classroom, laundry facilities, restrooms and a computer center

**Special Features:** Seven acres of the site are to be dedicated to an athletic area, to include a baseball diamond, soccer field, two basketball courts (one covered), and a combination athletic center and police substation.

**Supportive Services:** The Applicant has contracted with Child and Adult Development Center of Houston, Inc. to provide the following supportive services to tenants: computer training for youths and adults, job



**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS**  
**CREDIT UNDERWRITING ANALYSIS**

preparation and retention skills, GED classes through Houston Community College, athletic programs, skills development, parental training, abuse classes, and discounted child care nearby with transportation. These services will be provided at no cost to tenants. The contract requires the Applicant to provide, furnish, and maintain facilities in the community building for provision of the services, and to pay \$1,880 per month for these support services.

**Schedule:** The Applicant anticipates construction to begin in May of 2002, to be completed in July of 2003, to be placed in service in January of 2003, and to be substantially leased-up in October of 2003.

**POPULATIONS TARGETED**

**Income Set-Aside:** The Applicant has elected the 40% at 60% or less of area median gross income (AMGI) set-aside. 141 of the units (75% of the total) will be reserved for low-income tenants. Although there is no program requirement or scoring benefit to do so, the Applicant intends to reserve ten of the units (5%) for households earning 30% or less of AMGI. 61 units (32%) will be reserved for households earning 50% or less of AMGI, 70 units (38%) will be reserved for households earning 60% or less of AMGI, and the remaining 47 units will be offered at market rents.

**Special Needs Set-Asides:** Ten units (5%) will be reserved for handicapped tenants, and all units will be handicapped-accessible.

**Compliance Period Extension:** The Applicant has also elected to extend the compliance period an additional ten years.

**MARKET HIGHLIGHTS**

A market feasibility study dated March 21, 2001 was prepared by Patrick O'Connor and Associates, L.P. and a summary is attached. The following tables reflect information extracted by the Underwriter:

<b>ANNUAL INCOME-ELIGIBLE SUBMARKET DEMAND SUMMARY</b>		
Type of Demand	Units of Demand	% of Total Demand
Household Growth	307	6%
Resident Turnover*	4,585	94%
<b>TOTAL ANNUAL DEMAND</b>	<b>4,892</b>	<b>100%</b>

Ref: p. 70

\*Note: The analyst estimated there to be 22,923 income-eligible renter households in the market area in 2000 (p. 69) Assuming a 20% turnover rate would provide 4,585 annual income-eligible renter household from turnover. Combined with the growth households provides calculated capture rate of 4%.

<b>RENT ANALYSIS (net tenant-paid rents)</b>					
	Proposed	Program Max	Differential	Market	Differential
<b>1-Bedroom (30%)</b>	\$249	\$329	-\$80	\$650	-\$401
<b>1-Bedroom (50%)</b>	\$461	\$548	-\$87	\$650	-\$189
<b>1-Bedroom (60%)</b>	\$568	\$658	-\$90	\$650	-\$82
<b>1-Bedroom (MR)</b>	\$615	N/A		\$650	-\$35
<b>2-Bedroom (30%)</b>	\$303	\$395	-\$92	\$780	-\$477
<b>2-Bedroom (50%)</b>	\$558	\$658	-\$100	\$780	-\$222
<b>2-Bedroom (60%)</b>	\$686	\$790	-\$104	\$780	-\$94
<b>2-Bedroom (MR)</b>	\$738	N/A		\$780	-\$42
<b>3-Bedroom (30%)</b>	\$353	\$456	-\$103	\$950	-\$597
<b>3-Bedroom (50%)</b>	\$647	\$760	-\$113	\$950	-\$303
<b>3-Bedroom (60%)</b>	\$795	\$912	-\$117	\$950	-\$155
<b>3-Bedroom (MR)</b>	\$855	N/A		\$950	-\$95

(NOTE: Differentials are amount of difference between proposed rents and program limits and average market rents, e.g., proposed rent =\$500, program max =\$600, differential = -\$100)

The Underwriter found the market study provided sufficient information on which to base a funding recommendation.

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ANALYSIS**

**SITE and NEIGHBORHOOD CHARACTERISTICS**

**Location:** The site is an irregularly-shaped parcel located in the northwest area of Houston, approximately seven miles from the central business district. The site is situated on the south side of Tidwell Street and the west side of Rosslyn Road.

**Population:** The estimated 2000 population of the primary market area, defined as a five-mile radius of the site, was 325,824 and is expected to increase by 6% to approximately 346,050 by 2005. Within the primary market area there were estimated to be 119,307 households in 2000.

**Adjacent Land Uses:** Land uses in the overall area in which the site is located are mixed, with vacant land and single family housing predominating. Adjacent land uses include:

- **North:** Vacant land across Tidwell Road
- **South:** A flood ditch with single-family residential and vacant land beyond
- **East:** Rosslyn Road with single-family residential and vacant land beyond
- **West:** Vacant land, single-family residential, and a communications tower

**Site Access:** The project is to have two main entries, one from the north from Tidwell Road and one from the east from Rosslyn Road. Access to Interstate Highway 290 is three miles west, which provides connections to all other major roads serving the Houston area.

**Public Transportation:** Public transportation to the area is provided by the city's METRO bus system.

**Shopping & Services:** The site is near neighborhood shopping and strip centers, and Northline and Northwest malls are within four miles of the subject property. Schools, churches, and health care services are within a short driving distance of the site.

**Site Inspection Findings:** Two TDHCA staff members performed a site inspection on May 3, 2001 and found the location to be acceptable for the proposed development. The inspectors noted that the surrounding area has an abundance of vacant land.

**HIGHLIGHTS of SOILS & HAZARDOUS MATERIALS REPORT(S)**

A Phase I Environmental Site Assessment report dated March 22, 2001 was prepared by Phase Engineering, Inc. and a summary is attached.

**OPERATING PROFORMA ANALYSIS**

**Income:** At the time of application, the 2001 rent limits had not been released and thus the Applicant used 2000 rent limits in setting rents. Based on the Applicant's intention to charge maximum program rents, the Underwriter used the 2001 maximum rents in this analysis. The increase in rents results in the Applicant's potential gross rent estimate being understated by \$40.5K. An additional \$30.9K in income is available if 50% rents are charged on the ten 30% units. Estimates of secondary income and vacancy and collection losses are in line with TDHCA underwriting guidelines.

**Expenses:** The Applicant's total expense estimate of \$3,607 per unit is within 1% of an adjusted TDHCA database derived estimate of \$3,587 per unit for comparably-sized projects. The Applicant's budget shows several line item estimates, however, that deviate significantly when compared to the database averages, particularly general and administrative (\$28K lower), payroll (\$25K higher), repairs and maintenance (\$12K lower), utilities (\$6K lower), water, sewer, and trash (\$14K higher), and property tax (\$22K higher).

**Conclusion:** The Applicant's estimated income is consistent with the Underwriter's expectations and total operating expenses are within 5% of the adjusted database-derived estimate. The Applicant's NOI is slightly below 5% less than the Underwriter's and therefore should be used to evaluate debt service capacity. In the Applicant's income and expense estimates there is sufficient net operating income to service the proposed first lien permanent mortgage at a debt coverage ratio (DCR) that is within an acceptable range of TDHCA underwriting guidelines of 1.10 to 1.25. If the Applicant increases the rents on the ten 30% AMI units to 50% levels, an additional \$31K in potential gross rent is generated, resulting in an excessive DCR of 1.31. Therefore, these ten units should be restricted in the land use restriction agreement to 30% income and rent levels or a re-evaluation of the project's debt service and possibly credit allocation should take place.

Due primarily to the difference in effective gross income if maximum 2001 rents are used, the Underwriter's DCR of 1.26 slightly exceeds the program maximum standard of 1.25. This difference in income is likely to be offset, however, by a significant increase in utility allowances which is expected to be implemented shortly by the Houston Housing Authority. In addition, the Applicant is anticipated to have a

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS  
CREDIT UNDERWRITING ANALYSIS**

significant amount of deferred developer fee which they could fund out with additional debt if desired and this would bring the DCR down below 1.25.

**CONSTRUCTION COST ESTIMATE EVALUATION**

**Land Value:** The site cost of \$774,874 (\$0.75/SF or \$33,986/acre) is regarded as reasonable by the market analyst in light of recent comparable land sales. The acquisition also appears to be an arm's-length sale.

**Sitework Cost:** The Applicant's claimed sitework costs of \$6,350K per unit are considered reasonable compared to historical sitework costs for multifamily projects.

**Direct Construction Cost:** The Applicant's direct construction cost estimate is \$251K or 3.6% higher than the Underwriter's Marshall & Swift *Residential Cost Handbook*-derived estimate, and is therefore regarded as reasonable as submitted.

**Ineligible Costs:** The Applicant's contingency allowance slightly exceeded the 5% maximum allowed by TDHCA guidelines, and therefore the eligible allowance was reduced and the excess moved to ineligible costs.

**Fees:** The Applicant's general requirements, contractor's general and administrative fees, and contractor's profit exceed the 6%, 2%, and 6% maximums allowed by LIHTC guidelines based on their own construction costs by \$25K. Consequently, the Applicant's eligible fees in these areas have been reduced with the overage effectively moved to ineligible costs. The Applicant's included \$15K in housing consultant fees as an indirect cost, which the Underwriter moved to developer fees, however, this forced these fees to be over the guidelines by \$3K and this amount was effectively considered ineligible.

**Conclusion:** The Applicant's total project cost estimate is within 5% of the Underwriter's verifiable estimate and is therefore generally acceptable. The Applicant's total project cost estimate is also within the TDHCA maximum cost guideline. Since the Underwriter has been able to verify the Applicant's projected costs to a reasonable margin, the Applicant's total cost breakdown, as adjusted, is used to calculate eligible basis and determine the LIHTC allocation.

**FINANCING STRUCTURE ANALYSIS**

The Applicant intends to finance the development with four types of financing from five sources: conventional interim construction and permanent mortgage loans, syndicated LIHTC equity, cash equity, and deferred developer's fees.

**Construction Financing:** The Applicant intends to use Southwest Bank of Texas for an interim construction loan of \$10,600,000, and to fund the remainder of the construction phase with \$2,600,546 in LIHTC syndication proceeds and \$1,451,154 from internal sources. Although no commitment was provided, receipt of one is a condition of this report. The Applicant described the two-year construction loan as being divided into two parts, as follows:

- The first portion will be pre-funded in the amount of \$7,300,000 by funds advanced by the permanent lender, and will bear interest at a rate approximately 75 basis points less than the interest rate charged on the pre-funded permanent loan funds.
- The second portion in the amount of \$3,300,000 will bear interest at the LIBOR rate plus 2.25%.

**Permanent Financing:** Permanent mortgage financing will be provided by Continental Wingate Associates, Inc. in the form of a 30-year term loan of \$7,300,000. The interest rate will be at a fixed annual rate to be determined on the rate lock date and is estimated to be approximately 8%. The amortization period will also be 30 years.

**LIHTC Syndication:** JER Hudson Housing Capital LLC has offered terms for syndication of the tax credits. The commitment letter shows net proceeds are anticipated to be \$6,501,366 based on a syndication factor of 78%. The funds would be disbursed in a three-phased pay-in schedule:

1. 40% upon admission to the partnership and during construction;
2. 40% upon completion of construction;
3. 20% upon final closing of the permanent mortgage loan.

**Deferred Developer's Fees:** The Applicant's proposed deferred developer's fees of \$849,334 amount to 50% of the total fees.

**Cash Equity:** The General Partner intends to invest a nominal \$1,000 in the project.

**Financing Conclusions:** Since the Applicant's total development costs were approximately 4.5% more than the Underwriter's estimate, the Applicant's adjusted development costs were used to determine eligible

**TEXAS DEPARTMENT of HOUSING and COMMUNITY AFFAIRS**  
**CREDIT UNDERWRITING ANALYSIS**

basis. The applicable percentage rate was adjusted downward from 8.53% in the application in order to reflect the current underwriting rate of 8.51%. These adjustments decreased the recommended tax credit allocation to \$830,255 annually for ten years, resulting in syndication proceeds of approximately \$6,469,513. The Applicant initially anticipated the need to defer \$849,334 in developer fee, but based on the Underwriter's analysis it is anticipated there will be a need to defer a slightly higher \$881,187. This amount should be repayable from cash flow within approximately five years.

**REVIEW of ARCHITECTURAL DESIGN**

The units and community buildings are functional and attractive, with pitched roofs and stone accents. Each unit has a climate-controlled storage closet accessible from a bedroom, which is an unusual feature.

**IDENTITIES of INTEREST**

John Hettig and W. Barry Kahn own the Class A Limited Partner and the General Contractor, are part owners of the Developer, and are affiliated with the Property Manager. These appear to be acceptable relationships.

**APPLICANT'S/PRINCIPALS' FINANCIAL HIGHLIGHTS, BACKGROUND, and EXPERIENCE**

**Financial Highlights:**

- The Applicant, General Partner, and Class A Limited Partner are single-purpose entities created for the purpose of receiving assistance from TDHCA and therefore have no material financial statements.
- I.V. Enterprises, Inc., the owner of the General Partner, submitted an unaudited financial statement dated 1/1/01 reporting total assets of \$45K and consisting of \$3K in cash and \$42K in real property. Liabilities total \$3.5K, resulting in a net worth of \$41.6K. .

**Background & Experience:**

- The Applicant, General Partner, and Class A Limited Partner are new entities formed for the purpose of developing the project.
- Isaac and Vera Matthews, the owners of the General Partner, listed participation as general partner and co-developer in one previous LIHTC housing project totaling 132 units since 1999.
- W. Barry Kahn and John Hettig, principals of the Class A Limited Partner, listed participation as part owner, limited or general partner, and/or developer and manager in nine previous affordable housing projects since 1985. Their development corporation has also developed 39 conventional housing projects totaling 6,007 units since 1977.

**SUMMARY OF SALIENT RISKS AND ISSUES**


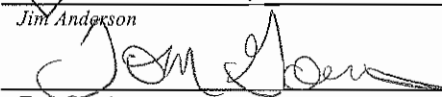
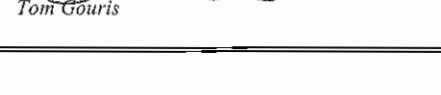
The project could potentially achieve an excessive profit level (i.e., a DCR above 1.25) if ten of the units are not restricted to 30% AMI rent levels.

**RECOMMENDATION**

- RECOMMEND APPROVAL OF AN LIHTC ALLOCATION NOT TO EXCEED \$830,255 ANNUALLY FOR TEN YEARS SUBJECT TO CONDITIONS.**

**CONDITIONS**

1. Receipt, review, and acceptance of an interim construction financing commitment letter with terms materially the same as those outlined in the application.
2. Receipt, review, and acceptance of an executed LURA that evidences the restriction of ten units to both the 30% rent and income calculated limits.

Underwriter:		Date: July 10, 2001
Credit Underwriting Supervisor:		Date: July 10, 2001
Director of Credit Underwriting:		Date: July 10, 2001

MULTIFAMILY FINANCIAL ASSISTANCE REQUEST: Comparative Analysis

Fountains at Tidwell, Houston, LIHTC #01042

Type of Unit	Number	Bedrooms	No. of Baths	Size in SF	Gross Rent Lmt.	Net Rent per Unit	Rent per Month	Rent per SF	Tnt Pd Util	Trash Only
LIHTC (30%)	4	1	1	665	\$329	\$260	\$1,038	\$0.39	\$69.48	\$5.32
LIHTC (50%)	4	1	1	665	548	\$479	1,914	0.72	69.48	5.32
LIHTC (60%)	7	1	1	665	658	\$589	4,120	0.88	69.48	5.32
MR	5	1	1	665		\$615	3,075	0.92	69.48	5.32
LIHTC (30%)	3	2	2	916	395	\$316	949	0.35	78.61	5.32
LIHTC (50%)	20	2	2	916	658	\$579	11,588	0.63	78.61	5.32
LIHTC (60%)	22	2	2	916	790	\$711	15,651	0.78	78.61	5.32
MR	15	2	2	916		\$738	11,070	0.81	78.61	5.32
LIHTC (30%)	3	3	2	1,207	456	\$367	1,102	0.30	88.81	5.32
LIHTC (50%)	37	3	2	1,207	760	\$671	24,834	0.56	88.81	5.32
LIHTC (60%)	41	3	2	1,207	912	\$823	33,751	0.68	88.81	5.32
MR	27	3	2	1,207		\$855	23,085	0.71	88.81	5.32
<b>TOTAL:</b>	<b>188</b>		<b>AVERAGE:</b>	<b>1,056</b>	<b>\$568</b>	<b>\$703</b>	<b>\$132,176</b>	<b>\$0.67</b>	<b>\$83.50</b>	<b>\$5.32</b>

**INCOME & EXPENSE**

Total Net Rentable Sq Ft: 198,616

**POTENTIAL GROSS RENT**

Secondary Income Per Unit Per Month: \$10.00  
Other Support Income:

**POTENTIAL GROSS INCOME**

Vacancy & Collection Loss % of Potential Gross Income: -7.50%  
Employee or Other Non-Rental Units or Concessions

**EFFECTIVE GROSS INCOME**

EXPENSES	% OF EGI	PER UNIT	PER SQ FT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% OF EGI
General & Administrative	4.73%	\$374	\$0.35	\$70,385	\$42,300	\$0.21	\$225	2.92%
Management	5.00%	396	0.37	74,401	72,528	0.37	386	5.00%
Payroll & Payroll Tax	8.68%	687	0.65	129,100	153,840	0.77	818	10.61%
Repairs & Maintenance	5.45%	431	0.41	81,101	68,880	0.35	366	4.75%
Utilities	2.59%	205	0.19	38,606	32,172	0.16	171	2.22%
Water, Sewer, & Trash	1.50%	119	0.11	22,372	36,120	0.18	192	2.49%
Property Insurance	2.14%	169	0.16	31,779	22,920	0.12	122	1.58%
Property Tax 2.90435	11.01%	871	0.82	163,805	185,640	0.93	987	12.80%
Reserve for Replacements	2.53%	200	0.19	37,600	37,596	0.19	200	2.59%
Other: Compl. fees & spt svcs	1.75%	139	0.13	26,088	26,088	0.13	139	1.80%
<b>TOTAL EXPENSES</b>	<b>45.38%</b>	<b>\$3,592</b>	<b>\$3.40</b>	<b>\$675,238</b>	<b>\$678,084</b>	<b>\$3.41</b>	<b>\$3,607</b>	<b>46.75%</b>
<b>NET OPERATING INC</b>	<b>54.62%</b>	<b>\$4,323</b>	<b>\$4.09</b>	<b>\$812,780</b>	<b>\$772,464</b>	<b>\$3.89</b>	<b>\$4,109</b>	<b>53.25%</b>
Continental Wingate Associates, Inc.	43.20%	\$3,419	\$3.24	\$642,778	\$642,778	\$3.24	\$3,419	44.31%
Source #2	0.00%	\$0	\$0.00	0	0	\$0.00	\$0	0.00%
IVE Fountains, LLC	0.00%	\$0	\$0.00	0	0	\$0.00	\$0	0.00%
<b>NET CASH FLOW</b>	<b>11.42%</b>	<b>\$904</b>	<b>\$0.86</b>	<b>\$170,002</b>	<b>\$129,686</b>	<b>\$0.65</b>	<b>\$690</b>	<b>8.94%</b>

**AGGREGATE DEBT COVERAGE RATIO**

**ALTERNATIVE DEBT COVERAGE RATIO**

**CONSTRUCTION COST**

Description	Factor	% of TOTAL	PER UNIT	PER SQ FT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		5.57%	\$4,149	\$3.93	\$780,000	\$780,000	\$3.93	\$4,149	5.32%
Off-Sites		0.00%	0	0.00	0	0	0.00	0	0.00%
Sitework		8.52%	6,350	6.01	1,193,800	1,193,800	6.01	6,350	8.15%
Direct Construction		50.26%	37,470	35.47	7,044,269	7,295,000	36.73	38,803	49.79%
Contingency	5.00%	2.94%	2,191	2.07	411,903	430,000	2.16	2,287	2.93%
General Requirements	6.00%	3.53%	2,629	2.49	494,284	520,000	2.62	2,766	3.55%
Contractor's G & A	2.00%	1.18%	876	0.83	164,761	173,000	0.87	920	1.18%
Contractor's Profit	6.00%	3.53%	2,629	2.49	494,284	520,000	2.62	2,766	3.55%
Indirect Construction		3.15%	2,345	2.22	440,900	440,900	2.22	2,345	3.01%
Ineligible Expenses		1.28%	957	0.91	180,000	180,000	0.91	957	1.23%
Developer's G & A	2.00%	1.57%	1,172	1.11	220,264	15,000	0.08	80	0.10%
Developer's Profit	13.00%	10.22%	7,616	7.21	1,431,716	1,685,000	8.48	8,963	11.50%
Interim Financing		5.49%	4,090	3.87	769,000	769,000	3.87	4,090	5.25%
Reserves		2.78%	2,071	1.96	389,376	650,000	3.27	3,457	4.44%
<b>TOTAL COST</b>		<b>100.00%</b>	<b>\$74,546</b>	<b>\$70.56</b>	<b>\$14,014,558</b>	<b>\$14,651,700</b>	<b>\$73.77</b>	<b>\$77,935</b>	<b>100.00%</b>

**SOURCES OF FUNDS**

				TDHCA	APPLICANT	RECOMMENDED	Max. Cost Guideline
Continental Wingate Associates, Inc.	52.09%	\$38,830	\$36.75	\$7,300,000	\$7,300,000	\$7,300,000	\$14,697,584
LIHTC Syndication Proceeds	46.39%	\$34,582	\$32.73	6,501,366	6,501,366	6,469,513	
IVE Fountains, LLC	0.01%	\$5	\$0.01	1,000	1,000	1,000	
Deferred Developer Fees	6.06%	\$4,518	\$4.28	849,334	849,334	881,187	
Additional (excess) Funds Required	-4.55%	(\$3,389)	(\$3.21)	(637,142)	0	0	
<b>TOTAL SOURCES</b>				<b>\$14,014,558</b>	<b>\$14,651,700</b>	<b>\$14,651,700</b>	

**DIRECT CONSTRUCTION COST ESTIMATE**

Residential Cost Handbook

Average Quality Multiple Residence Basis

CATEGORY	FACTOR	UNITS/SQ FT	PER SF	AMOUNT
Base Cost			\$38.18	\$7,583,096
<b>Adjustments</b>				
Exterior Wall Finish	1.07%		\$0.41	\$81,139
9-Foot Ceilings	4.00%		1.53	303,324
Roofing			0.00	0
Subfloor			(1.96)	(389,287)
Floor Cover			1.82	361,481
Porches/Balconies	\$28.10	11,648	1.65	327,309
Plumbing	\$585	504	1.48	294,840
Built-in Appliances	\$1,550	188	1.47	291,400
Stairs/Fireplaces			0.00	0
Floor Insulation			0.00	0
Heating/Cooling			1.41	280,049
Garages/Carports		0	0.00	0
Comm &/or Aux Bldgs	\$53.18	5,516	1.48	293,322
Other:			0.00	0
<b>SUBTOTAL</b>			<b>47.46</b>	<b>9,426,671</b>
Current Cost Multiplier	1.01		0.47	94,267
Local Multiplier	0.91		(4.27)	(848,400)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>\$43.66</b>	<b>\$8,672,537</b>
Plans, specs, survy, bld prm	3.90%		(\$1.70)	(\$338,229)
Interim Construction Interes	3.38%		(1.47)	(292,698)
Contractor's OH & Profit	11.50%		(5.02)	(997,342)
<b>NET DIRECT CONSTRUCTION COSTS</b>			<b>\$35.47</b>	<b>\$7,044,269</b>

**PAYMENT COMPUTATION**

<b>Primary</b>	\$7,300,000	Term	360
Int Rate	8.00%	DCR	1.26

<b>Secondary</b>	\$6,501,366	Term	
Int Rate	0.00%	Subtotal DCR	1.26

<b>Additional</b>	\$1,000	Term	
Int Rate		Aggregate DCR	1.26

**ALTERNATIVE FINANCING STRUCTURE:**

Primary Debt Service	\$642,778
Secondary Debt Service	0
Additional Debt Service	0
<b>NET CASH FLOW</b>	<b>\$170,002</b>

<b>Primary</b>	\$7,300,000	Term	360
Int Rate	8.00%	DCR	1.26

<b>Secondary</b>	\$6,501,366	Term	0
Int Rate	0.00%	Subtotal DCR	1.26

<b>Additional</b>	\$1,000	Term	0
Int Rate	0.00%	Aggregate DCR	1.26

**OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE**

INCOME at 3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
POTENTIAL GROSS RENT	\$1,586,109	\$1,633,692	\$1,682,703	\$1,733,184	\$1,785,180	\$2,069,512	\$2,399,132	\$2,781,252	\$3,737,769
Secondary income	22,560	23,237	23,934	24,652	25,391	29,436	34,124	39,559	53,164
Other Support Income:	0	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME	1,608,669	1,656,929	1,706,637	1,757,836	1,810,571	2,098,948	2,433,256	2,820,811	3,790,934
Vacancy & Collection Loss	(120,650)	(124,270)	(127,998)	(131,838)	(135,793)	(157,421)	(182,494)	(211,561)	(284,320)
Employee or Other Non-Rental U:	0	0	0	0	0	0	0	0	0
<b>EFFECTIVE GROSS INCOME</b>	<b>\$1,488,019</b>	<b>\$1,532,659</b>	<b>\$1,578,639</b>	<b>\$1,625,998</b>	<b>\$1,674,778</b>	<b>\$1,941,527</b>	<b>\$2,250,762</b>	<b>\$2,609,250</b>	<b>\$3,506,614</b>
<b>EXPENSES at 4.00%</b>									
General & Administrative	\$70,385	\$73,201	\$76,129	\$79,174	\$82,341	\$100,181	\$121,885	\$148,292	\$219,508
Management	74,401	76,633	78,932	81,300	83,739	97,076	112,538	130,462	175,331
Payroll & Payroll Tax	129,100	134,264	139,635	145,220	151,029	183,750	223,559	271,994	402,618
Repairs & Maintenance	81,101	84,346	87,719	91,228	94,877	115,433	140,441	170,869	252,927
Utilities	38,606	40,151	41,757	43,427	45,164	54,949	66,854	81,338	120,400
Water, Sewer & Trash	22,372	23,267	24,198	25,166	26,172	31,843	38,742	47,135	69,771
Insurance	31,779	33,050	34,372	35,747	37,176	45,231	55,030	66,953	99,106
Property Tax	163,805	170,358	177,172	184,259	191,629	233,146	283,658	345,113	510,852
Reserve for Replacements	37,600	39,104	40,668	42,295	43,987	53,517	65,111	79,218	117,261
Other	26,088	27,132	28,217	29,345	30,519	37,131	45,176	54,963	81,359
<b>TOTAL EXPENSES</b>	<b>\$675,238</b>	<b>\$701,504</b>	<b>\$728,798</b>	<b>\$757,160</b>	<b>\$786,634</b>	<b>\$952,256</b>	<b>\$1,152,994</b>	<b>\$1,396,337</b>	<b>\$2,049,134</b>
<b>NET OPERATING INCOME</b>	<b>\$812,780</b>	<b>\$831,155</b>	<b>\$849,841</b>	<b>\$868,838</b>	<b>\$888,144</b>	<b>\$989,271</b>	<b>\$1,097,767</b>	<b>\$1,212,913</b>	<b>\$1,457,480</b>
<b>DEBT SERVICE</b>									
First Lien Financing	\$642,778	\$642,778	\$642,778	\$642,778	\$642,778	\$642,778	\$642,778	\$642,778	\$642,778
Second Lien	0	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0	0
<b>NET CASH FLOW</b>	<b>\$170,002</b>	<b>\$188,377</b>	<b>\$207,063</b>	<b>\$226,060</b>	<b>\$245,367</b>	<b>\$346,494</b>	<b>\$454,990</b>	<b>\$570,135</b>	<b>\$814,702</b>
<b>DEBT COVERAGE RATIO</b>	<b>1.26</b>	<b>1.29</b>	<b>1.32</b>	<b>1.35</b>	<b>1.38</b>	<b>1.54</b>	<b>1.71</b>	<b>1.89</b>	<b>2.27</b>

LIHTC Allocation Calculation: Fountains at Tidwell, Houston, LIHTC #01042

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>(1) Acquisition Cost</b>				
Purchase of land	\$780,000	\$780,000		
Purchase of buildings				
<b>(2) Rehabilitation/New Construction Cost</b>				
On-site work	\$1,193,800	\$1,193,800	\$1,193,800	\$1,193,800
Off-site improvements				
<b>(3) Construction Hard Costs</b>				
New structures/rehabilitation hard costs	\$7,295,000	\$7,044,269	\$7,295,000	\$7,044,269
<b>(4) Contractor Fees &amp; General Requirements</b>				
Contractor overhead	\$173,000	\$164,761	\$169,776	\$164,761
Contractor profit	\$520,000	\$494,284	\$509,328	\$494,284
General requirements	\$520,000	\$494,284	\$509,328	\$494,284
(5) Contingencies	\$430,000	\$411,903	\$424,440	\$411,903
(6) Eligible Indirect Fees	\$440,900	\$440,900	\$440,900	\$440,900
(7) Eligible Financing Fees	\$769,000	\$769,000	\$769,000	\$769,000
(8) All Ineligible Costs	\$180,000	\$180,000		
(9) Developer Fees			\$1,696,736	
Developer overhead	\$15,000	\$220,264		\$220,264
Developer fee	\$1,685,000	\$1,431,716		\$1,431,716
(10) Development Reserves	\$650,000	\$389,376		
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$14,651,700</b>	<b>\$14,014,558</b>	<b>\$13,008,308</b>	<b>\$12,665,182</b>

<b>Deduct from Basis:</b>				
All grant proceeds used to finance costs in eligible basis				
B.M.R. loans used to finance cost in eligible basis				
Non-qualified non-recourse financing				
Non-qualified portion of higher quality units [42(d)(3)]				
Historic Credits (on residential portion only)				
<b>TOTAL ELIGIBLE BASIS</b>			<b>\$13,008,308</b>	<b>\$12,665,182</b>
High Cost Area Adjustment			100%	100%
<b>TOTAL ADJUSTED BASIS</b>			<b>\$13,008,308</b>	<b>\$12,665,182</b>
Applicable Fraction			75%	75%
<b>TOTAL QUALIFIED BASIS</b>			<b>\$9,756,231</b>	<b>\$9,498,886</b>
Applicable Percentage			8.51%	8.51%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			<b>\$830,255</b>	<b>\$808,355</b>
	<b>Syndication Proceeds</b>		<b>0.7792</b>	<b>\$6,469,513</b>
				<b>\$6,298,864</b>

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING

November 8, 2007  

---

8:30 a.m.

Capitol Extension, E1.028  
1500 North Congress Avenue  
Austin, Texas

BOARD MEMBERS:

ELIZABETH ANDERSON, Chair  
C. KENT CONINE, Vice Chair  
SHADRICK BOGANY, Member  
SONNY FLORES, Member  
GLORIA RAY, Member  
NORBERTO SALINAS, Member

STAFF:

MICHAEL GERBER, Executive Director



dealing with Commons of Grace. This action relates to a request from the applicant to return their existing credit allocation and receive 2008 credits as a means of providing them with an extension of more time to complete construction. Commons of Grace was awarded tax credits under the 2004 --

MS. ANDERSON: But wait. I thought we just heard that they --

MR. GERBER: We just --

MR. CONINE: Move to table it to the December meeting, please.

MS. ANDERSON: Second? Do we have a second?

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

2.f. is action on Housing Tax Credit amendments.

MR. GERBER: The first item is Fountains at

Tidwell. The original proposed development included a baseball field, soccer field, covered basketball court, open basketball court, walking trail, picnic area and parking for the facility, all part of a planned youth sports program. The owner is requesting to release 5.5 acres that was proposed to hold this facility, because the provider of the program has backed out of the deal, and the programs will not be provided. Staff is recommending denial of this amendment.

MS. ANDERSON: We've got witnesses jumping the gun here today and eager to speak to the Board.

MR. GERBER: Yes.

MS. ANDERSON: I do have public comment on this item, as is evident. And I'll ask you all to introduce yourselves for the record. Thank you.

REV. MATTHEWS: My name is Pastor Isaac Matthews.

MR. KAHN: Barry Kahn.

(Pause.)

MR. CONINE: Is somebody going to talk?

REV. MATTHEWS: Yes.

MR. CONINE: Good.

MR. SALINAS: Good.

(General laughter.)

MS. ANDERSON: Let's get rolling.

REV. MATTHEWS: Madam Chair, and to the Board, I'd like to provide just a little background on this request for this amendment. My name is Pastor Isaac Matthews, and my wife and I are the general partners of three tax credit developments in the Acres Homes area of Houston. On behalf of the Fountains at Tidwell, we are submitting an amendment to release a 5-acre tract of land from the 2003 LURA.

I have lived in the Acres Homes area for 35 years, and my wife, Vera, has lived there for 50 years. We have raised our families, volunteered and worked in this community. This area of our development is underserved as compared to the other areas in Houston; in fact, it was the last area where the city of Houston put in water and sewer. Many of these houses are still on blocks and beams. In order to encourage development in the area, the city has designated Acres Homes as a city-sponsored revitalization zone.

My wife and I, school teachers in the area, formed a venture with the Hettig Kahn group to provide development, construction and management service for the first of our now three successful developments. We were successful with receiving a tax credit allocation from the

Department for a 132-unit development called Tidwell Estates. The community was overwhelmed with joy when it was completed and immediately encouraged me to do another development.

We then acquired a 22-acre tract, needing only 14 acres of that for 188-units called Fountains at Tidwell. However, we wanted to do more required for another tax credit application. We had dreams of partnering with TSU to provide athletic activities to be operated coaches at our facility, but a lack of funding would not allow TSU to proceed.

On the main 14 acres of the tract that includes 188 units, we designed a sizable social service building for tutoring and other educational activities; we completed the first development with building mainly three-bedroom units, with a few three- and four-bedroom units, trying to appeal to all sizes and areas of families. We have a variety of vans to transport students between the two developments for social services, depending on the students' and residents' ages and needs.

**Rev. Matthews:** Our goal in adding to and providing a great environment for our residents is to service the entire community at large. With the strong demand for larger units at both developments and requests from the community

for houses for those who are wanting a single-family environment but only could not afford it, the Enclave, a 40-single-family-four-bedroom housing development was built.

The city council overwhelmingly supported the single-family concept which satisfied the need of larger families for larger units. It is now 100-percent leased. The community is ecstatic and requesting more single-family housing, and the requested released tract would certainly help fulfill this need.

I wish to point out that during the period the Fountains development was proposed and completed, the Sylvester Turner Park was proposed and built with support from the entire community, including myself. So when the funding of the Fountain Athletic Facility -- please note this was not required by the QAP -- did not occur, the residents were then transported to this park by our social service group and enjoyed many of the same or more benefits. The use of the park continues today.

I have always been a community-oriented person and am now engaged continuously with working with and making Acres Homes a better place for all. The Tidwell Estates, Fountains at Tidwell, the two tracts of Enclave Homes and Sylvester Turner Park are all nearby one

another, as you will note on the map that has been passed out. Thank you for your assistance in this matter. I hope you will grant our request. Thank you.

MS. ANDERSON: Thank you.

MR. KAHN: Good morning to all. We put together a package for you that includes a letter from Representative Sylvester Turner, who has been very active in this area and very much behind all of Pastor Matthews' activities. There's a map that shows you the relationship of the three developments he was talking about, as well as the relationship, you know, to the park, which absolves some of necessity of what we originally intended.

We also have a site plan of what was in the application, as well as a survey, including the land that we're requesting to be released, showing where a number of these amenities are. And then we have pictures of some of the additional amenities we put in other than what was required or even put in the additional application.

We know the Department has been very sensitive with people not doing what they're supposed to be doing or putting in the application. In this case, we feel we've gone overboard with alternative amenities. And that's the purpose of the pictures.

We aren't trying to get out of anything, but

the whole intent was what's best for this community. Pastor Matthews has worked very closely with the community leaders. The Department has spent, you know, huge resources trying to get communities much more involved, rather than less involved. And in this case, again, this is all response from the community.

As he noted the development could have been limited to 14 of the 22 acres, but he wanted to do more. At that time, the Department didn't have penalties in place. So dreaming to do more than what the QAP required was not a sin.

The 8-acre site separated by a drainage bayou could have easily been excluded from the land for the application and, the way today's environment is, would have. I mean, you know, there's no point in pushing for something extra, you know, with the Department's penalties now in place, but this was a 2001 application and 2003 LURA. All these rules and all these adherences to penalties -- they didn't exist.

As he noted, he pursued a program with TSU when funding was then available for student coaches to operate the facilities as part of a sports program as part of their educational process. He wanted to incorporate the athletic field for after-school activities for all their

students, operated under these, you know, school student teachers.

Unfortunately, by the time the development was finished, the TSU funding had ceased to exist. And the baseball diamond and soccer field were not put in place -- which, again, weren't required for threshold, weren't required for points, and was something just -- he had put in the application as trying to do something extra. And we rarely see that any more.

On three of the eight acres, in addition to the basketball court and parking lot included in the original application, a playground, a walking trail, a covered pavilion, covered basketball court, a covered bus depot for children to be picked up and a putting green were also constructed. Again, pictures are in your packet. All these will remain even if the amendment is granted.

He then worked with First Tee, a national non-profit, over the course of the next two years to do a pitch-and-chip. And instead, they chose a different location, again, for their funding needs.

As you noted, the Sylvester Turner Park was then built. Pastor Matthews runs the social service program at these properties. He buses kids to this park. So in effect, they're getting the benefit of having the



baseball diamond, soccer field, and whatever. And, you know, all this will continue. We're not trying to get out of any of the extras that we have provided.

**Mr. Kahn:** Unfortunately, the 5-acre field remains, and, even though fenced, people sometimes take down the fence and use it as a dumping ground. You know, it doesn't serve anybody any purpose.

And again, we wish to point out the amenities weren't required, the penalty provisions were non-existent at the time of this application or at the time that the 8609s were issued. It has been inspected on numerous occasions by the Department; nobody has ever brought up any type of faults with this development. It has a 98 REAC score and always passes inspections with flying colors, but --

MS. ANDERSON: I need to ask you to wind up.

MR. KAHN: Yes.

But, as he informed you, what the community wants is more of the single-family houses that we have developed. They leased up 100 percent overnight.

MR. CONINE: For sale, or for rent?

MR. KAHN: For rental. It's under the tax credit program.

MR. CONINE: Okay.

MR. KAHN: And, you know, we've tried to get community input, you know, into this. This is what the community wants. This is what the city council when they approved --

MS. ANDERSON: I need to ask you to wind up, please.

MR. KAHN: Anyhow, in this instance, we requested the acreage fee removed. And then staff has brought up the issue of penalties. The providing of the additional playground, walking trail and covered pavilion over the basketball court, and on and on, we feel are more than sufficient to suffice for any shortage of amenities.

And we request that the LURA allow for this five acres to be released.

And in fact, one thing we left out of the application for the amendment was there's in fact two LURAs, one with the Housing Trust Fund. And we requested that this land be freed up in that LURA, too. Thank you.

MR. BOGANY: I have a question.

MS. ANDERSON: Yes, Mr. Bogany.

MR. BOGANY: What do you plan on doing with the land once you get it released?

MR. KAHN: We plan on probably doing another tax credit application for additional single-family houses

for rental, which is what the community's requesting.

MR. CONINE: Why would you need it released?

MR. KAHN: Because right now, it's under the LURA of another project. And --

MR. CONINE: But the condition of the new project could be subject to a simultaneous release upon acceptance of the new 9 Percent credits of the old.

MR. KAHN: Well, that could be done. You know, that would be satisfactory. I mean we aren't trying to get it released to do something else other than what our game plan is. So I mean --

MR. CONINE: That's the way I would do it. I mean it makes it a whole lot more palatable for the Department, I'm sure, to know that all it takes is -- upon a 9 Percent award, one LURA goes away and a new one gets put on.

MR. KAHN: Well, the request can be granted subject to the fact that, you know, it's substitute housing that's put in place.

MR. CONINE: And --

MR. KAHN: We wouldn't have any problem with that at all.

MR. BOGANY: And you're okay with that?

MR. KAHN: Oh, yes.

MR. BOGANY: With doing it that --

MR. KAHN: Yes. I mean that's what our goal is. We just didn't want to confuse it when we had -- you know, with any title issues and cloud the future application.

REV. MATTHEWS: The intent is to build other single-family houses, which the community has requested.

MR. KAHN: And I have a rendering here of what the houses would look like if anybody wants to see it.

I'm sorry. I should have probably brought more and included it in the packet.

MR. CONINE: If there are no other questions, Madam Chair, I'll make a motion that we grant the removal of this LURA and the HOME --

Is it a HOME award?

MR. KAHN: Housing Trust Fund.

MR. CONINE: -- Housing Trust Fund award LURA only if 9 Percent credits are awarded on the project on the five acres in the future.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

REV. MATTHEWS: Thank you.

MR. CONINE: My motion also would waive any penalties that may be floating around.

MR. KAHN: We appreciate that.

MS. ANDERSON: Hearing no objections, so accepted.

MR. GERBER: Madam Chair and Board members, the next item is Maplewood Crossing. Subsequent to the publication of the Board materials, the owner presented substitutes of full perimeter fencing with an access gate, a covered porch surrounding the community building and a service coordinator's office in the community building in place of 30-year shingles and a 5-percent reduction in the community building.

The owner states that they were not able to provide 30-year shingles on all of the buildings, due to the lack of availability due to the hurricanes. Some of the buildings do have 30-year shingles, and some were completed with 20-year shingles. The owner had to reduce the size of the community building because of a city



## HETTIG/KAHN HOLDINGS, INC

August 16, 2010

Mr. Michael Gerber  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

Re: **LURA Amendment Request**  
Fountains at Tidwell in Houston (the "Property")  
TDHCA LIHTC No. 01042

Dear Mike:

Fountains at Tidwell, Ltd. ("**Owner**"), is the owner of the Property that received an allocation of low-income housing tax credits ("**LIHTC**"), along with a \$225,000 loan of Housing Trust Fund ("**HTF**") money, from TDHCA. Owner and TDHCA have entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Credits (the "**LIHTC LURA**") and a Land Use Restriction Agreement (Multifamily Properties) (HTF LURA) (the "**HTF LURA**") with respect to LIHTC and the HTF loan, respectively. The LIHTC LURA and the HTF LURA are hereinafter referred to collectively as the "**LURA**".

### Amendment Request

The LURA originally encumbered a 14.827 acre tract ("**Tract 1**") and a 7.952 acre tract ("**Tract 2**"). A request was made in 2007 that 5.0548 acres of Tract 2 (the "**Vacant Parcel**") be released from the LURA (the "**Prior Release Request**") and such request was heard by the TDHCA Board in November of 2007. The Board approved the request to release the Vacant Parcel and conditionally released it from the LURA provided that the Vacant Parcel be used for a 9% Tax Credit award in the future (the "**9% Condition**"), please see Exhibit A (the "**Prior Approval**"). Owner has now received a request from a third party to purchase the westerly 4 acres out of the Vacant Parcel. And although this proposed development would not be a 9% Tax Credit development, for the reasons cited below, the Owner believes the proposed development would be in the best interests of the Property and the surrounding area. Consequently, Owner hereby requests that said 4 acre tract of land out of the Vacant Parcel be fully released from the LURA and the 9% Condition.

### Detailed Description

Owner's original site plan for the Property, a copy of which is attached as Exhibit B, which was submitted with the tax credit application, anticipated that the buildings and related facilities for the Property would be constructed on Tract 1. The site was larger than needed for the housing structures because Owner envisioned using Tract 2 for an extensive sports facility to benefit the children residing in the Property. A

baseball diamond, soccer field, and basketball courts were designed for Tract 2, as shown on Exhibit B attached hereto. For the reasons cited in the Prior Release Request, the intended uses for Tract 2 did not materialize, which was why the Owner found it necessary to apply for and obtain the Board's approval to release the Vacant Parcel from the LURA. Note that the proposed sports facilities did not satisfy threshold or selection criteria for the tax credit application; and Owner did not receive any points for proposing these amenities. And the Board waived any penalties due to alternative amenities in approving the conditional release of the Vacant Parcel from the LURA.

The Vacant Parcel remains undeveloped and the 4 acres covered by this request is outlined and shown on Exhibit C. This land has become a burden on the neighborhood. Despite the fact that it is fenced, people are using the Vacant Parcel (including the 4 acres at issue) for a dumping ground.

The Owner has undertaken efforts to develop the Vacant Parcel into a 9% tax credit development, in accordance with the Board's Prior Approval, but has encountered challenges in being able to do so. Specifically, the first lien holder on the Property is Fannie Mae, and Owner has been unsuccessful in obtaining Fannie Mae's approval to build a 9% tax credit development on the Vacant Parcel. One of the reasons Fannie Mae has cited is that such a development would not be a third party offer, and questions arose on whether substitute collateral would be sufficient.

Since the initial discussions with Fannie Mae, the Owner has received a third party offer from Regency Nursing and Rehabilitation Centers, Inc. ("Regency") ([www.rnct.com](http://www.rnct.com)) to use the 4 acres for a skilled nursing facility for those on Medicaid under a license from the Texas Department of Aging and Disability Services. See data from Regency on Exhibit D. The Medicaid program imposes specific income limitations on the populations that can be served under that program, and the target population that would be served by Regency's facility is individuals on Medicaid who earn less than \$2,022 a month. These residents are typically single elderly individuals who many stay at the facilities for the balance of their lives.

Owner has discussed the offer with the servicer for Fannie Mae and was informed that Fannie would probably require the net proceeds, less some operating reserves, to be used to reduce the principal balance of the mortgage. Given that Regency's offer is a third party offer, Owner is hopeful to obtain a release from Fannie Mae to sell the 4 acres out of Vacant Parcel to Regency, even if part or all of the proceeds were required to be used to reduce the first mortgage. Moreover, because Owner is unable to stop vandals from the unlawful dumping, Owner believes the Property and the neighborhood would be better served if the 4 acres of the Vacant Parcel could be developed in this manner, and in particular for this needed area amenity. And with a sale, the tax credit property would no longer be burdened with costs to maintain the 4 acre tract. It should be noted that the Vacant Parcel is located in a Designated Census Tract known as Acres Homes, a city designated area in need of revitalization. Since TDHCA's Compact with Texas is to serve the State's extremely low to moderate-income population, Owner believes such purpose will be served with a skilled nursing facility to serve said population. In addition, the income requirement referenced above for the target population of the skilled nursing facility is within the 60% of AMI that would be dictated for a 9% tax credit transaction.

### **Impact of Amendment**

For the reasons cited in the Prior Release Request, the release of the Vacant Parcel from the Property's LURA did not have any material impact on the Property's tax credit application or its

Mr. Michael Gerber  
August 16, 2010  
Page 3

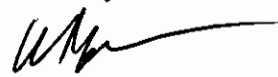
competitiveness for an award of tax credits. Moreover, the Board already conditionally approved the release of the Vacant Parcel from the LURA in the Prior Approval. What is being requested now is a full release of the 4 acres out of the Vacant Parcel from the LURA and the 9% Condition imposed in the Prior Approval. The release of the 4 acres from the LURA is subject to the same impact analysis as set forth in the Prior Release Request. Consequently, there would be no additional impact to the Property's application if the Board were to grant the request to fully release the 4 acres out of that Vacant Parcel.

### Conclusion

Owner believes that the Property, its residents, and the surrounding neighborhood are best served if the contract with Regency is culminated and the westerly 4 acre parcel out of the Vacant Parcel is permitted to be developed as proposed by Regency. We seek your approval of this request. Assuming the transaction closes, Owner will cause the Property to be re-platted so that the 4 acre parcel is a legal lot and appropriate release documentation can be prepared and recorded.

A check in the amount of \$2,500, payable to TDHCA, is being submitted under separate cover to process this amendment. We understand an amendment of this nature may require Board approval. If so, please include this amendment request for consideration at the next available TDHCA Board meeting. Regency needs to close the transaction by November. Owner hereby requests that this be placed on the September board agenda. Otherwise Regency likely will have to look for an alternative tract to purchase. If you need additional information to process this request, please let me know.

Sincerely,



W. Barry Kahn

### Enclosures

cc: *Fountains at Tidwell, Ltd.*  
Isaac Matthews  
Cynthia Bast

*TDHCA Staff*  
Robbye Meyer (Multifamily)  
Audrey Martin (Real Estate analysis)  
Ben Sheppard (Multifamily)  
Patricia Murphy (Compliance)  
Jeff Pender (Legal)



EXHIBIT "A"

PRIOR BOARD REQUEST



## Texas Department of Housing and Community Affairs

### Housing Tax Credit Program

U.S. Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Private Carrier Delivery: 507 Sabine, Suite 400 Austin, TX 78701

Telephone: (512) 475-3340 Telecopier: (512) 475-0764

To: Isaac Matthews      **NOTICE OF BOARD DECISION RE: AMENDMENT REQUEST HEARD 11/8/07**

**HTC No. 01042, Fountains at Tidwell**

**Summary of Request:** Owner requests approval to release 5.5048 acres of vacant land from the land use restrictive agreement. The development plan originally proposed that the residential buildings and clubhouse would be built on a 14.827 acre tract of land and that a 7.952 acre tract would contain a baseball field, soccer field, covered basketball court, open basketball court, walking trail, picnic area and parking lot. The 5.5048 acres is the western part of the 7.952 acre tract.

The owner's counsel stated that the recreational facilities on the 7.952 acre tract were proposed as part of a plan to provide a youth sports program that was to have been administered by students of Texas Southern University (TSU). Counsel stated that when TSU indicated that it would not fulfill its commitment, the owner planned a three-hole golf course and negotiated with The First Tee of Houston (a nonprofit organization) to provide its golf instruction and life skills program. The second proposed use of the site ended when First Tee chose a different site for its program.

The owner's counsel stated that an affiliate of the development owner built and leased 30 single family homes on the east side of the subject development and because of the success of this venture, the owner believes that the 5.5048 acre tract would be best used for a similar development. Counsel also stated that the subject tract is currently a problem because, despite being fenced, the land is suffering misuse as a dumping ground.

While the proposed change would not have affected either the Threshold qualifications, the scoring of the application or would not have affected the recommendation for an award of tax credits, there was a representation that these amenities would be offered to the tenants. The owner's counsel noted that the present rules governing amendments and penalties were not in place when the owner planned the development. Counsel indicated that the remainder of the 7.952 acres, other than the 5.048 acres, would contain a putting green and covered basketball court.

**Governing Law:** §2306.6712, Texas Government Code. The code states that the Board must approve material alterations of a development, including a significant modification of the site plan, and any other modification considered significant by the board.

**Owner:** Fountains at Tidwell, Ltd.

**General Partner:** IVE Fountains, LLC

**Developers:** Hettig Development Group II, LTD

**Principals/Interested Parties:** Isaac & Vera Matthews (Owners of GP); John E. Hettig and W. Barry Kahn (principals of special limited partner and developer)

**Syndicator:** JER Hudson

**Construction Lender:** Mitchell Mortgage

**Permanent Lender:** Mitchell Mortgage

**City/County:** Houston/Harris

**Set-Aside:** General Population

**Type of Area:** Urban

**Type of Development:** New Construction

**Population Served:** General Population

**Units:** 141 HTC units and 47 market rate units

**2001 Allocation:** \$830,255

**Allocation per HTC Unit:** \$5,888

**Prior Board Actions:** July, 2001 - Approved award of tax credits

**Underwriting Reevaluation:** Forms 8609 have already been issued to this property. The amount of the tax credits awarded would not have changed if the cost of the land that is at issue were deducted from the total land value.

**Staff Recommendation:** Staff recommends denying the request because the owner has not offered equivalent substitute features to compensate for the features that would be eliminated from the development.

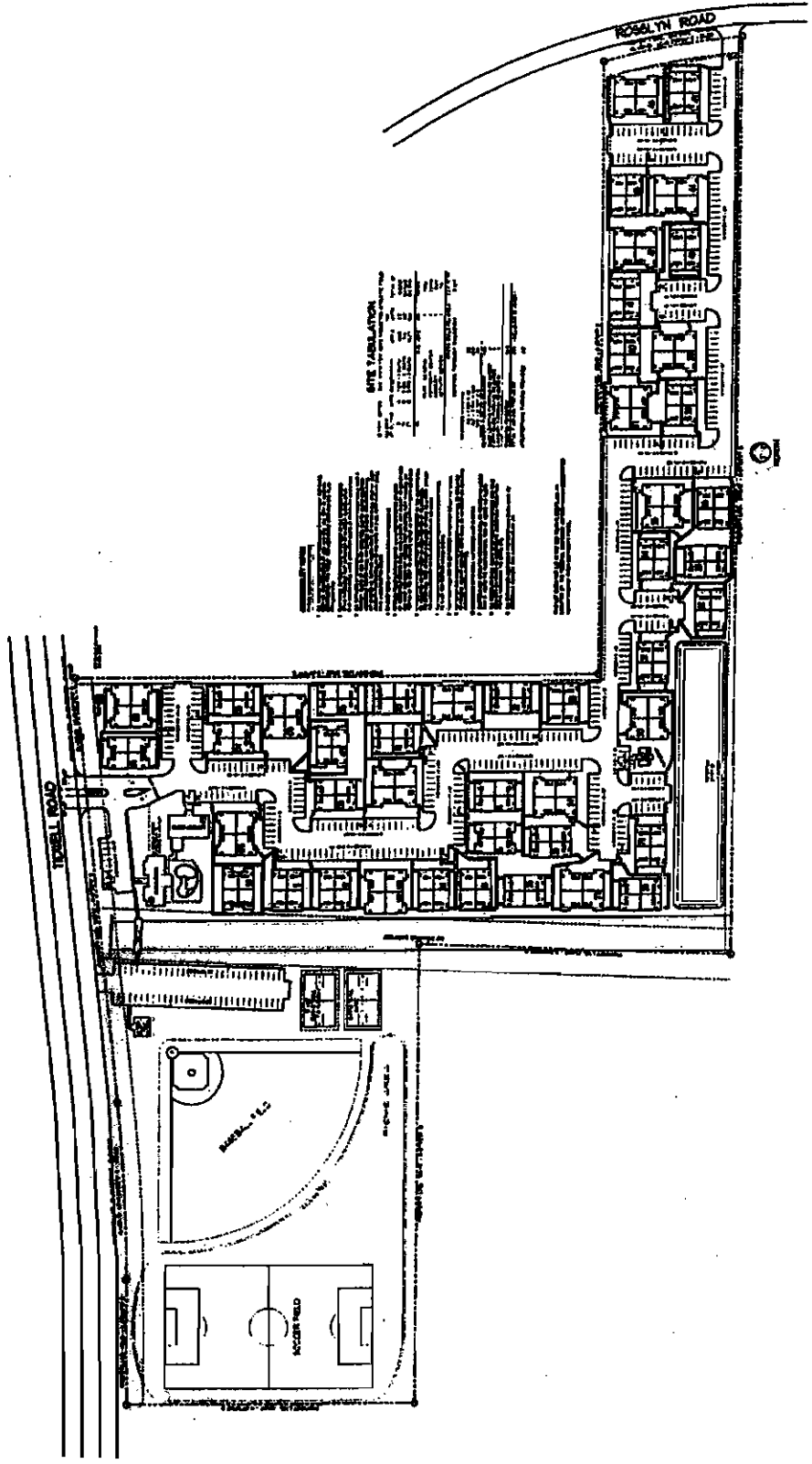
**Penalty Assessment:** Staff recommends the assessment of appropriate penalties pursuant to 49.9(c) of the Qualified Allocation Plan and Rules (as stated at the beginning of this presentation) because the amendment request was made after the change had been implemented and after the issuance of the IRS Forms 8609. The penalties should be assessed against the general partner and either the original or current special limited partner, as applicable, for having developed the property inconsistently with the application.

**ON NOVEMBER 8, 2007 THE REQUEST ABOVE WAS APPROVED BY THE BOARD WITH PENALTIES WAIVED (SEE TRANSCRIPT). THE APPROVAL WAS CONDITIONED ON THE AWARD OF 9% CREDITS ON THE 5.5048 ACRES RELEASED IN THE FUTURE.**

*Ben Sheppard*  
Ben Sheppard, Multifamily Finance Production

EXHIBIT "B"

TRACT 1 AND TRACT 2



**SITE TABULATION**

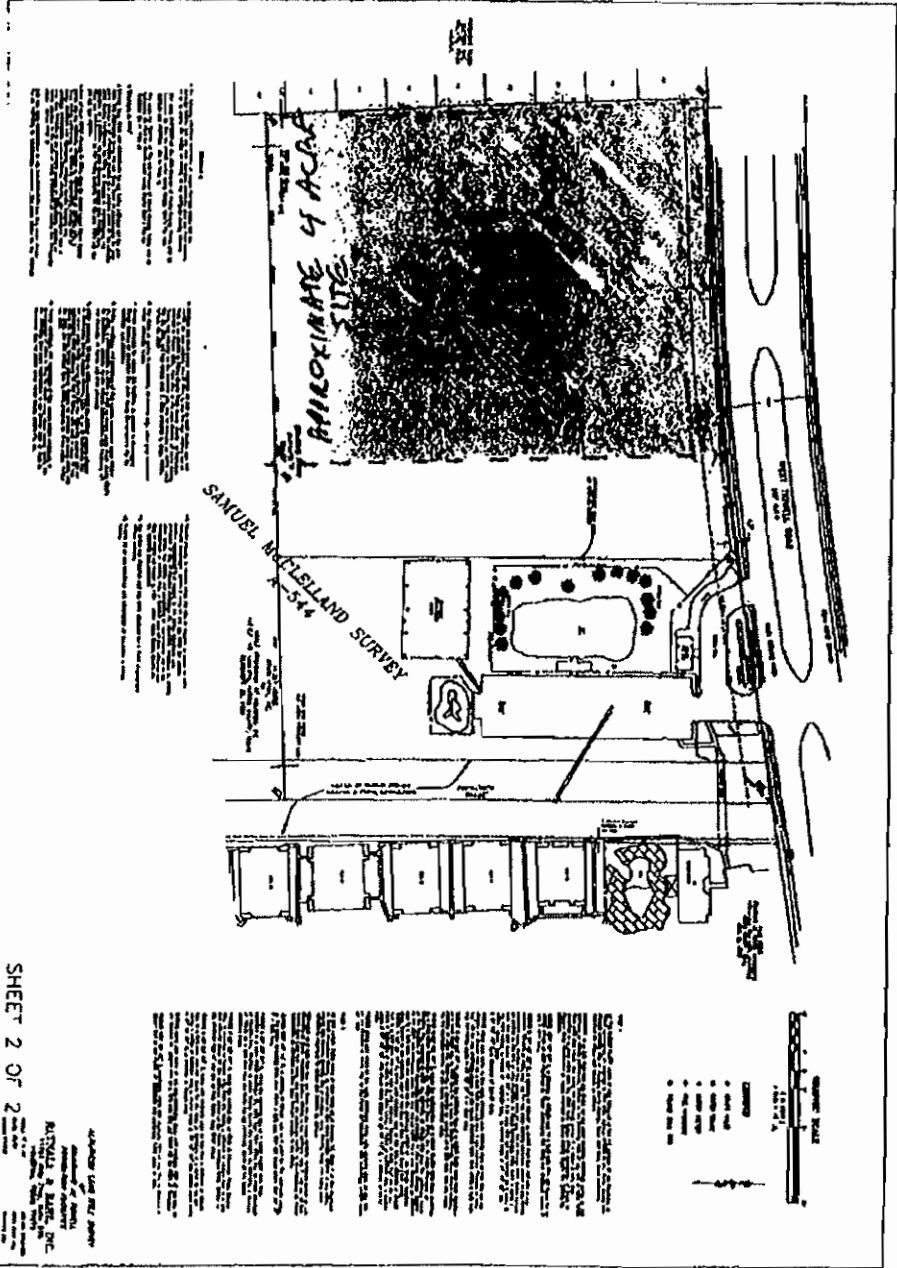
NO.	DESCRIPTION	AREA (SQ. FT.)	PERCENT
1	BASEBALL FIELD	10,000	1.5
2	SOCCER FIELD	10,000	1.5
3	PARKING	100,000	15.0
4	DRIVEWAYS	10,000	1.5
5	LANDSCAPE	10,000	1.5
6	UTILITIES	10,000	1.5
7	WALKWAYS	10,000	1.5
8	ROADS	10,000	1.5
9	TOTAL	660,000	100.0



**EXHIBIT "C"**

**4 ACRES IF IF TRACT 2 TO BE RELEASED**

EXHIBIT "A"



SHEET 2 OF 2

ADVANCED LAND RECLAMATION  
ENGINEERING & SURVEYING  
INCORPORATED  
1000 W. 10th Street  
Anchorage, Alaska 99501  
Tel: (907) 562-1234  
Fax: (907) 562-1235

**EXHIBIT "D"**

**INFORMATION ON REGENCY NURSING AND REHABILITATION CENTERS AND THEIR TARGETED  
CLIENTELE**



## REGENCY NURSING AND REHABILITATION CENTERS, INC.

Regency Nursing and Rehabilitation Centers, or its affiliate, Windsor Nursing and Rehabilitation Centers, Inc., manages over twenty skilled nursing facilities throughout Texas. Its founder and Chairman of the Board of Directors is Donald P. Kivowitz. Mr. Kivowitz graduated in 1968 from Parsons College in Fairfield, Iowa with a Bachelor of Science Degree In Business Administration. He was employed by NCH Corporation, a New York stock exchange company from 1969 through 1980. After leaving NCH Corporation, Mr. Kivowitz formed a group of companies that have been active in syndication, development and acquisition of real estate. In 1989, Mr. Kivowitz opened the company's first long-term care facility and has since opened fifteen additional facilities in Texas.

The Chief Executive Officer and President for Regency Nursing & Rehabilitation Centers, Inc. is Heber S. Lacerda. Mr. Lacerda holds two college degrees from Southwestern Adventist College in Keene, Texas. He obtained a Bachelor of Arts Degree in 1987 and a Bachelor of Business Administration Degree in 1988. Mr. Lacerda has been with Regency Nursing & Rehabilitation Centers, Inc. since 1988. After working in every level of operation, accounting and finance since joining the company, Mr. Lacerda was promoted President and Chief Operating Officer in December 1996. As a Certified Public Accountant with extensive expertise in the long-term healthcare profession, Mr. Lacerda has been a vital part of the success of Regency Nursing & Rehabilitation Centers, Inc. from its inception. Under the leadership of Mr. Kivowitz and Mr. Lacerda, Regency Nursing and Rehabilitation Centers, Inc. has become a sophisticated long-term health care management provider.

## **About Regency Nursing and Rehabilitation Centers**

Regency Nursing and Rehabilitation Centers, or its affiliate, Windsor Nursing and Rehabilitation Centers, Inc., manages over twenty skilled nursing facilities throughout Texas. We consider ourselves to be stewards of the people we serve. Our staff is 100% accountable to them, to their families, and to each other. By listening to new ideas and suggestions, encouraging growth through education and community awareness, we are able to offer excellent nursing care and rehabilitative services.

Senior Rehabilitation & Skilled Nursing Center, in Port Arthur, TX, unveils three new internet cafes for residents' use. Consisting of brand new Dell wireless laptop computers and wireless printers the stations are designed with residents' needs in mind. These resources will allow residents to surf the internet, contact family members via email and even place video calls across the internet so they can not only hear but see distant friends and family.

U.S. News and World Report lists three Regency homes as members of America's best nursing homes. Regency is very proud of this achievement made by our facilities located in Cuero, Kingsville, and Seguin.

Pflugerville Nursing and Rehabilitation Center is a brand new 120-bed facility. Both Medicare and Medicaid certified, we also offer skilled nursing for those who require more individualized care. We invite you to visit our facility to see what all we offer.

We recently opened Bastrop Lost Pines Nursing and Rehabilitation Center. Our beautiful 120-bed facility is both Medicare and Medicaid certified. We offer skilled nursing for those who need personalized therapy programs, and for those who need rehabilitation services before returning to their own homes we offer interim care. We also have a secured unit for residents who tend to wander.

Cuero Nursing and Rehabilitation Center has recently been awarded five stars by Medicare. Medicare assesses independent surveys and data covering three critical areas: health inspection results, quality measures and staffing levels. Only 10% of SNF in Texas archive this level of excellence. Of the five SNFs in De Witt county, CNRC is the only one awarded five stars.

Regency and Windsor Nursing Centers are very proud of the staff that made this achivement possible.

#### Services that are provided at RNCT Nursing and Rehabilitation Centers

- Physical Therapy
- Speech Therapy
- Wound Care
- Dementia/Alzheimer's Care
- Occupational Therapy
- I.V. Therapy
- Respiratory Care
- Interdisciplinary Team

#### **List of Current Facility Locations**

##### **Austin, TX**

- Heritage Park Rehabilitation and Skilled Nursing Center**
- Windsor Nursing and Rehabilitation Center of Duval**

##### **Bastrop, TX**

- Bastrop Lost Pines Nursing and Rehabilitation Center**

##### **Beaumont, TX**

- Jefferson Nursing and Rehabilitation Center**

##### **Brownsville, TX**

- Brownsville Nursing and Rehabilitation Center**

##### **Corpus Christi, TX**

- Corpus Christi Nursing & Rehabilitation Center**

##### **Cuero, TX**

**Cuero Nursing and Rehabilitation Center**

**Del Rio, TX**

**Val Verde Nursing and Rehabilitation Center**

**Eagle Pass, TX**

**Maverick Nursing and Rehabilitation Center**

**Edinburg, TX**

**Edinburg Nursing and Rehabilitation Center**

**Edna, TX**

**Southbrooke Manor Nursing and Rehabilitation Center**

**Elgin, TX**

**Elgin Nursing and Rehabilitation Center**

**Hallettsville, TX**

**Stevens Nursing and Rehabilitation Center of Hallettsville**

**Harlingen, TX**

**Harlingen Nursing and Rehabilitation Center**

**Kingsville, TX**

**Kingsville Nursing and Rehabilitation Center**

**Pearsall, TX**

**Pearsall Nursing and Rehabilitation Center - North**

**Pflugerville, TX**

**Pflugerville Nursing and Rehabilitation Center**

**Port Arthur, TX**

**Senior Rehabilitation and Skilled Nursing Center**

**Port Lavaca, TX**

**Port Lavaca Nursing and Rehabilitation Center**

**Rio Grande City, TX**

**Rio Grande City Nursing and Rehabilitation Center**

**Seguin, TX**

**Windsor Nursing and Rehabilitation Center of Seguin**

**Victoria, TX**

**Corporate Headquarters**

**Windsor Rehab, LTD**

---

**Weslaco, TX**

---

**Weslaco Corporate Office**

**Weslaco Nursing and Rehabilitation Center**

---

**Wharton, TX**

---

**Wharton Nursing and Rehabilitation Center**

---

**Yoakum, TX**

---

**Yoakum Nursing and Rehabilitation Center**

Medicaid

# INCOME REQUIREMENTS

# **MEDICAID ELIGIBILITY**

## **Nursing Facility Program**



# Medicaid Eligibility Specialists

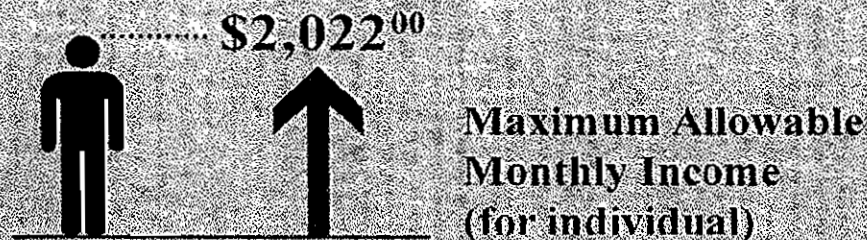
- ◆ Medicaid eligibility specialists are available to evaluate each resident's financial eligibility condition.
- ◆ The facility Business Office will gather the relevant information and contact the Medicaid eligibility specialist on behalf of the resident.





# Single Eligibility

## Maximum gross income



### What counts as income: *(Total gross income less \$60 for personal needs)*

- \* Social Security benefits
- \* Certain veterans benefits
- \* Private pensions
- \* Interest and dividends
- \* Royalty and rental payments
- \* Federal employee annuities
- \* Railroad benefits
- \* State and local retirement benefits
- \* Gifts and contributions
- \* Earnings and wages

# Single Eligibility

## Maximum countable resources



Individual

### What is a resource:

- \* Oil/gas/mineral rights
- \* Jewelry and antiques
- \* Cars and other vehicles
- \* Bank accounts and CDs
- \* Life insurance policies
- \* Boats and recreational vehicles
- \* IRA
- \* Burial funds
- \* Real property
- \* Stocks and bonds

### What can be excluded:

- \* Homestead where the individual intends to return.
- \* Life insurance if the face value is \$1,500 or less
- \* Separately identifiable burial funds of \$1,500 (less any excluded life insurance or irrevocable arrangement for burial).
- \* Car regardless of value (one vehicle)
- \* Burial spaces



# We Care: Services Overview

## Short Term Care and Rehabilitation

- \* Occupational therapy
- \* I.V. therapy
- \* Restorative therapy
- \* Post surgical care
- \* Post cardio event care
- \* Traumatic brain injury
- \* Wound care
- \* Physical therapy
- \* Speech therapy
- \* Stroke



*Flexible care  
tailored to  
your  
rehabilitation  
goals*



# We Care: Long Term Long Term Care

- \* Occupational therapy
- \* Alzheimer's
- \* Dementia
- \* Congestive heart failure
- \* Chronic pulmonary disease
- \* Assisted care
- \* Renal dialysis
- \* Non-ambulatory care
- \* Hospice
- \* Diabetic



*Full set of  
resources  
and care  
with  
Medicaid  
covering the  
cost*

# Resident Care

- ❖ Activity of daily living management
- ❖ 24-hour nursing care and supervision
- ❖ Medication management
- ❖ Palliative care management
- ❖ Doctor appointments
- ❖ Emergency care
- ❖ Disaster evacuation



# Professional Staff

- ❖ 24 hour, 7 day a week medical care
- ❖ Physicians on call 24x7
- ❖ All nursing staff is licensed
  - Registered nurse
  - Licensed vocational nurse
  - Certified nurse aide
  - Certified medication aide
- ❖ Regular staff training sessions



# Social Services

## Comprehensive Care Planning

- ❖ Psychosocial assessment and monitoring
- ❖ Psychiatric and psychological services
- ❖ Discharge planning
- ❖ Advanced Directives



# Medicaid Covered Services

- ❖ Room and board
- ❖ Medications
- ❖ Physician services
- ❖ Eye care\*
- ❖ Dental care\*
- ❖ Hearing\*
- ❖ Specialty equipment\*

\*These items must be pre-authorized and have limited coverage.





# Meal Services

- ❖ Personalized meals for dietary needs
- ❖ Therapeutic meal plans
- ❖ In-room dining
- ❖ Snacks
- ❖ Assisted feeding programs



# RESIDENT ENVIRONMENT



# Community Living

- ◆ Shopping trips, planned and unplanned
- ◆ Field trips
- ◆ Family visits to home sites
- ◆ Clean & comfortable environments
- ◆ Cable or satellite TV
- ◆ Spacious dining rooms
- ◆ Comfortable & attractive lobbies
- ◆ Beauty & barber shops
- ◆ Personalized laundry services
- ◆ Linen services



**“Mom loved that she could still go on her shopping trips to Wal-Mart.”**

# Safety and Security

- ◆ Peace of mind
- ◆ Around the clock staff monitors
- ◆ Security systems (Wanderguard™)



# Daily Activities

- ◆ Music – live entertainment
- ◆ Social events
- ◆ Church services
- ◆ Exercise
- ◆ Bingo
- ◆ Games
- ◆ Internet access
- ◆ Outdoor recreational areas



NORTH TEXAS COMMERCIAL ASSOCIATION OF REALTORS®  
COMMERCIAL CONTRACT OF SALE

[Check all boxes applicable to this Contract - Boxes not checked do not apply to this Contract]

In consideration of the agreements contained in this Commercial Contract of Sale (the "Contract"), Seller shall sell and convey to Purchaser, and Purchaser shall buy and pay for, the Property (defined below) pursuant to the provisions, and subject to the conditions, of this Contract.

1. PARTIES. The parties to this Contract are:

Seller: Fountains at Tidwell, Ltd.  
Address: c/o Hettig/Kahn Development Corp., 5325 Katy Freeway, Suite One  
Houston, Texas 77007  
Phone: (713) 871-0063 Fax: (713) 871-1916  
Email: hkahn@hettig-kahn.com

Purchaser: Houston RP-One, Ltd.  
Address: 101 West Goodwin Ave., Suite 600  
Victoria, Texas 77901  
Phone: (361) 576-0694 Fax: (361) 576-5484  
Email: hlacarda@ruct.com

2. PROPERTY. The address of the Property is:

2303 W. Tidwell Rd.  
Houston, Texas 77091  
The Property is located in Harria County, Texas, the land portion of which is further described as:  
approximately 4 acres as depicted on

~~as described in Exhibit "A", LEGAL DESCRIPTION and/or shown on Exhibit "B", SITE PLAN. The Property includes, all and singular, all improvements and fixtures situated thereon, and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller in and to adjacent streets, alleys, or rights-of-way (such land, improvements, fixtures, rights and appurtenances being collectively herein referred to as the "Property").~~

3. PURCHASE PRICE.

A. Amount and Payable. The purchase price for the Property is \$696,960.00 (the "Purchase Price"), payable at the Closing as follows (with the Earnest Money to be applied to the Purchase Price) (Check only one):

(1) All in cash (meaning Good Funds, as defined in Section 4F below). ~~if this Contract is subject to approval for Purchaser to obtain financing from a third party, then Addendum B-1, THIRD PARTY FINANCING is attached.~~

(2) Part in cash (Good Funds), in the following amount or percentage (Check only one):

(a) \$ \_\_\_\_\_

(b) \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Purchase Price.

~~If only part of the Purchase Price is to be paid in cash, then the balance of the Purchase Price will be paid according to the provisions in Addendum B-2, SELLER FINANCING. If part of the Purchase Price is to be paid by Purchaser assuming an existing promissory note secured by the Property, see Addendum B-3.~~

Seller's Initials \_\_\_\_\_

Purchaser's Initials [Signature]

~~the Property subject to an existing promissory note secured by the Property, see Addendum B-3. EXISTING LOAN, is attached.~~

**B. Adjustment.** The Purchase Price will be adjusted up or down based upon the land area of the Property as determined by the Survey. The land area will be multiplied by the following amount per acre or square foot, as applicable, and the product will become the Purchase Price at the Closing (Check only one):  \$ \_\_\_\_\_ per acre or  \$ 4.00 per square foot. The land area for purposes of determining the Purchase Price will be the gross land area of the Property unless this box  is checked, in which case the land area for purposes of determining the Purchase Price will be the Net Land Area as defined in Section 5A (Survey) of the Property. Notwithstanding the foregoing, the Purchase Price will not be reduced under this Section 3B to less than \$ \_\_\_\_\_.

#### 4. EARNEST MONEY AND TITLE COMPANY ESCROW.

**A. Title Company.** The Title Company to serve as escrow agent for this Contract is (the "Title Company"): American Title Company, 440 Louisiana St., Houston, Texas 77002.  
Attn: Ms. Catherine York

**B. Effective Date.** The "Effective Date" is the date the Title Company acknowledges receipt of this fully executed Contract as indicated by the signature block for the Title Company.

**C. Earnest Money.** Within two (2) Business Days after the Effective Date, Purchaser shall deliver an earnest money deposit in the amount of \$ 40,000.00 (the "Earnest Money") payable to the Title Company, in its capacity as escrow agent, to be held in escrow pursuant to the terms of this Contract. Seller's acceptance of this Contract is expressly conditioned upon Purchaser's timely deposit of the Earnest Money with the Title Company. If Purchaser fails to timely deposit the Earnest Money with the Title Company, then Seller may, at Seller's option, terminate this Contract by delivering a written termination notice to Purchaser at any time until Purchaser deposits the Earnest Money with the Title Company.

The Title Company shall deposit the Earnest Money in one or more fully insured accounts in one or more federally insured banking or savings institutions. Purchaser hereby instructs the Title Company to promptly deposit the check upon receipt (which instruction may not be retracted without Seller's written consent). After receipt of necessary tax forms from Purchaser, the Title Company will deposit the Earnest Money in an interest bearing account unless this box  is checked, in which case the Title Company will not be required to deposit the Earnest Money in an interest bearing account. Any interest earned on the Earnest Money will become a part of the Earnest Money. At the Closing, the Earnest Money will be applied to the Purchase Price or, at Purchaser's option, will be returned to Purchaser upon full payment of the Purchase Price.

**D. Independent Consideration.** Notwithstanding anything in this Contract to the contrary, a portion of the Earnest Money in the amount of \$100.00 will be non-refundable and will be distributed to Seller upon any termination of this Contract as independent consideration for Seller's performance under this Contract. If this Contract is properly terminated by Purchaser pursuant to a right of termination granted to Purchaser by any provision of this Contract, the Earnest Money will be promptly returned to Purchaser. Any provision of this Contract that states that the Earnest Money is to be returned to Purchaser means that the Earnest Money, less the non-refundable portion, is to be returned to Purchaser.

**E. Escrow.** The Earnest Money is deposited with the Title Company with the understanding that the Title Company is not: (1) responsible for the performance or non-performance of any party to this Contract; or (2) liable for interest on the funds except to the extent interest has been earned after the funds have been deposited in an interest bearing account.

**F. Definition of Good Funds.** "Good Funds" means currently available funds, in United States dollars, paid in the form of a certified check, cashier's check, official bank check or wire transfer acceptable to the Title Company, such that the payment may not be stopped by the paying party. Any reference in this Contract to "cash" means Good Funds.

Seller's Initials \_\_\_\_\_

Purchaser's Initials 

©Copyright 2005 NTEAR - Form No. 1 (M05)

Contract generated using eScribe™. eScribe™ is a service mark of eScribe, Inc. 110, 1060 W. Piquette, Suite 101, Farm, TX 76033, (800) 322-1176. The entire text of this Contract may be used by the parties to the contract for the purposes of the NTEAR, and it is not to be used for any other purpose. Use by others, as a violation of federal copyright law (17 U.S.C. § 107).

Page 2

©Documents and eScribe participation. Documents (CRM) (1/05) print 02/25/05





6. REVIEW OF SURVEY AND TITLE.

A. Title Review Period. Purchaser will have fifteen (15) days (the "Title Review Period") after receipt of the last of the Survey, Title Commitment and Title Documents to review them and to deliver in writing to Seller any objections Purchaser may have to them or any item disclosed by them. Any item to which Purchaser does not object will be deemed a "Permitted Exception." The items set forth on Schedule C of the Title Commitment, and any other items the Title Company identifies to be released upon the Closing, will be deemed objections by Purchaser. Purchaser's failure to object within the time provided will be a waiver of the right to object. If Purchaser delivers any written objections to Seller within the Title Review Period, then Seller shall make a good faith attempt to cure the objections within ten (10) days (the "Cure Period") after receipt of the objections. However, Seller is not required to incur any cost to do so. Zoning ordinances and the lien for current taxes are deemed to be Permitted Exceptions, but will not be listed on the deed or the Title Policy as exceptions to title DEFERRED.

B. Cure Period. If Seller cannot cure the objections within the Cure Period, Seller may deliver a written notice to Purchaser, before expiration of the Cure Period, stating whether Seller is committed to cure the objections at or before the Closing. If Seller does not cure the objections within the Cure Period, or does not timely deliver the notice, or does not commit in the notice to fully cure all of the objections at or before the Closing, then Purchaser may terminate this Contract by delivering a written notice to Seller on or before the earlier to occur of: (1) the date that is seven (7) days after the expiration of the Cure Period; or (2) the scheduled Closing Date. If Purchaser properly and timely terminates this Contract, the Earnest Money will be returned to Purchaser. If Purchaser does not properly and timely terminate this Contract, then Purchaser will be deemed to have waived any uncured objections and must accept title at the Closing subject to the uncured objections and other Permitted Exceptions. Seller's failure to cure Purchaser's objections under this Section 6 does not constitute a default by Seller.

7. SELLER'S REPRESENTATIONS.

A. Statements. Seller represents to Purchaser, to the best of Seller's <sup>ACTUAL</sup> knowledge, as follows:

(1) Title. At the Closing, Seller will convey to Purchaser good and indefeasible fee simple title to the Property free and clear of any and all liens, assessments, easements, security interests and other encumbrances except the Permitted Exceptions. ~~Delivery of the Title Policy pursuant to Section 12 (the Closing) will be deemed to satisfy the obligation of Seller as to the sufficiency of title required under this Contract.~~ However, delivery of the Title Policy will not release Seller from the warranties of title set forth in the Warranty deed.

(2) Leases. There are no parties in possession of any portion of the Property as lessees, tenants at sufferance or trespassers except tenants under written leases delivered to Purchaser pursuant to this Contract.

(3) Liens and Debts. There are no mechanic's liens, Uniform Commercial Code liens or unrecorded liens against the Property, and Seller shall not allow any such liens to attach to the Property before the Closing that will not be satisfied out of the Closing proceeds. All obligations of Seller arising from the ownership and operation of the Property and any business operated on the Property, including, but not limited to, taxes, leasing commissions, salaries, contracts, and similar agreements, have been paid or will be paid before the Closing. Except for obligations for which provisions are made in this Contract for prorating at the Closing and any indebtedness taken subject to or assumed, there will be no obligations of Seller with respect to the Property outstanding as of the Closing.

(4) Litigation. There is no pending or threatened litigation, condemnation, or assessment affecting the Property. Seller shall promptly advise Purchaser of any litigation, condemnation or assessment affecting the Property that is instituted after the Effective Date.

(5) Material Defects. Seller has disclosed to Purchaser any and all known conditions of a material nature with respect to the Property which may affect the health or safety of any occupant of the Property. Except as disclosed in writing by Seller to Purchaser, the Property has no known latent structural defects or construction defects of a material nature, and none of the improvements have been constructed with materials known to be a potential health hazard to occupants of the Property.

(6) Hazardous Materials. ~~Except as otherwise disclosed in writing by Seller to Purchaser, the Property (including any improvements) does not contain any Hazardous Materials (defined below) other than lawful quantities properly stored or permitted in compliance with applicable laws.~~

Seller's Initials \_\_\_\_\_ Purchaser's Initials [Signature]

Contract prepared using AutoContract™ 10.01 software, from AutoContract, LLC, 10818 Pine, Suite 101, Santa Fe, NM 87506, (505) 522-1212. The purchase of AutoContract™ is limited to the use of the software by THE WEBBANK GROUP, and its subsidiaries. Use by others is a violation of federal and state law under 15 U.S.C. 854. ©Copyright 2005 NTCAR - Form No. 1 (3/05)

**B. Remedies.** If Purchaser discovers, before the Closing, that any of Seller's representations has been misrepresented in a material respect, Purchaser may notify Seller of the misrepresentation in writing, and Seller shall attempt to correct the misrepresentation. If the misrepresentation is not corrected by Seller before the Closing, Purchaser may: (1) proceed to Closing without waiving any claim for misrepresentation; or (2) terminate this Contract by delivering a written termination notice to Seller, in which case the Earnest Money will be returned to Purchaser.

**C. Negative Covenants:** After the Effective Date, Seller shall not, without Purchaser's prior written approval: (1) further encumber the Property or allow an encumbrance upon the title to the Property, or modify the terms of any existing encumbrance, if the encumbrance would still be in effect after Closing; or (2) enter into any lease or contract affecting the Property, if the lease or contract would still be in effect after Closing. ~~However, Seller may enter into a lease or contract with an independent third party in the ordinary course of business, without Purchaser's consent, if Purchaser will be entitled to terminate the lease or contract after Closing, without incurring any termination charge, by delivering a termination notice thirty (30) days in advance of the termination date.~~ If Seller enters into any lease or contract affecting the Property after the Effective Date, then Seller shall immediately deliver a photocopy of the signed document to Purchaser.

**8. NONCONFORMANCE:** Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any limitations of uses of the Property. Purchaser acknowledges that the current use of the Property or the improvements located on the Property (or both) may not conform to applicable Federal, State or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, Americans with Disabilities Act requirements, wetlands restrictions and other matters may have a significant economic impact upon the intended use of the Property by Purchaser. However, if Seller is aware of pending zoning changes and/or current nonconformance with any Federal, State or local laws, ordinances, codes or regulations, Seller shall disclose same to Purchaser.

**9. INSPECTION. (Check only one)**

**A. Inspection Desired.** Purchaser desires to inspect the Property and Seller grants to Purchaser the right to inspect the Property as described in Attachment C. INSPECTION.

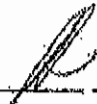
**B. Inspection Not Necessary.** Purchaser acknowledges that Purchaser has inspected the Property, including all buildings and improvements, and is thoroughly familiar with their condition. Purchaser accepts the Property in its present "AS IS" condition, and any changes caused by normal wear and tear before the Closing, but without waiving Purchaser's rights by virtue of Seller's representations expressed in this Contract.

**10. CASUALTY LOSS AND CONDEMNATION.**

**A. Damage or Destruction.** All risk of loss to the Property will remain upon Seller before the Closing. If the Property is damaged or destroyed by fire or other casualty to a Material Extent (defined below), then Purchaser may terminate this Contract by delivering a written termination notice to Seller within ten (10) days after the date the casualty occurred (and in any event before the Closing), in which case the Earnest Money will be returned to Purchaser. If the Property is damaged by fire or other casualty to less than a Material Extent, the parties shall proceed to the Closing as provided in this Contract. If the transaction is to proceed to the Closing, despite any damage or destruction, there will be no reduction in the Purchase Price and Seller shall do one of the following: (1) fully repair the damage before the Closing, at Seller's expense; (2) give a credit to Purchaser at the Closing for the entire cost of repairing the Property; or (3) assign to Purchaser all of Seller's right and interest in any insurance proceeds resulting from the damage or destruction, plus give a credit to Purchaser at the Closing in an amount equal to any deductible or other shortfall. The term "Material Extent" means damage or destruction where the cost of repair exceeds ten percent (10%) of the Purchase Price. If the extent of damage or the amount of insurance proceeds to be made available cannot be determined before the Closing Date, or the repairs cannot be completed before the Closing Date, either party may postpone the Closing Date by delivering a written notice to the other party specifying an extended Closing Date that is not more than thirty (30) days after the previously scheduled Closing Date.

**B. Condemnation.** If condemnation proceedings are commenced before the Closing against any portion of the Property, then Seller shall immediately notify Purchaser in writing of the condemnation proceedings, and Purchaser may terminate this Contract by delivering a written notice to Seller within ten (10) days after Purchaser receives the notice (and in any event before the Closing), in which case the Earnest Money will be returned to Purchaser. If this Contract is not terminated, then any condemnation award will (a) if known on the Closing Date, belong to Seller and the Purchase Price will

Seller's Initials \_\_\_\_\_

Purchaser's Initials  \_\_\_\_\_





13. DEFAULT.

A. Purchaser's Remedies. If Seller fails to close this Contract for any reason except Purchaser's default or the termination of this Contract pursuant to a right to terminate set forth in this Contract, Seller will be in default and Purchaser may elect to either: (1) enforce specific performance of this Contract (force Seller to sell the Property to Purchaser pursuant to this Contract); or (2) terminate this Contract by delivering a written notice to Seller. If Purchaser elects to terminate this Contract due to Seller's default, then Purchaser will be deemed to have waived any other remedies available to Purchaser and the Earnest Money will be returned to Purchaser.

The foregoing will be Purchaser's sole and exclusive remedies for Seller's default unless this box  is checked, in which case Purchaser may sue Seller for damages. If the box is checked to allow Purchaser to sue Seller for damages, then Purchaser must elect to pursue either specific performance or a claim for damages at the beginning of any legal action initiated by Purchaser.

B. Seller's Remedies. If Purchaser fails to close this Contract for any reason except Seller's default or the termination of this Contract pursuant to a right to terminate set forth in this Contract, Purchaser will be in default and Seller may terminate this Contract and receive the Earnest Money as liquidated damages for Purchaser's breach of this Contract, thereby releasing Purchaser from this Contract. If Seller terminates this Contract due to Purchaser's default, then the Earnest Money will be paid to Seller.

The right to receive the Earnest Money will be Seller's sole and exclusive remedy for Purchaser's default unless one of the following remedies is selected, in which case Seller may sue Purchaser:  to enforce specific performance (force Purchaser to purchase the Property pursuant to this Contract); or  for damages. If one or both of the boxes is checked to allow Seller to sue Purchaser to enforce specific performance or for damages, then Seller must elect to either receive the Earnest Money as liquidated damages or pursue one of the other selected remedies at the beginning of any legal action initiated by Seller.

14. AGENCY DISCLOSURE.

A. Agency Relationships. The term "Brokers" refers to the Principal Broker and the Cooperating Broker, if applicable, as set forth on the signature page. Each Broker has duties only to the party the Broker represents as identified below. If either Broker is acting as an intermediary, then that Broker will have only the duties of an intermediary, and the intermediary disclosure and consent provisions apply as set forth below. (Each broker check only one)

- (1) The Principal Broker is:  agent for Seller only; or  agent for Purchaser only; or  an intermediary.
(2) The Cooperating Broker is:  agent for Seller only;  agent for Purchaser only; or  an intermediary.

B. Other Brokers. Seller and Purchaser each represent to the other that they have had no dealings with any person, firm, agent or finder in connection with the negotiation of this Contract or the consummation of the purchase and sale contemplated by this Contract, other than the Brokers named in this Contract, and no real estate broker, agent, attorney, person, firm or entity, other than the Brokers, is entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of the representing party. Each party agrees to indemnify, defend, and hold the other party harmless from and against any costs, expenses or liability for any compensation, commission, fee, or charges that may be claimed by any agent, finder or other similar party, other than the Brokers, by reason of any dealings or acts of the indemnifying party.

C. Fee Sharing. Seller and Purchaser agree that the Brokers may share the Fee (defined below) among themselves, their sales associates, and any other licensed brokers involved in the sale of the Property. The parties authorize the Title Company to pay the Fee directly to the Principal Broker and, if applicable, the Cooperating Broker, in accordance with Section 13 (Professional Service Fee) or any other agreement pertaining to the Fee. Payment of the Fee will not alter the fiduciary relationships between the parties and the Brokers.

D. Intermediary Relationship. If either of the Brokers has indicated in Section 14A (Agency Relationships) that the Broker is acting as an intermediary in this transaction, then Purchaser and Seller hereby consent to the intermediary relationship, authorize such Broker or Brokers to act as an intermediary in this transaction, and acknowledge that the source of any expected compensation to the Brokers will be Seller, and the Brokers may also be paid a fee by Purchaser. A real estate broker who acts as an intermediary between parties in a transaction:

Seller's Initials \_\_\_\_\_ Purchaser's Initials \_\_\_\_\_



**B. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be deemed delivered on the earlier of: (1) actual receipt, if delivered in person or by courier, with evidence of delivery; (2) receipt of an electronic facsimile ("Fax") transmission with confirmation of delivery to the Fax numbers specified in this Contract, if any; or (3) upon deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid, and properly addressed to the intended recipient at the address set forth in this Contract. Any party may change its address for notice purposes by delivering written notice of its new address to all other parties in the manner set forth above. Copies of all written notices should also be delivered to the Brokers and to the Title Company, but failure to notify the Brokers or the Title Company will not cause an otherwise properly delivered notice to be ineffective.

**C. Termination.** If this Contract is terminated for any reason, the parties will have no further rights or obligations under this Contract, except that: (1) Purchaser shall pay the costs to repair any damage to the Property caused by Purchaser or Purchaser's agents; (2) Purchaser shall return to Seller any reports or documents delivered to Purchaser by Seller; and (3) each party shall perform any other obligations that, by the explicit provisions of this Contract, expressly survive the termination of this Contract. The obligations of this Section 16C will survive the termination of this Contract. The terms of any mutual termination agreement will supersede and control over the provisions of this Section 16C in the event of any conflict.

**D. Forms.** In case of a dispute as to the form of any document required under this Contract, the most recent form prepared by the State Bar of Texas will be used, modified as necessary to conform to the terms of this Contract.

**E. Attorneys' Fees.** The prevailing party in any proceeding brought to enforce this Contract, or brought relating to the transaction contemplated by this Contract, will be entitled to recover from the non-prevailing parties court costs, reasonable attorneys' fees and all other reasonable related expenses.

**F. Integration.** This Contract contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement. The parties agree that there are no oral agreements, understandings, representations or warranties made by the parties that are not expressly set forth in this Contract. Any prior written agreements, understandings, representations or warranties between the parties will be deemed merged into and superceded by this Contract, unless it is clear from the written document that the intent of the parties is for the previous written agreement, understanding, representation or warranty to survive the execution of this Contract.

**G. Survival.** Any representation or covenant contained in this Contract not otherwise discharged at the Closing will survive the Closing.

**H. Binding Effect.** This Contract will inure to the benefit of, and will be binding upon, the parties to this Contract and their respective heirs, legal representatives, successors and assigns.

**I. Time for Performance.** Time is of the essence under each provision of this Contract. Strict compliance with the times for performance is required.

**J. Business Day.** If any date of performance under this Contract falls on a Saturday, Sunday or Texas legal holiday, such date of performance will be deferred to the next day that is not a Saturday, Sunday or Texas legal holiday.

**K. Right of Entry.** After reasonable advance notice and during normal business hours, Purchaser, Purchaser's representatives and the Brokers have the right to enter upon the Property before the Closing for purposes of viewing, inspecting and conducting studies of the Property, so long as they do not unreasonably interfere with the use of the Property by Seller or any tenants, or cause damage to the Property.

**L. Governing Law.** This Contract will be construed under and governed by the laws of the State of Texas, and unless otherwise provided in this Contract, all obligations of the parties created under this Contract are to be performed in the county where the Property is located.

**M. Severability.** If any provision of this Contract is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalid, illegal, or unenforceable provision will not affect any other provisions, and this Contract will be construed as if the invalid, illegal, or unenforceable provision is severed and deleted from this Contract.

**N. Broker Disclaimer.** The Brokers will disclose to Purchaser any material factual knowledge the Brokers may possess about the condition of the Property; Purchaser understands that a real estate broker is not an expert in matters of law.

Seller's Initials \_\_\_\_\_

Purchaser's Initials \_\_\_\_\_

© Copyright 2005 NTCAR - Form No. 1 (3/05)

Page 10

tax, financing, surveying, hazardous materials, engineering, construction, safety, zoning, land planning, architecture, or the Americans with Disabilities Act. Purchaser should seek expert assistance on such matters. The Brokers do not investigate a property's compliance with building codes, governmental ordinances, statutes and laws that relate to the use or condition of the Property or its construction, or that relate to its acquisition. Purchaser is not relying upon any representations of the Brokers concerning permitted uses of the Property or with respect to any nonconformance of the Property. If the Brokers provide names of consultants or sources for advice or assistance, the Brokers do not warrant the services of the advisors or their products. The Brokers cannot warrant the suitability of property to be acquired. Purchaser acknowledges that current and future federal, state and local laws and regulations may require any Hazardous Materials to be removed at the expense of those persons who may have had or continue to have any interest in the Property. The expense of such removal may be substantial. Purchaser agrees to look solely to experts and professionals selected or approved by Purchaser to advise Purchaser with respect to the condition of the Property and will not hold the Brokers responsible for any condition relating to the Property. The Brokers do not warrant that Seller will disclose any or all property defects or other matters pertaining to the Property or its condition. Seller and Purchaser agree to hold the Brokers harmless from any damages, claims, costs and expenses including, but not limited to, reasonable attorneys' fees and court costs, resulting from or related to any person furnishing any false, incorrect or inaccurate information with respect to the Property, Seller's recoupling any material information with respect to the condition of the Property, or matters that should be analyzed by experts. To the extent permitted by applicable law, the Brokers' liability for errors or omissions, negligence, or otherwise, is limited to the return of the Fee, if any, paid to the responsible Broker pursuant to this Contract. The parties agree that they are not relying upon any oral statements that the Brokers may have made. Purchaser is relying solely upon Purchaser's own investigations and the representations of Seller, if any, and Purchaser acknowledges that the Brokers have not made any warranty or representation with respect to the condition of the Property or otherwise.

**O. Counterparts.** This Contract may be executed in a number of identical counterparts. Each counterpart is deemed an original and all counterparts will, collectively, constitute one agreement.

**P. Patriot Act Representation.** Seller and Purchaser each represent to the other that: (1) its property interests are not blocked by Executive Order No. 13224, 66 Fed. Reg. 49072; (2) it is not a person listed on the Specially Designated Nationals and Blocked Persons list of the Office of Foreign Assets Control of the United States Department of the Treasury; and (3) it is not acting for or on behalf of any person on that list.

## 17. STATUTORY NOTICES.

**A. Abstract or Title Policy.** As the time of the execution of this Contract, Purchaser acknowledges that the Brokers have advised and hereby advise Purchaser, by this writing, that Purchaser should have the abstract covering the Property examined by an attorney of Purchaser's own selection or that Purchaser should be furnished with or obtain a policy of title insurance.

**B. Notice Regarding Unimproved Property Located in a Certificated Service Area.** If the Property is unimproved and is located in a certificated service area of a utility service, then Seller shall give to Purchaser a written notice in compliance with §13.257 of the Texas Water Code, and Purchaser agrees to acknowledge receipt of the notice in writing. The notice must set forth the correct name of utility service provider authorized by law to provide water or sewer service to the Property, and must comply with all other applicable requirements of the Texas Water Code.

**C. Special Assessment Districts.** If the Property is situated within a utility district or flood control district subject to the provisions of §49.452 of the Texas Water Code, then Seller shall give to Purchaser the required written notice and Purchaser agrees to acknowledge receipt of the notice in writing. The notice must set forth the current tax rate, the current bonded indebtedness and the authorized indebtedness of the district, and must comply with all other applicable requirements of the Texas Water Code.

**D. Property Owners' Association.** If the Property is subject to mandatory membership in a property owners' association, Seller shall notify Purchaser of the current annual budget of the property owners' association, and the current authorized fees, dues and/or assessments relating to the Property. In addition, Seller shall give to Purchaser the written notice required under §5.012 of the Texas Property Code, if applicable, and Purchaser agrees to acknowledge receipt of the notice in writing. Also, Seller shall give to Purchaser the resale certificate required under Chapter 207 of the Texas Property Code, if applicable, and Purchaser agrees to acknowledge receipt of the resale certificate in writing.

**E. Notice Regarding Possible Annexation.** If the Property that is the subject of this Contract is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of the municipality

Seller's Initials \_\_\_\_\_

Purchaser's Initials \_\_\_\_\_

©Copyright 2005 NTCAR - Form No. 1 (3/05)

Complete printed using Adobe Acrobat® v5.0 software, San Antonio, TX, 1997-2005. Copyright © 2005 NTCAR. All rights reserved. This document is the property of NTCAR and is not to be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of NTCAR.

Page 11

© Copyright 2005 NTCAR - Form No. 1 (3/05)





20. EXHIBITS AND ADDENDA. All Exhibits and Addenda attached to this Contract are incorporated herein by reference and made a part of this Contract for all purposes [check all that apply]:

- |   |                   |  |                       |
|---|-------------------|--|-----------------------|
| <input checked="" type="checkbox"/> Exhibit "A" | Legal Description | <input type="checkbox"/> Addendum A            | Improved Property     |
| <input type="checkbox"/> Exhibit "B"            | Site Plan         | <input type="checkbox"/> Addendum B-1          | Third Party Financing |
|   |                   | <input type="checkbox"/> Addendum B-2          | Seller Financing      |
|   |                   | <input type="checkbox"/> Addendum B-3          | Existing Loan         |
|   |                   | <input checked="" type="checkbox"/> Addendum C | Inspection            |
|   |                   | <input type="checkbox"/> Addendum D            | Disclosure Notice     |
|   |                   | <input type="checkbox"/> Addendum E            | Lend Based Paint      |
|   |                   | <input type="checkbox"/> Addendum F            | Additional Provisions |

21. CONTRACT AS OFFER. The execution of this Contract by the first party to do so constitutes an offer to purchase or sell the Property. If the other party does not accept that offer by signing this Contract and delivering a fully executed copy to the first party within 7 days after the date this Contract is executed by the first party, then the first party may withdraw that offer by delivering a written notice to the other party at any time before the other party accepts that offer, in which case the Earnest Money, if any, will be returned to Purchaser.

22. ADDITIONAL PROVISIONS. (Additional provisions may be set forth below or on any attached Addendum).

Within five (5) days after the Effective Date of this Contract, Seller will deliver to Purchaser a copy of any existing survey, engineering report, environmental report, geotechnical report or other report or study regarding the Property which is in Seller's possession.

There are no leases in effect regarding any portion of the Property.

The Property is not subject to any roll-back taxes.

Seller agrees that from and after the Effective Date hereof until the termination of this Contract, Seller will not make, accept, negotiate or otherwise pursue any other offers for the purchase and sale of the Property.

See Addendum One for further Additional Provisions.

Seller's Initials \_\_\_\_\_

Purchaser's Initials   *R*  

©Copyright 2005 NTCAR - Form No. 1 (3/05)

Page 13



**TITLE COMPANY RECEIPT:** The Title Company acknowledges receipt of this Contract on \_\_\_\_\_ (the Effective Date) and, upon receipt of the Earnest Money, accepts the Earnest Money subject to the terms and conditions set forth in this Contract.

**TITLE COMPANY:**

By: (Signature) \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

*PERMISSION TO USE: This form is provided for use by members of the North Texas Commercial Association of Realtors<sup>®</sup>, Inc. ("NTCAR") and members of the North Texas Commercial Association of Real Estate Professionals, Inc. Permission is given to make limited copies of the current version of this form for use in a particular Texas real estate transaction. Please contact the NTCAR office to confirm you are using the current version of this form. Mass production or reproduction for resale is not allowed without express permission. Any changes to this form must be made in a manner that is obvious. If any words are deleted, they must be left in the form with a line drawn through them.*

Seller's Initials \_\_\_\_\_

Purchaser's Initials  \_\_\_\_\_

©Copyright 2005 NTCAR - Form No. 1 (305)

NORTH TEXAS COMMERCIAL ASSOCIATION OF REALTORS®

ADDENDUM C TO COMMERCIAL CONTRACT OF SALE

INSPECTION

Property address or description: 2303 Tidwell Rd.

1. Inspection Period. Purchaser will have a period of ninety (90) days after the Effective Date (the "Inspection Period") to inspect the Property and conduct studies regarding the Property. Purchaser's studies may include, without limitation: (1) permitted use and zoning of the Property; (2) core borings; (3) environmental and architectural tests and investigations; (4) physical inspections of improvements, fixtures, equipment, subsurface soils, structural members, and personal property; and (5) examination of agreements, manuals, plans, specifications and other documents relating to the construction and condition of the Property. Purchaser and Purchaser's agents, employees, consultants and contractors will have the right of reasonable entry onto the Property during normal business hours, and upon reasonable advance notice to Seller and any tenants on the Property, for purposes of inspections, studies, tests and examinations deemed necessary by Purchaser. The inspections, studies, tests and examinations will be at Purchaser's expense and risk. Purchaser shall defend and indemnify Seller against any claims that arise due to any actions by Purchaser or Purchaser's agents, employees, consultants and contractors.

2. Reports.

A. Within \_\_\_\_\_ days after the Effective Date, Seller shall deliver to Purchaser a written "Phase I" report of an environmental assessment of the Property. The report will be prepared, at Seller's expense, by an environmental consultant reasonably acceptable to Purchaser. The environmental assessment must include an investigation into the existence of Hazardous Materials (as defined in Section 16A of this Contract) in, on or around the Property. The environmental assessment must also include a land use history search, engineering inspections, research and studies that may be necessary to discover the existence of Hazardous Materials.

B. Within ten (10) days after the Effective Date, Seller shall deliver to Purchaser copies of all reports in Seller's possession of engineering investigations, tests and environmental studies that have been made with respect to the Property within the two year period before the Effective Date.

C. If Purchaser terminates this Contract, Purchaser shall deliver to Seller, at Purchaser's expense and contemporaneously with the termination, copies of all written reports, inspections, plans, drawings and studies made by Purchaser's agents, consultants and contractors. This provision will survive the termination of this Contract.

3. Termination. If Purchaser determines, in Purchaser's sole discretion, no matter how arbitrary, that the Property is not satisfactory or is not suitable for Purchaser's intended use or purpose, then Purchaser may terminate this Contract by delivering a written notice to Seller on or before the last day of the Inspection Period, in which case the Earnest Money will be returned to Purchaser.

4. Acceptance. If Purchaser does not properly and timely terminate this Contract before the expiration of the Inspection Period (or if Purchaser accepts the Property in writing) then Purchaser will be deemed to have waived all objections to the Property, except for any title objections that may be outstanding pursuant to Section 6 (Review of Survey and Title) of this Contract. In that event, except as may be expressly stated otherwise in this Contract, Purchaser agrees to purchase the Property in its current "AS IS" condition without any further representations of Seller. This Contract will continue in full force and effect, and the parties shall proceed to the Closing. This provision does not, however, limit or waive any representations Seller has made in this Contract.

5. Reimbursement. If Seller defaults and Purchaser does not elect to enforce specific performance of this Contract, then Seller shall reimburse Purchaser for Purchaser's actual, out-of-pocket expenses paid by Purchaser to independent third parties in connection with this Contract including, but not limited to, reasonable fees and expenses for engineering assessments, environmental assessments, architectural plans, surveys and legal work (but excluding any indirect, punitive or consequential damages, such as a claim for lost profits) in an amount not to exceed \$ 15,000.00.

6. Restoration. If the transaction described in this Contract does not close through no fault of Seller, and the condition of the Property was altered due to inspections, studies, tests or examinations performed by Purchaser or on Purchaser's behalf, then Purchaser must restore the Property to its original condition at Purchaser's expense.

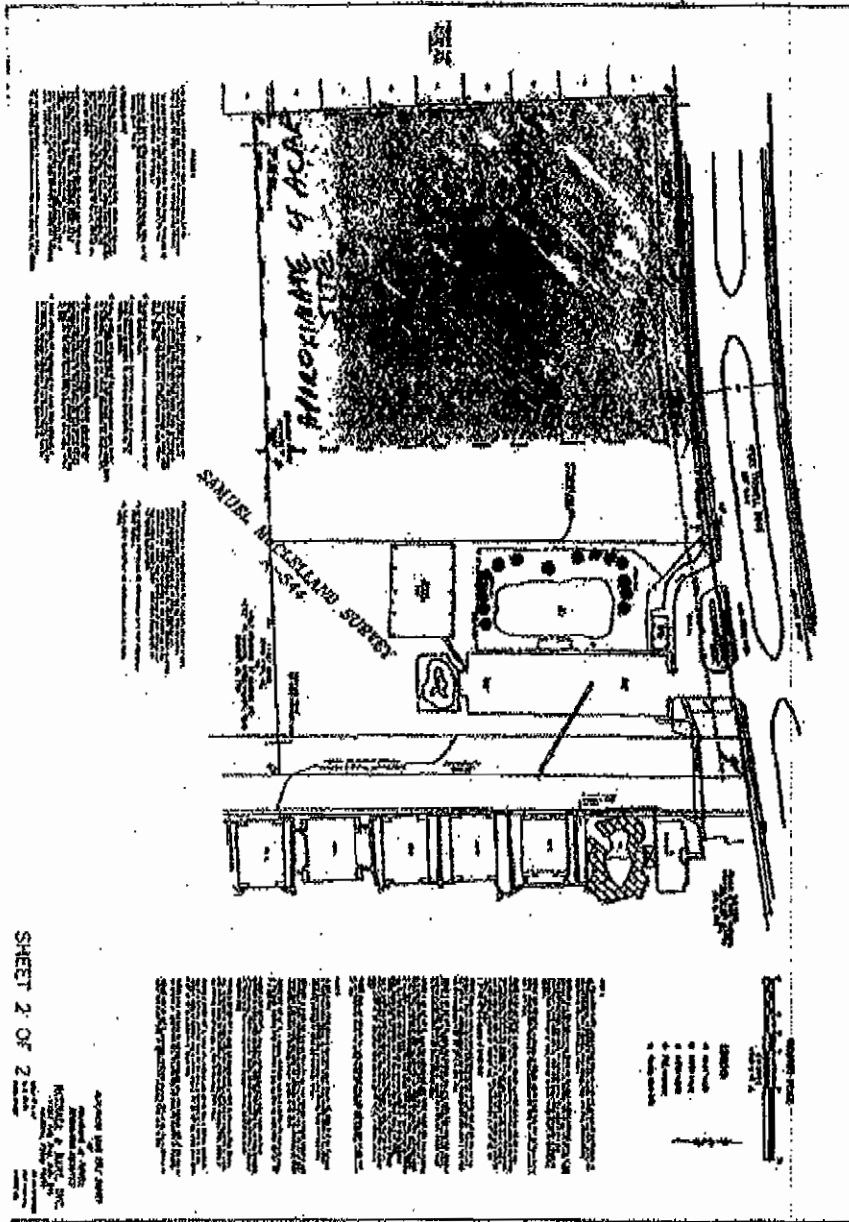
Seller's Initials \_\_\_\_\_ Purchaser's Initials \_\_\_\_\_

©Copyright 2004 NTCAR - Form No. 1 (12/04)  
paragraph of Section 22,

~~this Contract pursuant to the last~~

~~or if Seller terminates this~~  
ADDENDUM C

EXHIBIT "A"



SHEET 2 OF 2

ARCHITECT  
ENGINEER  
PLANNING  
LANDSCAPE ARCHITECT  
INTERIOR DESIGNER  
SPECIALIST IN HISTORIC PRESERVATION  
AND RESTORATION

THIS PLAN IS THE PROPERTY OF THE ARCHITECT AND ENGINEER AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT AND ENGINEER. THE ARCHITECT AND ENGINEER ASSUME NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED TO THEM BY OTHERS. THE ARCHITECT AND ENGINEER ARE NOT RESPONSIBLE FOR THE OMISSIONS OR ERRORS OF ANY OTHER PROFESSIONAL ENGINEERS OR ARCHITECTS WHOSE WORK IS REFERENCED IN THIS PLAN. THE ARCHITECT AND ENGINEER ARE NOT RESPONSIBLE FOR THE OMISSIONS OR ERRORS OF ANY OTHER PROFESSIONAL ENGINEERS OR ARCHITECTS WHOSE WORK IS REFERENCED IN THIS PLAN.

*[Handwritten signature]*

Addendum One to Commercial Contract for Sale by and between Fountains at Tidwell, Ltd., a Texas limited partnership, ("Seller") and Houston RP-One, Ltd., a Texas limited partnership, ("Purchaser") for a four acre tract of land located in the 2300 block of West Tidwell in Houston, TX ("Property") ("Contract").

The Contract is modified as follows:

1. Unless otherwise defined herein or context expressly dictates otherwise, all of the terms and provisions used herein shall have the same meaning ascribed to each such respective term as in the Contract. The terms "Buyer" and "Purchaser" are used interchangeably in this Addendum.

2. To the extent of any conflict between the terms and provisions of the Contract and the terms and provisions of this Addendum One, the terms of the latter shall prevail.

3. Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller, which representations and warranties shall be deemed to be restated at Closing and shall survive Closing:

(a) Buyer is a limited liability company, duly organized and in good standing under the laws of the State of Texas. Buyer has complete power and authority to enter into this Contract ~~and all other Contracts to be executed and delivered by Buyer pursuant to the terms and provisions hereof~~, to perform its obligations hereunder and thereunder, and to consummate the transaction contemplated hereby;

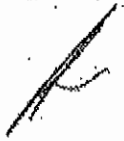
(b) This Contract has been duly executed and delivered by Buyer. ~~All other Contracts contemplated hereby to be executed and delivered by Buyer will be, prior to Closing, duly authorized, executed and ready in all respects to be delivered by Buyer.~~ This Contract and ~~all other Contracts contemplated hereby~~ constitute legal, valid and binding obligations of Buyer enforceable in accordance with their respective terms;

<sup>1.15</sup>  
(c) The execution, delivery and performance of this Contract ~~and any other Contract contemplated hereby~~ and the consummation of the transaction contemplated hereby ~~as thereby do~~ not, with or without the passage of time and/or the giving of notice, (i) conflict with, constitute a breach, violation or termination of any provision of any contract ~~or other Contract~~ to which Buyer is a party, (ii) conflict with or violate the organizational documents of Buyer, or (iii) violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to Buyer;

(d) Buyer is not a consumer as defined by the Texas Deceptive Trade Practices-Consumer Protection Act and has experience in financial and business matters that enable it to evaluate the risks and merits of the transaction contemplated hereby;

~~(e) Buyer will not acquire the Property with the assets of an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and~~

~~(f) Neither Buyer nor any officer or director of Buyer is either a "party in interest" (as defined in Section 3(14) of ERISA) or a "disqualified person" (as defined in Section 4975(e) of the Code) with respect to any employee benefit plan funded in whole or in part by Seller.~~



4. Covenants of Buyer. and releases

Buyer hereby covenants to Seller, which covenants shall survive Closing, as follows:

Buyer shall, in connection with its inspection and assessment of the Property during the Inspection Period, inspect the Property for the presence of Hazardous Substances (as such term is defined below) and shall promptly provide Seller with a true, correct, complete and legible copy of all written inspection reports and other documentation prepared by or on behalf of Buyer in connection with such inspection. Buyer hereby ~~assumes full responsibility for such inspections, and irrevocably and unconditionally waives any and all claims against Seller arising from the presence or alleged presence of Hazardous Substances in, on, under or about the Property.~~ As used in this Contract, the term "Hazardous Substances" means any and all substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law or which are classified as hazardous or toxic under local, state or federal laws or regulations, including, without limitation, (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste," "pollutant" or "contaminant" as such terms are defined by or listed in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*) ("RCRA"), the Toxic Substance Control Act (15 U.S.C. § 2601 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Control Act (7 U.S.C. § 136 *et seq.*), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 *et seq.*), the Hazardous and Solid Waste Amendments of 1984 (Public Law 86-616 Nov. 9, 1984), the Federal Clean Air Act (42 U.S.C. § 7401 *et seq.*), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or 40 CFR Part 302, both as amended, (iii) any material, waste or substance which is (A) oil, gas or any petroleum or petroleum by-product, (B) asbestos, in any form, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1251 *et seq.*), as amended, (E) flammable explosives, or (F) radioactive materials, and (iv) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," "industrial solid waste," "solid waste," "radioactive waste" or "special waste from health care facility" in the Texas Solid Waste Disposal Act (Texas Health & Safety Code Title 5, Subtitle B), the Texas Clean Air Act (Texas Health & Safety Code Title 5, Subtitle C), the Texas Pesticide Control Act (Tex. Agric. Code Ann. § 76.001 *et seq.*) and those substances included within the definitions of "hazardous substances," "regulated substances" or "petroleum products" in Subchapter I of the Texas Water Code (V.T.C.A., Water Code § 26.341 *et seq.*) and in the regulations promulgated pursuant to any of such laws, all as the same may be amended from time to time (collectively "Environmental Laws"). **IT IS THE INTENTION OF SELLER AND BUYER THAT THE WAIVER CONTAINED IN THIS SECTION 40 APPLY TO ALL CLAIMS DESCRIBED HEREIN, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS THAT ARISE IN WHOLE OR IN PART AS A RESULT OF SELLER'S SOLE OR CONCURRENT NEGLIGENCE, OR**

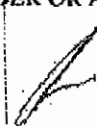


~~THE SOLE OR CONCURRENT NEGLIGENCE OF SELLER'S AGENTS, EMPLOYEES AND CONTRACTORS. FURTHER, BUYER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, COST, DAMAGE OR EXPENSE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, ACCOUNTANTS' FEES, CONSULTANTS' FEES, COURT COSTS AND INTEREST), SUFFERED OR INCURRED BY SELLER ARISING OUT OF OR RESULTING FROM THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS SUBSTANCES IN, ON, UNDER OR ABOUT THE PROPERTY FROM AND AFTER THE DATE OF CLOSING, INCLUDING, WITHOUT LIMITATION, (I) ANY LIABILITY UNDER OR ON ACCOUNT OF ENVIRONMENTAL LAW, INCLUDING, WITHOUT LIMITATION, THE ASSERTION OF ANY LIEN THEREUNDER, (II) CLAIMS BROUGHT BY THIRD PARTIES FOR LOSS OR DAMAGE INCURRED OR SUSTAINED ON OR AFTER THE DATE OF CLOSING, AND (III) LIABILITY WITH RESPECT TO ANY OTHER MATTER RELATING TO ANY ACTUAL OR ALLEGED VIOLATION BY BUYER OR THE PROPERTY OF ENVIRONMENTAL LAW.~~

5. Waiver of Representations and Warranties, Covenants and Indemnities. Notwithstanding anything to the contrary contained in this Contract, if either party consummates the transaction contemplated hereby with actual knowledge of (a) a breach of the other party's representations and warranties or covenants hereunder, or (b) an event or condition that upon the passage of time, the giving of notice or both, would constitute such a breach, (c) a claim against the other party pursuant to any of the indemnification provisions contained in this Contract, or (d) an event or condition that upon the passage of time, the giving of notice or both, would constitute a claim against the other party under any indemnification provision contained in this Contract, then the party that consummates the transaction contemplated by way of such knowledge shall be irrevocably deemed to have waived any and all representations and warranties, covenants or indemnities set forth in this Contract relating to such breach, claim, condition or event.

6. Each party represents and warrants to the other there has been no broker, finder, real estate agent or similar agent other than Principal Broker engaged in connection with the transaction contemplated hereby and each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker, finder or agent (other than Principal Broker) by, through or on account of any acts of the indemnifying party or its agents, employees or representatives, the indemnifying party will hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) in connection therewith. The provisions of this Section 6 shall survive Closing or termination of this Contract.

7. PURCHASER AGREES THAT IT WILL INSPECT AND ASSESS THE PROPERTY PRIOR TO THE EXPIRATION OF THE INSPECTION PERIOD AND THAT BUYER WILL RELY SOLELY UPON SUCH EXAMINATIONS AND INVESTIGATIONS IN ELECTING WHETHER OR NOT TO PURCHASE THE PROPERTY. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT BUYER IS PURCHASING THE PROPERTY "AS IS" AND "WHERE IS," AND WITH ALL FAULTS AND DEFECTS, LATENT OR OTHERWISE, AND THAT SELLER IS MAKING NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH RESPECT TO THE QUALITY, PHYSICAL CONDITION OR VALUE OF THE PROPERTY, THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES IN, ON, UNDER OR ABOUT




EXCEPT AS OTHERWISE SPECIFICALLY  
PROVIDED IN THE CONTRACT TO THE CONTRARY.

THE PROPERTY, THE ZONING CLASSIFICATION OF THE PROPERTY, THE COMPLIANCE OF THE PROPERTY WITH APPLICABLE LAW, OR THE INCOME OR EXPENSES FROM OR OF THE PROPERTY. WITHOUT LIMITING THE FOREGOING, IT IS UNDERSTOOD AND AGREED THAT SELLER MAKES NO WARRANTY OF HABITABILITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR ANY PURPOSE. WITHOUT LIMITING THE FOREGOING, SELLER SPECIFICALLY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, WITH REGARD TO TITLE TO THE PROPERTY, ANY IMPROVEMENTS THEREON, OR ANY INTEREST THEREIN, TO THE EXTENT THAT WARRANTIES OF TITLE ARE TO BE MADE, SUCH WARRANTIES SHALL BE SET FORTH SOLELY AND EXPRESSLY IN THE DEED AND OTHER DOCUMENTS USED TO CONVEY THE PROPERTY FROM SELLER TO BUYER AT CLOSING. NOTWITHSTANDING THAT A FORM OF DEED AND OTHER DOCUMENTS MAY BE ATTACHED TO THIS CONTRACT AND/OR REFERENCED HEREIN, NO WARRANTY OF TITLE CONTAINED IN SUCH DEED, BILL OF SALE, ASSIGNMENT OR OTHER DOCUMENT IS INTENDED TO BE INCORPORATED INTO OR MADE A PART OF THIS CONTRACT. THE PROVISIONS OF THIS SECTION 7 SHALL SURVIVE CLOSING.

11

8. Purchaser recognizes, understands and agrees that pursuant to this Contract it will become aware of certain information regarding Seller and the ownership and operation of the Property. Purchaser agrees that, except in connection with a proceeding before a court of competent jurisdiction or other governmental or quasi-governmental entity, it shall not disclose any such information to any third party or parties, except to agents, employees or independent contractors advising or assisting Purchaser with the transaction contemplated hereby, potential or actual investors, potential and actual lenders of all or a portion of the Purchase Price and as otherwise expressly allowed pursuant to the terms and provisions of this Contract. Seller agrees that, except in connection with a proceeding before a court of competent jurisdiction or other governmental or quasi-governmental entity, it shall not disclose to any third party or parties the existence of this Contract or the identity of Purchaser prior to Closing, except as expressly allowed pursuant to the terms and provisions of this Contract and as requested or required by regulatory and/or rating agencies. The provisions of this Section 8 shall survive Closing or termination of this Contract.

9. ~~The very last paragraph of Section 22 of the Contract shall be revised to read that~~  
The Property is subject to a Land Use Restrictive Agreement ("LURA") in favor of the Texas Department of Housing and Community Affairs ("TDHCA"). The Property is subject to a mortgage exceeding the Purchase Price. Seller's limited partner has approval rights with respect to any sale of property owned by Seller. Seller shall exercise diligent good faith efforts to obtain a release of the LURA from TDHCA, a release agreement from the mortgage holder and consent from Seller's limited partner, prior to the termination of the Inspection Period. Purchaser agrees to cooperate with Seller in connection with Seller's efforts to cause the necessary approvals and obtain appropriate releases, with such cooperation to include extending the Inspection Period for up to 60 days to obtain such releases and approvals. If Seller at any time is aware Seller will be unable to obtain any of said consents, then Seller shall immediately notify Purchaser and the transaction shall be terminated and the Earnest Money shall be released to Purchaser. Nothing in this paragraph shall be construed to restrict or prohibit Purchaser from exercising its right to terminate the Contract prior to the expiration of the Inspection Period.



10. Representations and Warranties of Seller. Seller hereby makes the following representations and warranties to Purchaser, which representations and warranties shall be deemed to be restated at Closing and shall survive the Closing:


(a) Except as provided in paragraph 9, below, with respect to the consent of Seller's limited partner, Seller is a limited partnership, duly organized and in good standing under the laws of the State of Texas. Seller has complete power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transaction contemplated hereby;

(b) This Contract has been duly executed and delivered by Seller. Except as provided in paragraph 9, below, with respect to the consent of Seller's limited partner, this Contract constitutes the legal, valid and binding obligations of Seller, enforceable in accordance with its terms; and

(c) The execution, delivery and performance of this Contract and the consummation of the transaction contemplated hereby does not, with or without the passage of time and/or the giving of notice, (i) conflict with, constitute a breach, violation or termination of any provisions of any contract to which Seller is a party, (ii) conflict with or violate the organizational documents of Seller, or (iii) violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to Seller.


11. Survey/Configuration of Property. The Property shall be in approximately the configuration shown on Exhibit "A" attached hereto. The survey of the Property to be obtained by Seller pursuant to Section 5A of the Contract shall reflect the exact configuration of the Property and shall be subject to the approval of Purchaser and Seller, such approval not to be unreasonably withheld. Upon the completion of the survey and the approval of the Property configuration by Seller and Purchaser, the property description prepared by the Surveyor will be substituted for Exhibit "A" attached to the Contract. The configuration of the Property as reflected by the survey shall be consistent with the configuration of the Property on the final Subdivision Plat (hereinafter defined).

12. Subdivision and Platting. In order to enable Purchaser to develop and construct a nursing home facility on the Property, it will be necessary to subdivide the Property into a single legal lot pursuant to a recorded subdivision plat (the "Subdivision Plat") which has been approved by all required governmental authorities, including, without limitation, the City of Houston, Harris County, the State of Texas and any division, agency, body or authority of any of the foregoing, as necessary (the "Required Governmental Authorities"). Seller will be responsible for preparing, submitting and processing the Subdivision Plat and for obtaining the approval thereof by the Required Governmental Authorities prior to Closing at Seller's sole cost and expense. In this regard, Seller will exercise its diligent, good-faith efforts to obtain approval of the Subdivision Plat as expeditiously as reasonably possible after the Effective Date. Purchaser shall have the right of approval of the Subdivision Plat and once agreed to, the configuration of the Property and the Subdivision Plat will not be changed by Seller unless required by one or more of the Required Governmental Authorities or otherwise approved by Purchaser. Seller will consult with Purchaser on all matters concerning the subdividing and platting of the Property. If the Subdivision Plat, as finally designed, is different than approved by Purchaser and is unacceptable to Purchaser because the layout



or configuration of the Property, or if any easements, setbacks, rights-of-way or restrictions which affect the Property that are incorporated therein or are required in connection therewith adversely affect Purchaser's ability to develop and use the Property in accordance with Purchaser's plans, then, notwithstanding anything contained in the Contract to the contrary, Purchaser, as Purchaser's sole and exclusive remedy, shall have the right to terminate this Contract by written notice to Seller within ten (10) days after Seller delivers to Purchaser a copy of the final version of the Subdivision Plat that Seller intends to submit to the Required Governmental Authorities for approval and which will be approved without further changes, whereupon this Contract will be terminated, the Earnest Money, save and except for the independent consideration under paragraph 4D of the Contract which will be delivered to Seller, will be returned to Purchaser, and neither Purchaser nor Seller will have any further rights, duties, or obligations hereunder.

13. Closing Date. The Closing Date will be within fifteen (15) days after the latter to occur of (i) approval of the Subdivision Plat by all Required Governmental Authorities, or (ii) the expiration of the Inspection Period. In the event the Subdivision Plat has not been fully approved by all Required Governmental Authorities by the date which is 150 days after the Effective Date, either party may terminate this Contract by written notice to the other, in which event this Contract shall be null and void, and neither party shall have any further rights, duties or obligations hereunder, and the Earnest Money, except for the independent consideration under Section 4D of the Contract which shall be delivered to Seller, shall be returned to Purchaser.



**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Authorize the Executive Director to waive the threshold requirement of standard RG-6 COAX or better cabling and CAT3 phone cable or better.

**WHEREAS**, the standard of RG-6 COAX or better and CAT3 phone cable or better was a threshold requirement in the 2009 Qualified Allocation Plan and Rules, and

**WHEREAS**, due to some cabling companies not using the RG-6 COAX cable or CAT3 phone cabling and requiring optical cable, and

**WHEREAS**, the owner will pay the appropriate fee, in accordance with §50.20 of the 2010 Qualified Allocation Plan and Rules, for an amendment change request.

**BE IT RESOLVED**, that the Board authorizes the Executive Director to review and approve the waiver of the threshold wiring requirement for good cause on a case by case basis as an administrative amendment.

**Background**

The Department has received inquiries of the possibilities for the use of fiber optic cabling in place of RG-6 COAX and CAT3 phone cable. Some companies are only using fiber optic cabling for the service being provided for new subdivisions.

Staff is recommending the Board give the Executive Director the authority to review such requests administratively and waive the threshold requirement if deemed appropriate on a case by case basis.

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Approve the award of Housing Tax Credits for Application #10262, Las Brisas Manor.

**WHEREAS**, the Board approved the award of final commitments for the 2010 Competitive Housing Tax Credit Application Round at the July 29<sup>th</sup> Board meeting; and

**WHEREAS**, all Department's underwriting reports had not been completed at the time of that meeting;

**WHEREAS**; the list of recommended Applications for Final Commitments of Housing Tax Credits from the 2010 State Housing Credit Ceiling should have included one additional application; therefore

**BE IT RESOLVED**, that the award recommendation presented in this meeting relating to Application #10262, Las Brisas Manor is hereby approved in the form presented to this meeting.

**Background**

At the July 29, 2010 Board meeting, staff presented the recommendations for the 2010 Competitive Housing Tax Credit Application Round. However, all of the Department's Real Estate Analysis reports had not been completed at the time of that meeting due to late appeals determined at the July 8, 2010 meeting. Some awards were conditioned upon final underwriting.

In Rural Sub-Region 11, the highest scoring application (Artisan at Port Isabel) was one of the applications that did not have final underwriting complete. There was not enough allocation available in the sub-region to recommend the next application and staff followed the standard procedure and process and did not recommend the next application for award. Subsequent to the meeting, the underwriting was completed for the Artisan at Port Isabel and it was determined that there would have been enough allocation in the sub-region to recommend the next application before allowing the remaining balance to be added to the Rural collapse. The following chart reflects the Rural Region 11 awards.

Rural Region 11 Funds Available		\$2,088,317	
TDHCA #	Dev Name	Request Amount	REA Amount
10014	Artisan at Port Isabel	\$1,396,089	\$1,317,863
10262	Las Brisas Manor	\$ 698,724	\$ 698,724
		\$2,094,813	\$2,016,587
	Over By	\$ 6,496	
	Under By		\$ 21,730

Additionally, the Department has confirmed additional returned credits from the Tax Credit Assistance Program award applicants which become available statewide because they are insufficient to satisfy the need from the next development in the region from which they were originally pledged and this will allow all previous recommendations from the July 29<sup>th</sup> meeting to remain intact.

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Requested Action**

Approve the 2010 Housing Tax Credit Waiting List.

WHEREAS, the Board is required by §2306.6711(c) of the Texas Government Code to “establish a waiting list of additional Applications ranked by score in descending order of priority based on set-aside categories and regional allocation goals” concurrently with the initial issuance of commitments for Competitive Housing Tax Credits; therefore

BE IT RESOLVED, that the 2010 Housing Tax Credit Waiting List is hereby approved in the form presented to this meeting.

**Background**

**STAFF RECOMMENDATION – WAITING LIST**

Consistent with §2306.6711 of the Texas Government Code and §50.10(b) of the 2010 QAP, “...the Board shall generate, concurrently with the issuance of commitments, a Waiting List of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals...”

Staff recommends that the Board consider the Waiting List to be composed of all Applications that have not been approved by the Board for a commitment of 2010 Housing Tax Credits, and have not been terminated by the Department or withdrawn by the Applicant. Staff further recommends that the applications that remain be approved or amended and approved by the Board today be accepted as the Waiting List “ranked by score in descending order of priority” for regional allocation purposes.

Developments will be awarded from the waiting list as follows:

- If tax credits are returned from the Nonprofit Set-Aside, and the return of tax credits causes the Department to achieve less than the required 10% Set-Aside, the next highest scoring Qualified Nonprofit Development will be recommended for a commitment to the Board, regardless of the region in which it is located. If tax credits are returned from the Nonprofit Set-Aside, and the return of tax credits does not cause the Department to go below the required 10% Set-Aside, then the next highest scoring Development in the sub-region of the returned tax credits will be recommended for a commitment to the Board, regardless of Set-Aside.
- If tax credits are returned from the USDA Set-Aside Allocation and the return of tax credits causes the Department to achieve less than the required five percent allocation, the next highest scoring USDA Development from the At-Risk Waiting List will be recommended to the Board for a commitment. If there are no eligible USDA Applications available, then the next highest scoring At-Risk



Application will be recommended for a commitment to the Board. If there are no eligible At-Risk Applications available, then the remaining ceiling will be added to the Statewide collapse pool.

- If tax credits are returned from the At-Risk Set-Aside Allocation and the return of tax credits causes the Department to achieve less than the required fifteen percent At-Risk set-aside, the next highest scoring At-Risk Development from the At-Risk Waiting List will be recommended for a commitment to the Board. If there are no eligible Applications available in the At-Risk set-aside, then the remaining ceiling will be added to the Statewide collapse pool.
- For all other Developments, if tax credits are returned from a Development not associated with any Set-Aside, the next highest scoring Development from that sub-region's waiting list, regardless of inclusion in a set-side, will be recommended for a commitment to the Board. If no other Development exists in the sub-region then to the extent that sufficient funds exist the next highest statewide collapse Development will be funded.

All Developments on the Waiting List not yet reviewed for Threshold or underwritten must still be found to be Acceptable, or Acceptable with Conditions, by the Multifamily and Real Estate Analysis Divisions. Credit amounts and conditions are subject to change based on underwriting and underwriting appeals. Allocations from the Waiting List remain subject to review by the Portfolio Management and Compliance Division to ensure no issues of Material Noncompliance exist. In the event that the credit amount returned is insufficient to fund the next appropriate Application, staff may wait to determine if other return credits would make the application whole or offer the Applicant an opportunity to adjust the size of their Development. If the Applicant declines the offer, staff will contact the next appropriate Applicant on the Waiting List, continuing in this manner until the Waiting List is exhausted. Staff will also review to ensure that no awards from the Waiting List would cause a violation of any sections of the 2010 QAP (for example, the \$2 million credit limitation, the one-mile rules, etc.).

The Board heard public comment at the July meeting that supported the use of the prescribed Waiting List because it supports the utilization of the regional allocation as required by statute.

**At-Risk and USDA Awarded and Active Applications ("At-Risk A/R/N")  
2010 Competitive Housing Tax Credit Program Waiting List  
(As of September 9, 2010, the recommendations may change due to pending appeals)**

**Estimated State Ceiling to be Allocated: \$8,115,778**

File #	Region Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP AR	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
10058	9 A	Guild Park Apts	779 W. Mayfield	San Antonio	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	114	114	G	1 RH	\$1,127,186	Gilbert M. Piette	<input type="checkbox"/>	223.0	Competitive in At-Risk Set-Aside
10238	8 A	Prince Hall Plaza	700 Doris St.	Navasota	Rural	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	60	60	G	1 RH	\$624,203	K.T. (Ike) Akbari	<input checked="" type="checkbox"/>	219.0	Competitive in At-Risk Set-Aside
10239	3 A	Prince Hall Gardens	1800 E. Robert	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	100	100	G	1 RH	\$1,064,555	K.T. (Ike) Akbari	<input type="checkbox"/>	211.0	Competitive in At-Risk Set-Aside
10150	9 A	Woodlawn Ranch Apts	330 W. Cheryl Dr.	San Antonio	Urban	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	200	252	G	1 NC	\$2,000,000*	Stephen J. Poppoon	<input type="checkbox"/>	211.0	Competitive in At-Risk Set-Aside
10020	9 A	La Posada del Rey Apts	3135 Roosevelt Ave.	San Antonio	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	145	145	G	1 RH	\$1,375,120	Jennifer Chester	<input type="checkbox"/>	207.0	Competitive in At-Risk Set-Aside
10212	8 A	Longbridge Apts	921 N. Tyus St.	Groesbeck	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	28	28	G	1 RH	\$199,376	Dennis Hoover	<input checked="" type="checkbox"/>	206.0	Competitive in USDA Allocation
10226	3 A	Red Oak Apts	413 & 507 West Red Oak Rd.	Red Oak	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	116	116	G	1 RH	\$1,029,742	Paul Patierno	<input checked="" type="checkbox"/>	203.0	Competitive in USDA Allocation
10112	10 A	Country Village Apts	1500 Hackberry Ln.	Mathis	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	36	36	E	1 RH	\$270,645	Dennis Hoover	<input checked="" type="checkbox"/>	197.0	Competitive in USDA Allocation
10213	6 A	Heritage Square Apts	7626 Hwy 60 South	Wallis	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	24	24	G	1 RH	\$193,607	Dennis Hoover	<input checked="" type="checkbox"/>	196.0	Competitive in USDA Allocation
10211	4 A	Riverplace Apts	1304 West Ave. A	Hooks	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	28	40	G	1 RH	\$239,854	Dennis Hoover	<input checked="" type="checkbox"/>	184.0	Competitive in USDA Allocation
10253	6 A	Brookwood Apts	444 Jefferson St.	West Columbia	Rural	<input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	50	50	E	1 RH	\$321,049	Ronald Potterpin	<input checked="" type="checkbox"/>	183.0	Competitive in USDA Allocation
<b>Total:</b>							<b>901</b>	<b>965</b>			<b>\$8,445,337</b>				
10044	3 N	Wynnewood Seniors Housing	Approx. 1500 Block of S. Zang Blvd. (W. side of street)	Dallas	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	140	140	E	3 NC	\$1,606,374*	Brian L. Roop	<input type="checkbox"/>	204.0	Not Competitive in Region
10274	4 N	Grand Manor Apts	2700 N. Grand Ave.	Tyler	Urban	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	120	120	G	3 RH	\$1,197,939*	Owen Metz	<input type="checkbox"/>	196.0	Not Competitive in Region**
10225	6 N	North MacGregor Arms	3533 N. MacGregor	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>	64	64	G	3 RH	\$690,966*	Janet Miller	<input type="checkbox"/>	190.0	Not Competitive in Region
<b>Total:</b>							<b>324</b>	<b>324</b>			<b>\$3,495,279</b>				
<b>14 Total Applications</b>							<b>1,225</b>	<b>1,289</b>			<b>\$11,940,616</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO=USDA=USDA, Nonprofit=NP, At-Risk=AR.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

\*\* = Property site is located in a Hurricane Ike County.

**Regional Awarded and Active Applications ("Regional A/R/N")  
2010 Competitive Housing Tax Credit Program Waiting List  
(As of September 9, 2010, the recommendations may change due to pending appeals)**

**Estimated State Ceiling to be Allocated: \$45,989,408**

Region File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Target <sup>4</sup> Units	Housing <sup>5</sup> Pop	Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>	
<b>Region: 1</b>																
<b>Allocation Information for Region 1:</b>		<b>Total Credits Available for Region: \$1,763,189</b>					<b>Urban Allocation: \$1,079,863</b>				<b>Rural Allocation: \$683,326</b>					
<b>Applications Submitted in Region 1: Urban</b>																
10236	1 A	Viking Road Apts	Intersection of Viking Rd. and Ventura Rd.	Amarillo	Urban	<input type="checkbox"/> <input type="checkbox"/>	132	132	G	NC	\$1,417,000	Justin Zimmerman	<input type="checkbox"/>	191.0	Significant Sub-Regional Shortfall in Statewide Collapse	
							<b>Total:</b>	<b>132</b>	<b>132</b>			<b>\$1,417,000</b>				
							<b>Total:</b>	<b>132</b>	<b>132</b>			<b>\$1,417,000</b>				
<b>Applications Submitted in Region 1: Rural</b>																
10107	1 A	Tenth Street Apts	SE Corner Tenth St. and Whittenburg St.	Borger	Rural	<input type="checkbox"/> <input type="checkbox"/>	47	48	G	NC	\$583,000	Justin Zimmerman	<input type="checkbox"/>	157.0	Competitive in Region	
							<b>Total:</b>	<b>47</b>	<b>48</b>			<b>\$583,000</b>				
							<b>Total:</b>	<b>47</b>	<b>48</b>			<b>\$583,000</b>				
<b>2 Applications in Region</b>							<b>Region Total:</b>	<b>179</b>	<b>180</b>			<b>\$2,000,000</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Target <sup>4</sup> Units	Housing <sup>5</sup> Pop	Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	------------------------------------	-----------------------------	----------	------------------------	------------------	---------------	----------------	----------------------

**Region: 2**

<b>Allocation Information for Region 2:</b>	<b>Total Credits Available for Region:</b>	<b>\$834,111</b>	<b>Urban Allocation:</b>	<b>\$245,824</b>	<b>Rural Allocation:</b>	<b>\$588,287</b>
---	--	------------------	--------------------------	------------------	--------------------------	------------------

<b>Applications Submitted in Region 2: Urban</b>																	
10246	2	A	Green Briar Village Phase II	901 Airport Dr.	Wichita Falls	Urban	<input type="checkbox"/>	<input type="checkbox"/>	36	36	G	NC	\$438,447	Randy Stevenson	<input type="checkbox"/>	202.0	Significant Sub-Regional Shortfall in Statewide Collapse
									<b>Total:</b>	<b>36</b>	<b>36</b>			<b>\$438,447</b>			
102108	2	N	Griffith Road Apts	SE corner of Griffith Rd. and Scottish Rd.	Abilene	Urban	<input type="checkbox"/>	<input type="checkbox"/>	83	84	G	NC	\$923,000	Michael B. Wilhoit	<input type="checkbox"/>	200.0	Not Competitive in Region
									<b>Total:</b>	<b>83</b>	<b>84</b>			<b>\$923,000</b>			
									<b>Total:</b>	<b>119</b>	<b>120</b>			<b>\$1,361,447</b>			
<b>Applications Submitted in Region 2: Rural</b>																	
10000	2	A	Mustang Heights Apts	Intersection of Arizona Ave. & I-20 frontage Rd.	Sweetwater	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	NC	\$950,000	Lucille Jones	<input type="checkbox"/>		Forward Commitment of 2010 Credits Made in 2009
									<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$950,000</b>			
10023	2	N	Burkburnett Pioneer Crossing for Seniors	109 Williams Dr.	Burkburnett	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	E	NC	\$927,718*	Noor Jooma	<input checked="" type="checkbox"/>	205.0	\$2M Cap Violation; Not Competitive in Region
									<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$927,718</b>			
									<b>Total:</b>	<b>160</b>	<b>160</b>			<b>\$1,877,718</b>			
<b>4 Applications in Region</b>							<b>Region Total:</b>		<b>279</b>	<b>280</b>			<b>\$3,239,165</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

Region: 3

<b>Allocation Information for Region 3:</b>	<b>Total Credits Available for Region:</b> \$11,253,085	<b>Urban Allocation:</b> \$10,150,352	<b>Rural Allocation:</b> \$1,102,732
---	---	---------------------------------------	--------------------------------------

Applications Submitted in Region 3: Urban																	
10119	3	A	Race Street Lofts	2817/2812/2820/2822/2902 McLemore St.	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	36	36	G	RH	\$592,207	Jesus "Jay" Chapa	<input type="checkbox"/>	228.0	Competitive in Region	
10284	3	A	Atmos Lofts	1900 Jackson St.	Dallas	Urban	<input type="checkbox"/> <input type="checkbox"/>	107	107	G	ADR	\$1,336,488*	Ted Hamilton	<input type="checkbox"/>	225.0	Competitive in Region	
10153	3	A	Britain Way	1954 Shoaf	Irving	Urban	<input type="checkbox"/> <input type="checkbox"/>	168	168	G	RH	\$1,627,680	Deepak Sulakhe	<input checked="" type="checkbox"/>	225.0	Competitive in Region	
10079	3	A	Steeple Chase Farms	S. FM 1417 and Park Ave.	Sherman	Urban	<input type="checkbox"/> <input type="checkbox"/>	156	156	G	NC	\$1,996,605	Chris Dischinger	<input type="checkbox"/>	217.0	Competitive in Region	
10136	3	A	Evergreen at Richardson	SWC of Renner Rd. & N. Star Rd.	Richardson	Urban	<input type="checkbox"/> <input type="checkbox"/>	170	170	E	NC	\$2,000,000*	Don Maison	<input checked="" type="checkbox"/>	216.0	Competitive in Region	
10171	3	A	HomeTowne at Garland	1520 Castle Dr.	Garland	Urban	<input type="checkbox"/> <input type="checkbox"/>	144	144	E	NC	\$1,434,894	Carla Simmons	<input type="checkbox"/>	216.0	Competitive in Region	
								<b>Total:</b>	<b>781</b>	<b>781</b>			<b>\$8,987,874</b>				
10158	3	N	Sedona Ranch	6101 Old Denton Rd.	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	172	172	E	NC	\$1,940,000	Chris Applequist	<input type="checkbox"/>	216.0	Not Competitive in Region	
10200	3	N	Hillside West Seniors	Near 32 Pinnacle Park Blvd.	Dallas	Urban	<input type="checkbox"/> <input type="checkbox"/>	130	130	E	NC	\$1,632,728*	Brandon Bolin	<input type="checkbox"/>	216.0	Not Competitive in Region	
10117	3	N	Terrell Homes I	Scattered Sites (N. of Hwy 287, E. of Hwy 35W, S. of Hwy 30 and W. of MLK Jr. Hwy)	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	54	54	G	NC	\$1,136,782*	Jesus "Jay" Chapa	<input type="checkbox"/>	215.0	Not Competitive in Region	
10137	3	N	Evergreen at Wylie	Approx. the 600 to 700 Block of S. McCreary Rd.	Wylie	Urban	<input type="checkbox"/> <input type="checkbox"/>	160	160	E	NC	\$1,936,192*	Don Maison	<input checked="" type="checkbox"/>	215.0	Not Competitive in Region	
10093	3	N	Greenhaus at East Side Apts	4611 E. Side Ave.	Dallas	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/>	24	24	G	NC	\$412,525*	Maria Machado	<input checked="" type="checkbox"/>	213.0	Not Competitive in Region	
10202	3	N	Brae Estates	3715 NE 28th St. and 3650 Kimbo Rd.	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	68	68	G	NC	\$1,292,507*	Kim McCaslin Schliker	<input type="checkbox"/>	212.0	Not Competitive in Region	
10134	3	N	Champion Homes at Copperridge	5602 Maple Ave.	Dallas	Urban	<input type="checkbox"/> <input type="checkbox"/>	107	107	G	NC	\$1,378,758*	Saleem Jafar	<input type="checkbox"/>	212.0	\$2M Cap Violation; Not Competitive in Region	
10009	3	N	Creekside Village	3601 Miller Rd.	Rowlett	Urban	<input type="checkbox"/> <input type="checkbox"/>	116	116	E	NC	\$1,311,710*	Charles Holcomb	<input type="checkbox"/>	211.0	Not Competitive in Region	

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

File #	Region Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
10075	3 N	Vermillion Park	Eastern Terminus of Emporium Square	Mesquite	Urban	<input type="checkbox"/> <input type="checkbox"/>	96	96	E	NC	\$1,000,000*	Clifton Phillips	<input type="checkbox"/>	210.0	Not Competitive in Region
10232	3 N	Evergreen Residences-3800 Willow	3800 Willow	Dallas	Urban	<input type="checkbox"/> <input type="checkbox"/>	100	100	G	SRO	\$1,151,210*	Graham Greene	<input type="checkbox"/>	210.0	Not Competitive in Region
10113	3 N	Promenade at Mercer Crossing	NWC of Whittington Pl. and Senlac Dr.	Farmers Branch	Urban	<input type="checkbox"/> <input type="checkbox"/>	124	124	E	NC	\$1,518,354*	Brad Kyles	<input type="checkbox"/>	209.0	Not Competitive in Region
10027	3 N	The Huntington at Greenville	300 Block S. Greenville Ave. and Main St.	Allen	Urban	<input type="checkbox"/> <input type="checkbox"/>	114	114	E	NC	\$1,387,546*	Mark Musemeche	<input type="checkbox"/>	207.0	Not Competitive in Region
10233	3 N	Kleberg Commons	12700 Kleberg Rd.	Dallas	Urban	<input type="checkbox"/> <input type="checkbox"/>	200	200	E	NC	\$2,000,000*	Dale Lancaster	<input type="checkbox"/>	203.0	Not Competitive in Region
10062	3 N	Willow Bay Apts	E. side of Boat Club Rd. and Cromwell Marine Creek Dr.	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	124	124	E	NC	\$1,631,681*	Mark Lechner	<input type="checkbox"/>	202.0	Not Competitive in Region
10045	3 N	North Court Villas	10 acres on the S. side of Stonebrook Pkwy. Between Woodstream Dr. and Preston Rd.	Frisco	Urban	<input type="checkbox"/> <input type="checkbox"/>	150	150	G	NC	\$2,000,000*	Dru Childre	<input type="checkbox"/>	197.0	Not Competitive in Region
10221	3 N	Residences at Rowlett Creek	SWC of Firewheel Pkwy. & Castle Dr.	Garland	Urban	<input type="checkbox"/> <input type="checkbox"/>	160	160	G	NC	\$2,000,000*	Dan Allgeier	<input type="checkbox"/>	194.0	Not Competitive in Region
10089	3 N	Silver Spring at Chapel Hill	SWC of Bonds Ranch Rd. and Business 287/Saginaw Blvd.	Fort Worth	Urban	<input type="checkbox"/> <input type="checkbox"/>	100	100	E	NC	\$914,179*	Alice Wong	<input type="checkbox"/>	190.0	Not Competitive in Region
							<b>Total: 1,999</b>	<b>1,999</b>			<b>\$24,644,172</b>				
							<b>Total: 2,780</b>	<b>2,780</b>			<b>\$33,632,046</b>				

**Applications Submitted in Region 3: Rural**

10130	3 A	Meadow Vista	White Settlement Rd. (1/4 mile E. of FM 730)	Weatherford	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$895,498	Justin MacDonald	<input checked="" type="checkbox"/>	210.0	Competitive in Region
							<b>Total: 80</b>	<b>80</b>			<b>\$895,498</b>				
10090	3 N	Silver Spring at Forney	SEC of FM 548 and Reeder Ln.	Forney	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$802,682*	Alice Wong	<input type="checkbox"/>	209.0	Not Competitive in Region
10050	3 N	West Park Senior Housing	West Park Row and 44th St.	Corsicana	Rural	<input type="checkbox"/> <input checked="" type="checkbox"/>	48	48	E	NC	\$544,559*	Emanuel H. Glockzin, Jr.	<input checked="" type="checkbox"/>	207.0	Not Competitive in Region
10257	3 N	The Colony at Lake Granbury	SWC Hwy 4 & Thorp Springs Rd.	Granbury	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$964,787*	Rick J. Deyoe	<input checked="" type="checkbox"/>	207.0	Not Competitive in Region
10092	3 N	Silver Spring Grand Heritage	SWC of Hwy 78 and C.R. 484	Lavon	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$866,244*	Alice Wong	<input type="checkbox"/>	203.0	Not Competitive in Region

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

File #	Region Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>	
10059	3 N	Westway Place	44th St., off West Park Row	Corsicana	Rural	<input type="checkbox"/> <input checked="" type="checkbox"/>	40	40	G	NC	\$546,741*	Emanuel H. Glockzin, Jr.	<input checked="" type="checkbox"/>	201.0	Not Competitive in Region	
10018	3 N	Granbury Seniors	1300 N. Meadows Dr.	Granbury	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$1,019,323*	Ryan Wilson	<input type="checkbox"/>	200.0	Not Competitive in Region	
<b>Total:</b>							<b>408</b>	<b>408</b>			<b>\$4,744,336</b>					
<b>Total:</b>							<b>488</b>	<b>488</b>			<b>\$5,639,834</b>					
<b>30 Applications in Region</b>							<b>Region Total:</b>	<b>3,268</b>	<b>3,268</b>			<b>\$39,271,880</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 4**

<b>Allocation Information for Region 4:</b>	<b>Total Credits Available for Region: \$1,696,890</b>	<b>Urban Allocation: \$746,605</b>	<b>Rural Allocation: \$950,285</b>
---	--	------------------------------------	------------------------------------

**Applications Submitted in Region 4: Urban**

10028	4 A	Pecan Ridge	NWC of Milam and 15th St.	Texarkana	Urban	<input type="checkbox"/> <input type="checkbox"/>		124	124	G	RH	\$1,899,414	Naomi Byrne	<input type="checkbox"/>	225.0	Significant Sub-Regional Shortfall in Statewide Collapse
10198	4 A	Pinnacle at North Chase	E. side of N. Broadway, S. of Loop 323	Tyler	Urban	<input type="checkbox"/> <input type="checkbox"/>		120	120	G	NC	\$1,473,851	Lisa Stephens	<input type="checkbox"/>	216.0	Competitive in Hurricane Ike Counties
								<b>Total:</b>	<b>244</b>	<b>244</b>		<b>\$3,373,265</b>				
								<b>Total:</b>	<b>244</b>	<b>244</b>		<b>\$3,373,265</b>				

**Applications Submitted in Region 4: Rural**

10026	4 A	Silverleaf at Chandler II	801 FM 2010	Chandler	Rural	<input type="checkbox"/> <input type="checkbox"/>		44	44	E	NC	\$518,601	J Michael Sugrue	<input checked="" type="checkbox"/>	211.0	Competitive in Region
								<b>Total:</b>	<b>44</b>	<b>44</b>		<b>\$518,601</b>				
10033	4 N	Sulphur Springs Pioneer Crossing for Seniors	Gossett Ln.	Sulphur Springs	Rural	<input type="checkbox"/> <input type="checkbox"/>		80	80	E	NC	\$929,204*	Noor Jooma	<input checked="" type="checkbox"/>	210.0	Not Competitive in Region
10039	4 N	Paris Retirement Village II	1500 W. Washington St.	Paris	Rural	<input type="checkbox"/> <input type="checkbox"/>		78	80	E	NC	\$864,182*	Joe Chamy	<input checked="" type="checkbox"/>	169.0	Not Competitive in Region
								<b>Total:</b>	<b>158</b>	<b>160</b>		<b>\$1,793,386</b>				
								<b>Total:</b>	<b>202</b>	<b>204</b>		<b>\$2,311,987</b>				
<b>5 Applications in Region</b>								<b>Region Total:</b>	<b>446</b>	<b>448</b>		<b>\$5,685,252</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.



Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Target <sup>4</sup> Units	Housing <sup>5</sup> Pop	Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	------------------------------------	-----------------------------	----------	------------------------	------------------	---------------	----------------	----------------------

**Region: 5**

<b>Allocation Information for Region 5:</b>	<b>Total Credits Available for Region:</b> \$1,259,603	<b>Urban Allocation:</b> \$567,607	<b>Rural Allocation:</b> \$691,996
---	--	------------------------------------	------------------------------------

<b>Applications Submitted in Region 5: Urban</b>																	
10031	5 A	The Crossing	3705 E. Lucas	Beaumont	Urban	<input type="checkbox"/>	<input type="checkbox"/>	150	150	E	NC	\$1,556,815	Robert L. Reyna	<input type="checkbox"/>	201.0	Significant Sub-Regional Shortfall in Statewide Collapse	
								<b>Total:</b>	<b>150</b>	<b>150</b>			<b>\$1,556,815</b>				
								<b>Total:</b>	<b>150</b>	<b>150</b>			<b>\$1,556,815</b>				

<b>Applications Submitted in Region 5: Rural</b>																	
10283	5 A	Lufkin Pioneer Crossing	1805 N John Reddit	Lufkin	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	NC	\$936,578	Noor Jooma	<input checked="" type="checkbox"/>	211.0	Significant Sub-Regional Shortfall in Rural Collapse	
10279	5 A	Hudson Green	840 Mt. Carmel Rd.	Hudson	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	NC	\$919,550*	H. Elizabeth Young	<input checked="" type="checkbox"/>	208.0	Competitive in Hurricane Ike Counties	
10271	5 A	Hudson Manor	4280 Old Union Rd.	Hudson	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	E	NC	\$955,313*	H. Elizabeth Young	<input checked="" type="checkbox"/>	208.0	Competitive in Hurricane Ike Counties	
10126	5 A	Auburn Square	11.35 acres E. of 2390 N. Main St.	Vidor	Rural	<input type="checkbox"/>	<input checked="" type="checkbox"/>	80	80	G	NC	\$1,100,480	Vivian L. Ballou	<input checked="" type="checkbox"/>	204.0	Competitive in Hurricane Ike Counties	
								<b>Total:</b>	<b>320</b>	<b>320</b>			<b>\$3,911,921</b>				
10241	5 N	Timberland Trails Apts	2205 N. Timberland Dr.	Lufkin	Rural	<input type="checkbox"/>	<input checked="" type="checkbox"/>	80	80	G	NC	\$858,909*	John D. Mathews	<input checked="" type="checkbox"/>	198.0	Not Competitive in Region	
								<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$858,909</b>				
								<b>Total:</b>	<b>400</b>	<b>400</b>			<b>\$4,770,830</b>				

<b>6 Applications in Region</b>								<b>Region Total:</b>	<b>550</b>	<b>550</b>			<b>\$6,327,645</b>				
---------------------------------	--	--	--	--	--	--	--	----------------------	------------	------------	--	--	--------------------	--	--	--	--

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 6**

<b>Allocation Information for Region 6:</b>	<b>Total Credits Available for Region:</b>	<b>\$10,011,875</b>	<b>Urban Allocation:</b>	<b>\$9,080,579</b>	<b>Rural Allocation:</b>	<b>\$931,296</b>
---	--	---------------------	--------------------------	--------------------	--------------------------	------------------

Applications Submitted in Region 6:		Urban														
10084	6 A	Perry Street Apts	4415 Perry St.	Houston	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	160	160	G	NC	\$920,833	Joy Horak-Brown	<input type="checkbox"/>	216.0	Competitive in Region
10142	6 A	Mason Senior Apartment Homes	W. side of Mason Rd., N. of Franz Rd.	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	120	120	E	NC	\$1,451,258	Kenneth G. Cash	<input type="checkbox"/>	216.0	Competitive in Region
10035	6 A	Zion Gardens	St. Charles & Webster St.	Houston	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	70	70	G	NC	\$953,930	L. David Punch	<input type="checkbox"/>	214.0	Competitive in Region
10178	6 A	Cypress Creek at Fayridge	NEC of Beltway 8 and Fayridge Dr.	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	148	151	G	NC	\$2,000,000	Stuart B. Shaw	<input type="checkbox"/>	210.0	Competitive in Region
10124	6 A	Golden Bamboo Village III	W. side of Synott Rd. (approx. 900LF N. of intersection of Synott Rd. & Bellaire Rd.)	Houston	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	130	130	E	NC	\$1,611,321	Michael CaoMy Nguyen	<input type="checkbox"/>	210.0	Competitive in Region
10266	6 A	Travis Street Plaza Apts	4500 Travis	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	192	192	G	NC	\$1,325,820	Tim Cantwell	<input type="checkbox"/>	210.0	Competitive in Hurricane Ike Counties
10115	6 A	Tuscany Place	N. side of Northpark Dr. (Approx. 1200LF East of TX Loop 494)	Kingwood	Urban	<input type="checkbox"/>	<input type="checkbox"/>	152	152	G	NC	\$2,000,000	Ben Amor	<input type="checkbox"/>	208.0	Competitive in Hurricane Ike Counties
10094	6 A	Providence Town Square	3801 Center St.	Deer Park	Urban	<input type="checkbox"/>	<input type="checkbox"/>	165	188	E	NC	\$1,721,277	Chris Richardson	<input type="checkbox"/>	206.0	Competitive in Hurricane Ike Counties
10051	6 A	Parkway Ranch II	E. side of the approx. 10000 Block W. Montgomery	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	44	45	G	NC	\$962,945	W. Barry Kahn	<input type="checkbox"/>	206.0	Competitive in Hurricane Ike Counties
10227	6 A	Tarrington Court Apts	Approx. 1/2 mile NEC of I-45 and S. Sam Houston Pkwy. E. on the SEC of the approx. 8000 Block of Sam Houston Pkwy. East	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	153	153	E	NC	\$1,990,250*	J. Steve Ford	<input type="checkbox"/>	205.0	Competitive in Hurricane Ike Counties
10064	6 A	Cypress Gardens	Wallisville Rd. and Maxey Rd.	Houston	Urban	<input type="checkbox"/>	<input type="checkbox"/>	100	100	E	NC	\$1,380,254	Scott Brian	<input type="checkbox"/>	204.0	Competitive in Hurricane Ike Counties

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

File #	Region Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>	
10003	6 A	Champion Homes at Marina Landing	7302 Heards Ln.	Galveston	Urban	<input type="checkbox"/> <input type="checkbox"/>	256	256	G	RH	\$1,643,824	Saleem Jafar	<input type="checkbox"/>		Forward Commitment of 2010 Credits Made in 2009	
							<b>Total: 1,690</b>	<b>1,717</b>			<b>\$17,961,712</b>					
10184	6 N	Cypress Creek at Veterans Memorial	Approx. 8500 Block of Veterans Memorial Dr.	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/>	148	152	G	NC	\$2,000,000*	Stuart B. Shaw	<input type="checkbox"/>	208.0	\$2M Cap Violation	
10096	6 N	The Orchard at Westchase	3802 Rodgerdale	Houston	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/>	153	153	E	NC	\$1,917,087	Stephan Fairfield	<input type="checkbox"/>	200.0	Not Competitive in Region	
10290	6 N	Magnolia Place Apts	Wenda St. at the 9500 Block of Cullen Blvd.	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/>	144	144	E	NC	\$1,995,026	Bert Magill	<input type="checkbox"/>	199.0	Not Competitive in Region	
10186	6 N	Mariposa at Calder Drive	N. side of FM 517 approx. 1/5 mi W. of FM 646	League City	Urban	<input type="checkbox"/> <input type="checkbox"/>	172	176	E	NC	\$2,000,000*	Stuart B. Shaw	<input type="checkbox"/>	193.0	\$2M Cap Violation; Not Competitive in Region	
10101	6 N	Lafayette Park Apts	Approx. 200 Block of Aldine Bender and 16000 Block of Cotillion Dr.	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/>	150	150	E	NC	\$1,930,643*	William D. Henson	<input type="checkbox"/>	192.0	Not Competitive in Region	
10080	6 N	Rolling Meadows	S. Side of FM 518 Hwy	Kemah	Urban	<input type="checkbox"/> <input type="checkbox"/>	124	124	E	NC	\$1,698,491*	Chris Dischinger	<input type="checkbox"/>	192.0	Not Competitive in Region	
10250	6 N	Willow Meadow Place Apts	10630 Beechnut	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/>	328	328	G	RH	\$2,000,000*	M. Dale Dodson	<input type="checkbox"/>	179.0	Not Competitive in Region	
10128	6 N	Ventana Pointe	Red Oak Dr. & Butterfield Rd.	Houston	Urban	<input type="checkbox"/> <input type="checkbox"/>	96	96	E	NC	\$1,232,530*	Monique Allen	<input type="checkbox"/>	178.0	Not Competitive in Region	
10229	6 N	Hannover Park	Approx. 2828 FM 2920	Spring	Urban	<input type="checkbox"/> <input type="checkbox"/>	142	142	I	NC	\$2,000,000*	Paula Burns	<input type="checkbox"/>	175.0	Not Competitive in Region	
10228	6 N	Wintersprings Apts	Approx. 6000 Block of Atascocita Rd.	Humble	Urban	<input type="checkbox"/> <input type="checkbox"/>	156	156	E	NC	\$1,998,701*	J. Steve Ford	<input type="checkbox"/>	173.0	\$2M Cap Violation; Not Competitive in Region	
							<b>Total: 1,613</b>	<b>1,621</b>			<b>\$18,772,478</b>					
							<b>Total: 3,303</b>	<b>3,338</b>			<b>\$36,734,190</b>					
<b>Applications Submitted in Region 6:</b>		<b>Rural</b>														
10061	6 A	Magnolia Trails	31000 Block of Nichols Sawmill Rd.	Magnolia	Rural	<input type="checkbox"/> <input type="checkbox"/>	80	80	E	NC	\$906,277	David Mark Koogler	<input type="checkbox"/>	212.0	Competitive in Region	
							<b>Total: 80</b>	<b>80</b>			<b>\$906,277</b>					
							<b>Total: 80</b>	<b>80</b>			<b>\$906,277</b>					
<b>23 Applications in Region</b>							<b>Region Total: 3,383</b>		<b>3,418</b>		<b>\$37,640,467</b>					

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 7**

<b>Allocation Information for Region 7:</b>	<b>Total Credits Available for Region: \$3,138,744</b>	<b>Urban Allocation: \$2,489,082</b>	<b>Rural Allocation: \$649,662</b>
---	--	--------------------------------------	------------------------------------

<b>Applications Submitted in Region 7: Urban</b>																
10002	7	A	Wildflower Terrace	NEC of Berkman Dr. & Tom Miller St.	Austin	Urban	<input type="checkbox"/>	<input type="checkbox"/>	170	200	E	NC	\$1,990,747	Diana Mclver	<input type="checkbox"/>	Forward Commitment of 2010 Credits Made in 2009
									<b>Total:</b>	<b>170</b>	<b>200</b>			<b>\$1,990,747</b>		
10152	7	N	Shady Oaks	4320 S. Congress Ave.	Austin	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	238	238	G	RH	\$1,339,983	Walter Moreau	<input type="checkbox"/>	225.0 Not Competitive in Region
10183	7	N	Cypress Creek at Four Seasons Farm	0.1 Miles East of Intersection of FM 150 and Lehman Rd.	Kyle	Urban	<input type="checkbox"/>	<input type="checkbox"/>	148	151	G	NC	\$2,000,000*	Stuart B. Shaw	<input type="checkbox"/>	203.0 \$2M Cap Violation;Not Competitive in Region
10162	7	N	Promontory Pointe	NWC I-35 and Fleischer Dr.	Austin	Urban	<input type="checkbox"/>	<input type="checkbox"/>	200	200	G	NC	\$1,875,000*	Sarah Andre	<input type="checkbox"/>	203.0 Not Competitive in Region
									<b>Total:</b>	<b>586</b>	<b>589</b>			<b>\$5,214,983</b>		
									<b>Total:</b>	<b>756</b>	<b>789</b>			<b>\$7,205,730</b>		
<b>Applications Submitted in Region 7: Rural</b>																
10143	7	A	Oak Creek Townhomes	1110 Broadway St.	Marble Falls	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	RH	\$996,930	Dennis Hoover	<input checked="" type="checkbox"/>	193.0 Significant Sub-Regional Shortfall in Rural Collapse
									<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$996,930</b>		
10235	7	N	Villas of Giddings	40 lots in the Rolling Oaks subdivision	Giddings	Rural	<input type="checkbox"/>	<input type="checkbox"/>	36	36	G	NC	\$751,056*	Jeffrey S. Spicer	<input checked="" type="checkbox"/>	192.0 Not Competitive in Region
									<b>Total:</b>	<b>36</b>	<b>36</b>			<b>\$751,056</b>		
									<b>Total:</b>	<b>116</b>	<b>116</b>			<b>\$1,747,986</b>		
<b>6 Applications in Region</b>									<b>Region Total:</b>	<b>872</b>	<b>905</b>			<b>\$8,953,716</b>		

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 8**

<b>Allocation Information for Region 8:</b>	<b>Total Credits Available for Region: \$2,380,425</b>	<b>Urban Allocation: \$1,750,542</b>	<b>Rural Allocation: \$629,883</b>
---	--	--------------------------------------	------------------------------------

<b>Applications Submitted in Region 8: Urban</b>																	
10077	8	A	Fairways at Sammons Park	SWC of West Adams and 43rd St.	Temple	Urban	<input type="checkbox"/>	<input type="checkbox"/>	92	92	E	NC	\$1,000,000	Clifton Phillips	<input type="checkbox"/>	210.0	Competitive in Region
									<b>Total:</b>	<b>92</b>	<b>92</b>			<b>\$1,000,000</b>			
									<b>Total:</b>	<b>92</b>	<b>92</b>			<b>\$1,000,000</b>			

<b>Applications Submitted in Region 8: Rural</b>																	
10007	8	A	Mexia Gardens	NEC N. Bailey at E. Sumpter	Mexia	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	NC	\$812,214	Richard Brown	<input type="checkbox"/>	184.0	Significant Sub-Regional Shortfall in Rural Collapse
									<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$812,214</b>			
									<b>Total:</b>	<b>80</b>	<b>80</b>			<b>\$812,214</b>			
<b>2 Applications in Region</b>									<b>Region Total:</b>	<b>172</b>	<b>172</b>			<b>\$1,812,214</b>			

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 9**

<b>Allocation Information for Region 9:</b>	<b>Total Credits Available for Region: \$3,742,759</b>	<b>Urban Allocation: \$3,076,230</b>	<b>Rural Allocation: \$666,529</b>
---	--	--------------------------------------	------------------------------------

<b>Applications Submitted in Region 9: Urban</b>																	
10169	9 A	La Risa	800 Babcock Rd.	San Antonio	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	237	237	G	RH	\$1,954,346	Jerry Du Terroill	<input type="checkbox"/>	225.0	Competitive in Region	
<b>Total:</b>								<b>237</b>	<b>237</b>			<b>\$1,954,346</b>					
10040	9 N	Ashton Senior Village	SEC of Borgfeld Rd. and FM 3009 (Roy Richard Dr.)	Schertz	Urban	<input type="checkbox"/>	<input type="checkbox"/>	176	176	E	NC	\$2,000,000	Colby Denison	<input checked="" type="checkbox"/>	215.0	Not Competitive in Region	
10076	9 N	Darson Marie Terrace	3142 Weir Ave.	San Antonio	Urban	<input type="checkbox"/>	<input type="checkbox"/>	56	57	E	NC	\$703,739*	Richard Washington	<input type="checkbox"/>	212.0	Not Competitive in Region	
10120	9 N	Montabella Senior	NWC of tract of land at NWC of Lakeview Dr. & Foster Rd.	San Antonio	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	90	90	E	NC	\$1,161,397*	Susan Sheeran	<input type="checkbox"/>	212.0	Not Competitive in Region	
10160	9 N	Creekside Place	SWC of Turner Dr. & Morrison Dr.	New Braunfels	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	176	176	E	NC	\$1,959,715*	Fernando S. Godinez	<input type="checkbox"/>	207.0	Not Competitive in Region	
10114	9 N	The Terrace at Haven for Hope	N. San Marcos & Perez St.	San Antonio	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	140	140	G	NC	\$1,638,351*	Meghan Garza-Oswald	<input type="checkbox"/>	194.0	Not Competitive in Region	
10118	9 N	San Juan Square III	2200 Block of S. Calaveras St.	San Antonio	Urban	<input type="checkbox"/>	<input checked="" type="checkbox"/>	139	139	G	NC	\$1,908,261*	David Casso	<input type="checkbox"/>	190.0	Not Competitive in Region	
<b>Total:</b>								<b>777</b>	<b>778</b>			<b>\$9,371,463</b>					
<b>Total:</b>								<b>1,014</b>	<b>1,015</b>			<b>\$11,325,809</b>					

<b>Applications Submitted in Region 9: Rural</b>																			
10131	9 A	Guadalupe Crossing	End of Sunflower Ln.	Comfort	Rural	<input type="checkbox"/>	<input type="checkbox"/>	68	68	G	NC	\$858,688	Granger MacDonald	<input type="checkbox"/>	209.0	Significant Sub-Regional Shortfall in Rural Collapse			
<b>Total:</b>								<b>68</b>	<b>68</b>			<b>\$858,688</b>							
10121	9 N	Mesquite Place	Tract of land on S. side County Rd. 4010 (Gilliam Rd.) approx. 1950LF	Pearsall	Rural	<input type="checkbox"/>	<input type="checkbox"/>	80	80	G	NC	\$1,096,573*	Lucille Jones	<input checked="" type="checkbox"/>	203.0	Not Competitive in Region			
<b>Total:</b>								<b>80</b>	<b>80</b>			<b>\$1,096,573</b>							
<b>Total:</b>								<b>148</b>	<b>148</b>			<b>\$1,955,261</b>							
<b>9 Applications in Region</b>								<b>Region Total:</b>		<b>1,162</b>	<b>1,163</b>			<b>\$13,281,070</b>					

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 10**

<b>Allocation Information for Region 10:</b>	<b>Total Credits Available for Region: \$1,571,844</b>	<b>Urban Allocation: \$951,193</b>	<b>Rural Allocation: \$620,651</b>
--	--	------------------------------------	------------------------------------

**Applications Submitted in Region 10: Urban**

10125	10	A	Costa Tarragona II	2240 N. Padre Island Dr.	Corpus Christi	Urban	<input type="checkbox"/> <input type="checkbox"/>	96	96	G	NC	\$1,333,459*	John D. Bell	<input checked="" type="checkbox"/>	211.0	Significant Sub-Regional Shortfall in Statewide Collapse
-------	----	---	--------------------	--------------------------	----------------	-------	---	----	----	---	----	--------------	--------------	-------------------------------------	-------	--

**Total: 96 96 \$1,333,459**

10132	10	N	Seaside Manor	SWC of FM 1069 and Gallion St.	Ingleside	Urban	<input type="checkbox"/> <input type="checkbox"/>	100	100	E	NC	\$1,103,591*	Justin MacDonald	<input checked="" type="checkbox"/>	206.0	Not Competitive in Region
-------	----	---	---------------	--------------------------------	-----------	-------	---	-----	-----	---	----	--------------	------------------	-------------------------------------	-------	---------------------------

**Total: 100 100 \$1,103,591**

**Total: 196 196 \$2,437,050**

**Applications Submitted in Region 10: Rural**

10220	10	A	Casa Ricardo	200 W. Yoakum Ave.	Kingsville	Rural	<input type="checkbox"/> <input type="checkbox"/>	60	60	E	RH	\$650,580	Socorro "Cory" Hinosoja	<input checked="" type="checkbox"/>	218.0	Significant Sub-Regional Shortfall in Rural Collapse
-------	----	---	--------------	--------------------	------------	-------	---	----	----	---	----	-----------	-------------------------	-------------------------------------	-------	--

**Total: 60 60 \$650,580**

**Total: 60 60 \$650,580**

**3 Applications in Region**

**Region Total: 256 256 \$3,087,630**

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>	
<b>Region: 11</b>																	
<b>Allocation Information for Region 11: Total Credits Available for Region: \$5,724,980 Urban Allocation: \$3,636,663 Rural Allocation: \$2,088,317</b>																	
<b>Applications Submitted in Region 11: Urban</b>																	
10222	11	A	Citrus Gardens	2100 Grapefruit	Brownsville	Urban	<input type="checkbox"/> <input type="checkbox"/>	148	148	G	RH	\$1,807,115	Antonio Juarez	<input type="checkbox"/>	222.0	Competitive in Region	
10122	11	A	La Terraza at Lomas del Sur	E. side of Ejido Blvd. (approx. 2000LF S. of the intersection of Ejido Blvd. & Wormser Rd.)	Laredo	Urban	<input type="checkbox"/> <input type="checkbox"/>	128	128	G	NC	\$1,688,609	Carlos Villarreal	<input type="checkbox"/>	211.0	Competitive in Region	
								<b>Total:</b>	<b>276</b>	<b>276</b>			<b>\$3,495,724</b>				
10135	11	N	Champion Homes at Canyon Creek	1700 N. Minnesota Ave.	Brownsville	Urban	<input type="checkbox"/> <input type="checkbox"/>	100	100	G	NC	\$1,348,738*	Saleem Jafar	<input type="checkbox"/>	199.0	\$2M Cap Violation; Not Competitive in Region	
10223	11	N	Sunset Terrace Senior Village	700 W. Egly	Pharr	Urban	<input type="checkbox"/> <input checked="" type="checkbox"/>	80	80	E	NC	\$837,980*	J. Fernando Lopez	<input checked="" type="checkbox"/>	193.0	Not Competitive in Region	
								<b>Total:</b>	<b>180</b>	<b>180</b>			<b>\$2,186,718</b>				
								<b>Total:</b>	<b>456</b>	<b>456</b>			<b>\$5,682,442</b>				
<b>Applications Submitted in Region 11: Rural</b>																	
10014	11	A	Artisan at Port Isabel	100 Hockaday and 100 Ash Dr.	Port Isabel	Rural	<input type="checkbox"/> <input type="checkbox"/>	74	74	G	RH	\$1,317,863	Ryan Wilson	<input checked="" type="checkbox"/>	216.0	Competitive in Region	
								<b>Total:</b>	<b>74</b>	<b>74</b>			<b>\$1,317,863</b>				
10262	11	R	Las Brisas Manor	1970 US Hwy 277 S.	Del Rio	Rural	<input type="checkbox"/> <input type="checkbox"/>	48	48	E	NC	\$698,724*	Mark du Mas	<input checked="" type="checkbox"/>	215.0	Competitive in Region	
								<b>Total:</b>	<b>48</b>	<b>48</b>			<b>\$698,724</b>				
10151	11	N	Sunflower Estates	404 Lion's Villa Ave.	La Feria	Rural	<input type="checkbox"/> <input type="checkbox"/>	77	79	G	NC	\$1,010,136*	Sunny K. Philip	<input checked="" type="checkbox"/>	211.0	Not Competitive in Region	
								<b>Total:</b>	<b>77</b>	<b>79</b>			<b>\$1,010,136</b>				
								<b>Total:</b>	<b>199</b>	<b>201</b>			<b>\$3,026,723</b>				
<b>7 Applications in Region</b>							<b>Region Total:</b>	<b>655</b>	<b>657</b>			<b>\$8,709,165</b>					

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.



Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 12**

<b>Allocation Information for Region 12:</b>	<b>Total Credits Available for Region: \$1,058,829</b>	<b>Urban Allocation: \$466,309</b>	<b>Rural Allocation: \$592,520</b>
--	--	------------------------------------	------------------------------------

<b>Applications Submitted in Region 12: Urban</b>																	
10103	12	A	Gateway Plaza Apts	NWC of Loop 250 and W. Hwy. 80	Midland	Urban	<input type="checkbox"/>	<input type="checkbox"/>	95	96	G	NC	\$1,077,000	Michael B. Wilhoit	<input type="checkbox"/>	200.0	Significant Sub-Regional Shortfall in Statewide Collapse
									<b>Total:</b>	<b>95</b>	<b>96</b>			<b>\$1,077,000</b>			
									<b>Total:</b>	<b>95</b>	<b>96</b>			<b>\$1,077,000</b>			
<b>Applications Submitted in Region 12: Rural</b>																	
10270	12	A	Gateway to Eden	Grant/Rudder and Kelly St.	Eden	Rural	<input type="checkbox"/>	<input type="checkbox"/>	17	17	G	NC	\$268,527*	Ethan Horne	<input checked="" type="checkbox"/>	136.0	Appeal Pending
									<b>Total:</b>	<b>17</b>	<b>17</b>			<b>\$268,527</b>			
									<b>Total:</b>	<b>17</b>	<b>17</b>			<b>\$268,527</b>			
<b>2 Applications in Region</b>								<b>Region Total:</b>	<b>112</b>	<b>113</b>			<b>\$1,345,527</b>				

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.  
2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.  
3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.  
4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.  
5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.  
6 = Comment: Reason for Recommendation  
\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

Region	File #	Status <sup>1</sup>	Development Name	Address	City	Allocation <sup>2</sup>	Set-Asides <sup>3</sup> USDA NP	LI Units	Total Units	Target <sup>4</sup> Pop	Housing <sup>5</sup> Activity	Recommended* Credit	Owner Contact	TDHCA HOME	Final Score	Comment <sup>6</sup>
--------	--------	---------------------	------------------	---------	------	-------------------------	------------------------------------	-------------	----------------	----------------------------	----------------------------------	------------------------	------------------	---------------	----------------	----------------------

**Region: 13**

<b>Allocation Information for Region 13:</b>	<b>Total Credits Available for Region: \$2,219,470</b>	<b>Urban Allocation: \$1,593,917</b>	<b>Rural Allocation: \$625,553</b>
--	--	--------------------------------------	------------------------------------

**Applications Submitted in Region 13: Urban**

10176	13	A	Canyon Square Village	8622 & 8624 N. Loop Rd.	El Paso	Urban	<input type="checkbox"/> <input type="checkbox"/>	104	104	G	NC	\$1,293,104	Ike J. Monty	<input type="checkbox"/>	209.0	Competitive in Region
<b>Total:</b>								<b>104</b>	<b>104</b>			<b>\$1,293,104</b>				
10024	13	N	Canutillo Palms	Parcel directly South of Canutillo High School. 200 ft West of I-10	El Paso	Urban	<input type="checkbox"/> <input type="checkbox"/>	172	172	G	NC	\$2,000,000*	R.L. "Bobby" Bowling IV	<input type="checkbox"/>	192.0	Not Competitive in Region
<b>Total:</b>								<b>172</b>	<b>172</b>			<b>\$2,000,000</b>				
<b>Total:</b>								<b>276</b>	<b>276</b>			<b>\$3,293,104</b>				

**Applications Submitted in Region 13: Rural**

10022	13	A	Presidio Dolores Apts	12473 Cuatro Aces Circle	San Elizario	Rural	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	36	36	G	NC	\$725,184*	Albert Davalos	<input type="checkbox"/>	161.0	Significant Sub-Regional Shortfall in Rural Collapse	
<b>Total:</b>								<b>36</b>	<b>36</b>			<b>\$725,184</b>					
<b>Total:</b>								<b>36</b>	<b>36</b>			<b>\$725,184</b>					
<b>3 Applications in Region</b>								<b>Region Total:</b>	<b>312</b>	<b>312</b>			<b>\$4,018,288</b>				

<b>102 Total Applications</b>								<b>11,646</b>	<b>11,722</b>			<b>\$135,372,019</b>				
-------------------------------	--	--	--	--	--	--	--	---------------	---------------	--	--	----------------------	--	--	--	--

1 = Status of Award Abbreviation: Development Previously Awarded 2009 Housing Tax Credits=A, Recommended for Award=R, Not Recommended for Award=N.

2 = Allocation: Rural Regional Allocation or Urban Regional Allocation.

3 = Set-Aside Abbreviations: TRDO-USDA=USDA, Nonprofit=NP.

4 = Target Population Abbreviation: Intergenerational=I, Elderly=E, General=G.

5 = Housing Activity: New Construction=NC, Rehabilitation (includes Reconstruction)=RH, Adaptive Reuse=ADR.

6 = Comment: Reason for Recommendation

\* = Recommended Credit: Development is displaying the requested amount because a real estate analysis has not yet been completed.

**MULTIFAMILY FINANCE DIVISION  
BOARD ACTION REQUEST**

**September 9, 2010**

**Recommended Action**

Staff does not recommend the Issuance of Forward Commitments for Allocations from the 2011 State Housing Credit Ceiling for 2010 Applications. However, if the Board determines otherwise, it is recommended that the following form of resolution be used:

**WHEREAS**, the Board, as permitted under §50.10(c) of the 2009 Qualified Allocation Plan and Rules (the “QAP”), may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance, and

**WHEREAS**, forward commitments made this year will reduce the amount of Housing Tax Credits available in 2011 to other qualified applications that will be submitted for the 2011 Application Round, and

**WHEREAS**, the scoring process and Department rules were objectively applied to all 2010 Applications and those Applications not recommended for an award did not achieve a competitive score and/or did not meet the requirements of the program; and

**WHEREAS**, the Board has heard public comment and determined that certain forward commitments are appropriate.

It is hereby:

RESOLVED, that the Board approves the award of the following forward commitments:

**Background**

The Board may consider all Applications submitted under the 2010 Application Round. Included with this Board Action Request is a list of the Applications that have received awards and Applications that remain on the 2010 Waiting List. Pursuant to §50.10(c) of the 2010 QAP, “The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors”.

The following issues should be noted:

1. As described in §50.10(c) of the 2010 QAP: “Applications that are submitted under the 2010 QAP and granted a Forward Commitment of 2011 Housing Tax Credits are considered by

the Board to comply with the 2011 QAP by having satisfied the requirements of this 2010 QAP, except for statutorily required QAP changes.”

2. As described in §50.10(c)(1) of the 2010 QAP: “Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the Credit Ceiling from which the credits are allocated.”
3. For any Application approved by the Board for a forward commitment, the credit amount awarded will be attributed to the respective region and Set-Asides from the 2011 State Housing Credit Ceiling to ensure adherence to the requirements of §2306.6714 and the Regional Allocation Formula in 2010.
4. Any approved Applications will be reviewed to ensure that they do not have Material Noncompliance consistent with §50.5(b)(2) and (3) of the 2010 QAP.
5. Any approved Applications will be reviewed consistent with §50.6(f) of the 2010 QAP to ensure that they do not have any violations of the “one-mile, one-year test.” This rule prohibits the Department from allocating to an Application with a proposed site that is within one mile of any other Application’s proposed site awarded in the same calendar year.
6. Staff will review to ensure that consistent with §50.6(d) of the 2010 QAP, the Department “shall not allocate more than \$2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor.” The allocation will be counted in the year of the award.
7. Any Applications that have not been reviewed, at this time, will be reviewed for Eligibility and Threshold, financial feasibility and compliance with previous participation; conditions to the award and the amount of final credits awarded will be those identified by Real Estate Analysis and/or Multifamily Finance Division.

### **Recommendations**

Staff does not recommend the allocation of forward commitments at this time. Generally, Applications that did not score sufficiently to be awarded credits in the application round would be eligible to reapply in 2011 under the terms of the new QAP. Without the reapplication process, the deals awarded out of next year’s allocation will not be held to the same standards as other applicants in 2011.

**HOME PROGRAM DIVISION**

**BOARD ACTION REQUEST**

**September 9, 2010**

**Recommended Action**

Approve as presented the 2010 HOME Multifamily Development Program Notice of Funding Availability (NOFA) for publication in the *Texas Register* and discontinue the previous 2010 Rental Housing Development NOFA.

**RESOLVED**, the Executive Director and his designees and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to publish the 2010 HOME Multifamily Development Program Notice of Funding Availability in the *Texas Register* in the form presented to this meeting and in connection therewith to make such non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing, and

**FURTHER RESOLVED**, that the 2010 HOME Rental Housing Development Notice of Funding Availability is hereby discontinued effective as of the date that the 2010 HOME Multifamily Development Program NOFA is published in the *Texas Register*.

**Background**

In January 2010, the Board approved the 2010 HOME Rental Housing Development (RHD) NOFA. Subsequently, the Board approved the addition of \$10,500,000 in returned and deobligated funds to this NOFA in March 2010, bringing total funds available to \$22,027,136. Demand for these funds was high, with the majority of applications requesting funding in conjunction with 9% tax credit applications. All remaining funds available under this NOFA were awarded at the July 29, 2010 Board meeting.

The Department has executed its 2010 Grant Agreement with HUD; therefore, 2010 funding is now available to be programmed for various uses in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP) approved by HUD. Staff anticipates demand for multifamily funds will continue to be high, and recommends a total of \$18,218,765 be made available under the MFD NOFA, with \$10,500,000 available under the General Set-Aside, \$6,539,074 available under the CHDO Set-Aside, and \$1,179,691 available under the Persons with Disabilities Set-Aside.

The \$10,500,000 in funds under the General Set-Aside includes \$5,000,000 from the 2010 allocation, \$2,000,000 in projected program income in accordance with the OYAP, and \$3,500,000 from the Department's balance of funds available for programming. Currently, \$500,000 of the projected \$2,000,000 in program income is available and staff will continue to

transfer program income as it becomes available to meet the OYAP. Additionally, staff recommends the transfer of \$3,500,000 from the Department's balance of funds available for programming to the General Set-Aside, which results in a total of \$10,500,000 available under the General Set-Aside. All of the funding made available under the NOFA is subject to the Regional Allocation Formula, except for the PWD Set-Aside funds and funds being programmed from the Department's available balance, in accordance with §2306.111(d) of Texas Government Code until November 30, 2010, after which time funds will be made available in all non-Participating Jurisdictions of the state. Only funds under the PWD Set-Aside are available for use in HUD Participating Jurisdictions in accordance with §2306.111 of Texas Government Code. The RAF Tables are not included in the NOFA but will be available on the Department's website, as stated in the NOFA.

Under the 2010 RHD NOFA, eighteen (18) pending applications totaling \$25,114,556 in funds did not receive an award of funds. All of these applicants also applied under the 2010 competitive tax credit cycle and two (2) of these applicants received a commitment of housing tax credits at the July 29, 2010 Board meeting but, due to insufficient funds, were unable to receive an award of HOME funds. Staff recommends the transfer of all 18 pending applications to the 2010 MFD NOFA subject to meeting all program requirements in place at the time of application submission. This will allow those applications that remain on the housing tax credit waiting list to remain in queue for HOME funds under the 2010 MFD NOFA. Additionally, the two (2) applications for funding under PWD Set-Aside that previously received a commitment of housing tax credits are being recommended today under a separate board item. If these applications are approved, \$179,691 will remain available under this Set-Aside, and approximately \$24M in applications will remain under review.

In addition, with the addition of many program requirements to the 2010 HOME Program Rule, some parts of the NOFA have become redundant. These passages, including several threshold requirements, loan terms, and financial capacity requirements, have been deleted from the revised NOFA. Funding will continue to be limited to \$2,000,000 per Application; no substantive changes have been made to NOFA requirements.

The availability and use of these funds are subject to the Department's HOME Program Rule (10 TAC Chapter 53), the federal regulations governing the HOME Program (24 CFR Part 92), and the Department's Real Estate Analysis Rules and Guidelines (10 TAC §§1.32-1.37). An open application cycle will be used to process applications received in response to this NOFA.

The proposed NOFA and RAF Tables are attached behind this action item.



**Texas Department of Housing and Community Affairs  
HOME Investment Partnerships Program**

**Multifamily Development Program  
Notice of Funding Availability (NOFA)**

- 1) **Summary.** The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of up to \$18,218,765 in funding from the HOME Investment Partnerships Program for the development of affordable multifamily rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (“HOME Rules”) in effect at the time Application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and 84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.
- 2) **Allocation of HOME Funds.**
  - a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for Multifamily Development activities involving acquisition and new construction or acquisition and rehabilitation of affordable housing. The funds made available under this NOFA are subject to the following set-asides.
    - i) **CHDO Set-Aside.** At least \$6,539,074 in funds are set-aside to eligible Community Housing Development Organizations (CHDOs) meeting the requirements of 10 TAC §53.90 and this NOFA.
    - ii) **Persons with Disabilities Set-Aside.** \$1,179,691 in funds are set-aside to fund Applications proposing all of their HOME units to be restricted for persons with disabilities and are subject to the Department’s Integrated Housing Rule at 10 TAC §1.15. Funds requested and awarded under this set-aside may be located in any area of the state including within other Participating Jurisdictions. Funds requested and awarded under this set-aside are subject to a \$500,000 per Application funding limit.
    - iii) **General Set-Aside.** The remaining \$10,500,000 in funds shall be available to all other Applications proposing Multifamily Development that meet the requirements of this NOFA, the HOME Program Rule, and the Federal HOME regulations. Of these funds, \$5,000,000 is made available from the 2010 allocation, \$3,500,000 made available from the Department’s balance of funds available for programming and

\$2,000,000 in projected program income, as available, in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP). Currently, approximately \$500,000 in program income is being made available and additional program income will be added when received throughout the year. Of the funds made available, only the \$3,500,000 in funds from the Department's balance of funds available for programming is not subject to the Regional Allocation Formula (RAF); the remaining funds are regionally allocated as reflected in Table 2.

iv) An Applicant may have only one active Application at a time and may only apply under one set-aside at a time. Additionally, the following processes will be followed for the review and award of Applications:

(1) Once all funds from the CHDO Set-Aside have been awarded, all pending Applications remaining in this set-aside will be considered for funds under the General Set-Aside;

(2) Once all funds from the Persons with Disabilities Set-Aside have been awarded, pending Applications under this set-aside must reapply to be considered under the General or other set-asides due to the different statutory and NOFA requirements for these Applications; and

(3) The Department may complete the CHDO Certification process for Applications that originally applied under the CHDO Set-Aside but receiving funds from the General Set-Aside in order to meet the Department's future obligations to award funds for CHDO activities.

b) This NOFA will be conducted as an open Application cycle and funding will be available on a first-come, first-served basis. Applications for funds under the CHDO or General Set-Asides, submitted prior to 5:00 p.m. on **November 30, 2010** are subject to the Regional Allocation Formula (RAF). The RAF tables for each set-aside can be accessed at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) Funds under the Persons with Disabilities Set-Aside are not subject to regional allocation.

c) Based on the availability of funds, Applications for the statewide open Application cycle will be accepted until 5:00 p.m. **April 29, 2011**. Project funds awards are limited to no more than **\$2,000,000** per Application except for Applications receiving funds from the Persons with Disabilities set-aside as provided in §(2)(a)(ii) of this NOFA.

d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least \$15,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program.

### 3) **Eligible and Prohibited Activities.**

a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 53.



- b) Multifamily Development funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside.
- 4) **Site and Development Restrictions.** In addition to the requirements in 10 TAC Chapters 53 and 60, Developments must meet the requirements at 10 TAC §50.6 of the Qualified Allocation Plan and Rules apply, except for subsections (d), (f), (g), (h), and (k).
- 5) **Public Notification Requirements.** Applicants must request at least fourteen (14) days prior to submission of an Application and submit with the Application a list of Neighborhood Organizations on record with the county and state in accordance with 10 TAC §50.9(h)(8)(A)(i). The Department **shall** publicly notify all individuals and entities required by §2306.1114 of Texas Government Code.
- 6) **Application and Threshold Criteria.** An Application must be compliant with the Threshold requirements in 10 TAC §§53.24 and 53.80 and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 53.
- a) **Affirmative Marketing.** Documentation of compliance with the Affirmative Marketing requirements in the Fair Housing Act and the Department's Compliance Rules at 10 TAC §60.112(d). Applicants will be required to use HUD form 935.2a to meet these requirements.
- b) **Application Certifications.** All Applicants will be required to certify to compliance with the following:
- i) Davis-Bacon Act (24 CFR §92.354);
  - ii) Environmental standards (24 CFR Parts 50 & 58);
  - iii) Uniform Relocation Act (49 CFR Part 24);
  - iv) Lead Safe Housing Rule (24 CFR Part 35);
  - v) Other certifications may be required as specifically stated in the ASPM current at the time of Application; and
  - vi) Audit Certification. An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).
- c) **CHDO Certification.** Requirements under this subsection must only be met for Applications considered for an award of funds from the CHDO Set-Aside. CHDO Certification will be awarded in accordance with the rules and procedures as set forth by 10 TAC §53.90, Community Housing Development Organization (CHDO) Certification.

- 7) **Tie Breaker Factors.** In the event that two or more Applications receive the same priority based upon the provisions of §10 of this NOFA in any given Set-Aside category and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive a preference in consideration for an awarded of funds.
- a) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction or Adaptive Reuse.
  - b) The Application with the least amount of HOME funds per HOME restricted unit will win this second tier tie breaker.
- 8) **Application Submission**
- a) All Applications submitted under this NOFA must be received on or before **5:00 p.m. Friday, April 29, 2011.** The Department will accept Applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published in the Texas Register until the deadline date. For questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via e-mail at HOME@tdhca.state.tx.us.
  - b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.
  - c) All Applications must be submitted, and provide all documentation, as described in this NOFA and associated Application materials.
  - d) Applicants must submit the Application materials as detailed in the ASPM in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the ASPM in effect at the time the Application is submitted.
  - e) The Application consists of several parts as described in the ASPM. A complete Application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete Applications or improperly compiled Applications will not be accepted. Applicants must submit the Application materials as detailed in the ASPM in effect at the time the Application is submitted.
  - f) Third Party Reports. If all applicable third party reports are not received at the time of Application submission, the Application will be terminated.
  - g) If a Development has an existing Housing Tax Credit allocation or HOME contract with the Department and construction on the development has not begun, an abbreviated Application for a HOME award or for an increase in the existing HOME award can be

submitted under this NOFA. If additional funds are sought, such an Application may also request that the terms for the additional HOME funds also apply for the funds in an existing HOME Contract. The entire amount of HOME funds received from the Department may not exceed the maximum award per development as reflected in this NOFA for the respective set-aside. An Application qualifying for the abbreviated Application process may be considered by staff to have already met the threshold requirements in §§(8) and (9)(a) of this NOFA without additional review unless staff determines additional documentation is required in accordance with §(13)(h) of this NOFA.

- h) The requirements of the abbreviated Application will be reflected in the Application Submission Procedures Manual (ASPM). In addition to the Application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full Application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full Application and an amendment may be required for any Application that includes changes to the previous Board approved Application beyond those that are directly related to the development costs, financing structure or additional HOME program related requirements or that affect an existing allocation of Housing Tax Credits.
- i) All Application materials including manuals, NOFAs, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- j) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. An Application fee is not required for Applications submitted pursuant to §(13)(g) of this NOFA and that have an existing HOME Contract with the Department. The Application fee is not a reimbursable cost under the HOME Program.
- k) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.
- l) Applications must be sent via overnight delivery to:

**HOME Program Division  
Texas Department of Housing and Community Affairs  
Attn: Chris Law  
221 East 11th Street  
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**HOME Program Division  
Texas Department of Housing and Community Affairs  
Attn: Chris Law  
Post Office Box 13941  
Austin, TX 78711-3941**

**2010 HOME Multifamily Development Program  
Regional Allocation Formula**

**Table 1. CHDO Set-Aside Regional Allocation**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$298,159	4.5%	\$298,121	100.0%	\$38	0.0%
2	Abilene	\$187,506	3.4%	\$184,969	98.6%	\$2,537	1.4%
3	Dallas/Fort Worth	\$1,306,126	18.6%	\$510,236	39.1%	\$795,890	60.9%
4	Tyler	\$643,722	10.1%	\$555,467	86.3%	\$88,255	13.7%
5	Beaumont	\$346,124	5.3%	\$315,702	91.2%	\$30,422	8.8%
6	Houston	\$593,986	10.7%	\$177,970	30.0%	\$416,016	70.0%
7	Austin/Round Rock	\$430,245	7.7%	\$173,377	40.3%	\$256,868	59.7%
8	Waco	\$251,062	4.5%	\$120,690	48.1%	\$130,371	51.9%
9	San Antonio	\$334,413	4.9%	\$249,101	74.5%	\$85,312	25.5%
10	Corpus Christi	\$396,228	5.9%	\$306,386	77.3%	\$89,842	22.7%
11	Brownsville/Harlingen	\$1,291,383	17.3%	\$702,259	54.4%	\$589,124	45.6%
12	San Angelo	\$286,212	3.8%	\$161,544	56.4%	\$124,668	43.6%
13	El Paso	\$173,907	3.1%	\$85,957	49.4%	\$87,951	50.6%
Total		\$6,539,074	100.0%	\$3,841,779	58.8%	\$2,697,295	41.2%

**Table 2. General Set-Aside Regional Allocation\***

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$319,176	4.5%	\$319,135	100.0%	\$40	0.0%
2	Abilene	\$200,723	3.4%	\$198,007	98.6%	\$2,716	1.4%
3	Dallas/Fort Worth	\$1,398,192	18.6%	\$546,202	39.1%	\$851,991	60.9%
4	Tyler	\$689,097	10.1%	\$594,621	86.3%	\$94,476	13.7%
5	Beaumont	\$370,522	5.3%	\$337,955	91.2%	\$32,567	8.8%
6	Houston	\$635,855	10.7%	\$190,515	30.0%	\$445,340	70.0%
7	Austin/Round Rock	\$460,572	7.7%	\$185,597	40.3%	\$274,974	59.7%
8	Waco	\$268,759	4.5%	\$129,198	48.1%	\$139,561	51.9%
9	San Antonio	\$357,985	4.9%	\$266,660	74.5%	\$91,325	25.5%
10	Corpus Christi	\$424,157	5.9%	\$327,982	77.3%	\$96,175	22.7%
11	Brownsville/Harlingen	\$1,382,410	17.3%	\$751,760	54.4%	\$630,650	45.6%
12	San Angelo	\$306,386	3.8%	\$172,931	56.4%	\$133,455	43.6%
13	El Paso	\$186,166	3.1%	\$92,016	49.4%	\$94,150	50.6%
Total		\$7,000,000	100.0%	\$4,112,579	58.8%	\$2,887,421	41.2%

\* Reflects \$5,000,000 in 2010 funds and \$2,000,000 in projected program income in accordance with the OYAP.

**HOME PROGRAM DIVISION**  
**BOARD ACTION REQUEST**  
**September 9, 2010**

**Recommended Action**

Approve HOME Program Award Recommendations from the 2010 Rental Housing Development (RHD) Program Notice of Funding Availability (NOFA), involving the award of two (2) applications, totaling \$1,000,000 in project funds.

**RESOLVED**, that the award of contracts for development of Auburn Square and Britain Way, totaling \$1,000,000 in project funds, subject to the conditions of the underwriting reports, is hereby approved in the form presented to this meeting.

**Background**

On May 12, 2010, the Board approved the addition of \$10,500,000 in returned and deobligated funds to the 2010 Rental Housing Development (RHD) NOFA. At the July 29, 2010 Board Meeting, the Board awarded all remaining funds in this NOFA to 18 applications requesting funding in conjunction with 9% tax credit allocations.

The two applications recommended are requesting funding under the PWD Set-Aside. Both received 9% tax credit allocations, subject to the completion of underwriting, at the July Board meeting. However, these applications could not be recommended for HOME PWD funds at that time due to the Department having already utilized 5% of its 2009 HOME allocation in Participating Jurisdictions (PJs); this limit is outlined at §2306.111(c) of the Texas Government Code.

The Department has executed its 2010 Grant Agreement with HUD; therefore, 2010 Program Year funding is now available to be programmed for various uses in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP) approved by HUD. Staff is recommending 2010 funds be made available in new NOFAs under separate board items today. In accordance with the 2010 OYAP, \$1,179,691 is available under the multifamily Persons with Disabilities Set-Aside.

Staff recommends the aforementioned applications be funded using the 2010 funds under this NOFA set-aside for Persons with Disabilities (PWD). Both applications have completed all stages of the Department's review process at this time, including underwriting under the 2009 HOME Program Rules and will be required to execute a contract under and follow the requirements of the 2009 HOME Program Rules.

If the NOFA is approved and the recommended applications are awarded, \$179,691 will remain available under the PWD Set-Aside, with \$7,000,000 available under the General Set-Aside and \$6,539,074 available under the CHDO Set-Aside. The application acceptance period ends on December 31, 2010.

Attached are the Application and Award Recommendations Logs and the underwriting reports.

## 2010 HOME Rental Housing Development Program - Application Log

Tuesday, August 24, 2010

Application Acceptance Period: 9/10/2010 to 6/30/2011

Total Funding Amount: \$14,718,765

Total Set-Aside Funding Level: \$7,000,000

Available Balance: \$7,000,000

### General Set-Aside

File #	Reg.	Received By Date	Development Name	City	Housing Actvty(1)	Reqstd HOME Units	Total Units	Target(2) Population	Layering (3)			Requested Project Funds	Awarded / Recommended Project Funds	CHDO	Requested CHDO Funds	Awarded / Recommended CHDO Funds	Status	
									9%	4%	HTF							
10039	4	2/23/2010	Paris Retirement Village II	Paris	NC	19	80	Elderly	Yes	No	No	\$1,850,000		N	\$0		Under Review	
10223	11	2/25/2010	Sunset Terrace Senior Village	Pharr	NC	22	80	Elderly	Yes	No	No	\$2,000,000		N	\$0		Under Review	
10033	4	2/26/2010	Sulphur Springs Pioneer Crossing for Seniors	Sulphur Springs	NC	20	80	Elderly	Yes	No	No	\$2,000,000		N	\$0	\$0	Under Review	
10262	11	3/1/2010	Las Brisas Manor	Del Rio	NC	15	48	Elderly	Yes	No	No	\$1,907,548		N	\$0		Under Review	
10257	3	3/1/2010	The Colony at Lake Granbury	Granbury	NC	16	80	Elderly	Yes	No	No	\$990,000		N	\$0		Under Review	
10151	11	3/2/2010	Sunflower Estates	La Feria	NC	8	79	General	Yes	No	No	\$792,008		N	\$0		Under Review	
10121	9	3/16/2010	Mesquite Place	Pearsall	NC	16	80	General	Yes	No	No	\$1,300,000		N	\$0		Under Review	
10132	10	3/22/2010	Seaside Manor	Ingleside	NC	20	100	Elderly	Yes	No	No	\$550,000		N	\$0		Under Review	
10023	2	3/26/2010	Burkburnett Pioneer Crossing for Seniors	Burkburnett	NC	20	80	Elderly	Yes	No	No	\$2,000,000		N	\$0		Under Review	
10235	7	4/1/2010	Villas of Giddings	Giddings	NC	22	36	General	Yes	No	No	\$2,000,000		N	\$0		Under Review	
<b>Total HOME Applications</b>						<b>10</b>	<b>Unit Totals:</b>		<b>178</b>	<b>743</b>	<b>Fund Totals:</b>			<b>\$15,389,556</b>		<b>\$0</b>	<b>\$0</b>	

Total Set-Aside Funding Level: \$6,539,074

Available Balance: \$6,539,074

### CHDO Set-Aside

File #	Reg.	Received By Date	Development Name	City	Housing Actvty(1)	Reqstd HOME Units	Total Units	Target(2) Population	Layering (3)			Requested Project Funds	Awarded / Recommended Project Funds	CHDO	Requested CHDO Funds	Awarded / Recommended CHDO Funds	Status
									9%	4%	HTF						
10137	3	1/29/2010	Evergreen at Wylie	Wylie	NC	32	160	Elderly	Yes	No	No	\$2,000,000		Y	\$50,000		Under Review

Sorted by Date and Time Received

1 = Housing Activity: New Construction=NC, Rehabilitation = R

2 = Target Population Abbreviation: Intergenerational=Intg

3 = Layering of Other Department Active Applications: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program, HTF = Housing Trust Fund

File #	Reg.	Received By Date	Development Name	City	Housing Actvty(1)	Reqstd HOME Units	Total Units	Target(2) Population	Layering (3)			Requested Project Funds	Awarded / Recommended Project Funds	CHDO	Requested CHDO Funds	Awarded / Recommended CHDO Funds	Status	
									9%	4%	HTF							
10040	9	2/22/2010	Ashton Senior Village	Schertz	NC	36	176	Elderly	Yes	No	No	\$2,000,000		Y	\$50,000		Under Review	
10059	3	3/1/2010	Westway Place	Corsicana	NC		40	General	Yes	No	No	\$1,200,000		Y	\$0		Under Review	
10050	3	3/1/2010	West Park Senior Housing	Corsicana	NC	25	48	Elderly	Yes	No	No	\$1,025,000		Y	\$50,000		Under Review	
10241	5	3/10/2010	Timberland Trails Apts	Lufkin	R	31	80	General	Yes	No	No	\$2,000,000		Y	\$0		Under Review	
<b>Total HOME Applications</b>						<b>5</b>	<b>Unit Totals:</b>		<b>124</b>	<b>504</b>	<b>Fund Totals:</b>			<b>\$8,225,000</b>		<b>\$150,000</b>		

**Total Set-Aside Funding Level: \$1,179,691**

**Available Balance: \$1,179,691**

### PWD Set-Aside

File #	Reg.	Received By Date	Development Name	City	Housing Actvty(1)	Reqstd HOME Units	Total Units	Target(2) Population	Layering (3)			Requested Project Funds	Awarded / Recommended Project Funds	CHDO	Requested CHDO Funds	Awarded / Recommended CHDO Funds	Status	
									9%	4%	HTF							
10093	3	3/1/2010	Greenhaus at East Side Apts	Dallas	NC	13	24	General	Yes	No	No	\$500,000		N	\$0		Under Review	
10126	5	3/11/2010	Auburn Square	Vidor	NC	8	80	General	Yes	No	No	\$500,000	\$500,000	N	\$0	\$0	Pending Award 9/9/2010	
10153	3	3/31/2010	Britain Way	Irving	R	17	168	General	Yes	No	No	\$500,000	\$500,000	N	\$0	\$0	Pending Award 9/9/2010	
<b>Total HOME Applications</b>						<b>3</b>	<b>Unit Totals:</b>		<b>38</b>	<b>272</b>	<b>Fund Totals:</b>			<b>\$1,500,000</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$0</b>	

Sorted by Date and Time Received

1 = Housing Activity: New Construction=NC, Rehabilitation = R

2 = Target Population Abbreviation: Intergenerational=Intg

3 = Layering of Other Department Active Applications: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program, HTF = Housing Trust Fund



**2010 HOME Rental Housing Development Program - Award Recommendations**

Tuesday, August 24, 2010

Application Acceptance Period: 9/10/2010 to 6/30/2011

Total NOFA Amount: \$14,718,765

Total Set-Aside Funding Level: \$1,179,691

Available Balance: \$1,179,691

**PWD Set-Aside**

File #	Reg.	Received By Date	Development Name	City	Housing Actvty(1)	Reqstd HOME Units	Total Units	Target(2) Population	Layering (3)			Requested Project Funds	Awarded / Recommended Project Funds	CHDO	Requested CHDO Funds	Awarded / Recommended CHDO Funds	Status
									9%	4%	HTF						
10126	5	3/11/2010	Auburn Square	Vidor	NC	8	80	General	Yes	No	No	\$500,000	\$500,000	N	\$0	\$0	Pending Award 9/9/2010
10153	3	3/31/2010	Britain Way	Irving	R	17	168	General	Yes	No	No	\$500,000	\$500,000	N	\$0	\$0	Pending Award 9/9/2010
<b>Total HOME Applications</b>		<b>2</b>					<b>Unit Totals:</b>	<b>25</b>	<b>248</b>	<b>Fund Totals:</b>			<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$0</b>	

Sorted by Date and Time Received

1 = Housing Activity: New Construction=NC, Rehabilitation = R

2 = Target Population Abbreviation: Intergenerational=Intg

3 = Layering of Other Department Active Applications: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program, HTF = Housing Trust Fund



REPORT DATE: 07/28/10 PROGRAM: 9% HTC/HOME FILE NUMBER: 10126

**DEVELOPMENT**

Auburn Square

Location: 12.05 ± acre parcel East of 290 North Main St. Region: 5

City: Vidor County: Orange Zip: 77662  OCT  DDA

Key Attributes: General, New Construction, Rural, Non-Profit

**ALLOCATION**

TDHCA Program	REQUEST			RECOMMENDATION			
	Amount	Interest	Amort/Term	Amount	Interest	Amort/Term	Lien Position
HOME Activity Funds	\$500,000	1.00%	30/30	\$500,000	1.00%	30/18	2nd
Housing Tax Credit (Annual)	\$1,102,290			\$1,100,480			

**CONDITIONS**

- 1 Receipt, review and acceptance by commitment of a firm commitment for the \$950K local HOME funds with the terms clearly stated.
- 2 Receipt, review, and acceptance, by commitment, of evidence from the Housing Authority of the City of Orange that it has jurisdiction over utility allowances in Vidor, or alternatively, receipt of evidence of Department approval of other utility allowances within the following range: \$53-79 for one bedroom units, \$69-103 for two bedroom units, and \$86-129 for three bedroom units.
- 3 Receipt, review, and acceptance, by carryover, of evidence from the local taxing jurisdiction confirming that a 50% property tax exemption will be available to the development.
- 4 Receipt, review, and acceptance, before the 10% Test, of documentation that a comprehensive noise assessment has been completed to determine the requirements for the proposed development to satisfy HUD guidelines, and that any subsequent recommendations have been incorporated into the development plans.
- 5 Receipt, review and acceptance, by cost certification, of an attorney's opinion affirming that the \$950K local HOME cash flow loan can be repaid at or by maturity and can be considered valid debt.
- 6 Receipt, review, and acceptance, by Cost Certification, of documentation that all noise assessment recommendations were implemented.
- 7 Should the terms and rates of the proposed debt or syndication change, the transaction should be re-evaluated and an adjustment to the credit allocation amount may be warranted.

This section intentionally left blank.

**SALIENT ISSUES**

TDHCA SET-ASIDES for LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	5
50% of AMI	50% of AMI	35
60% of AMI	60% of AMI	40

**STRENGTHS/MITIGATING FACTORS**

- The most recent affordable development in the PMA, completed in 2008, was absorbed within 5 months.
- Overall occupancy in the PMA is 94.9%.
- The principals of the Applicant have experience developing and owning 4,763 Housing Tax Credit units.
- Proposed rents are on average 30% lower than market rents.

**WEAKNESSES/RISKS**

- Site has poor visibility from Main Street, with two existing businesses located on either side of the entrance to the development, and in between the site and Main Street.
- The feasibility of the development is dependent on the receipt of a \$950K local HOME loan, which has not yet been committed.

**PREVIOUS UNDERWRITING REPORTS**

No previous reports.

**DEVELOPMENT TEAM**

**OWNERSHIP STRUCTURE**



**CONTACT**

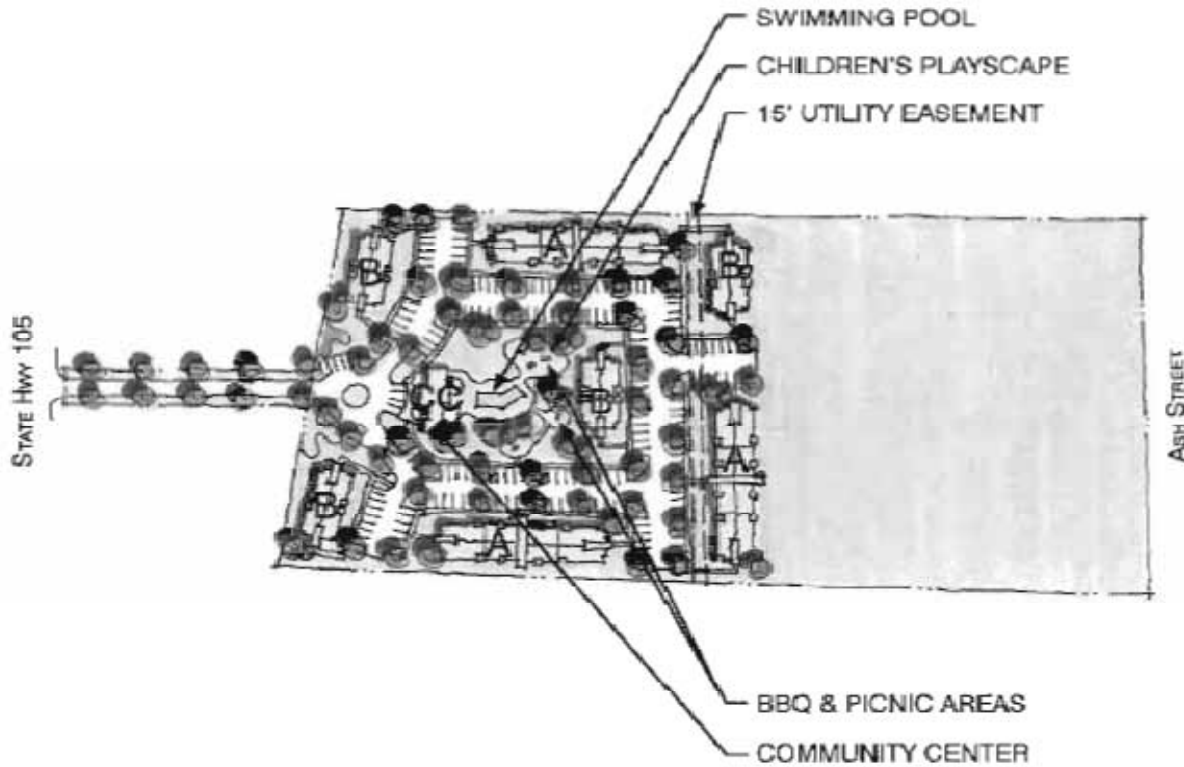
Contact: Vivian Ballou Phone: (409) 727-5987 Fax: (409) 727-5987  
 Email: vballou@yahoo.com

**IDENTITIES of INTEREST**

- The Applicant, Developer, and supportive services provider are related entities. In addition, the General Contractor and property manager, are related entities. These are common relationships for HTC-funded developments.

**PROPOSED SITE**

**SITE PLAN**



**Comments:**

The Applicant has confirmed that the undeveloped portion of the site will be kept as green space.

**BUILDING CONFIGURATION**

Building Type	A	B																		Total Buildings	
Floors/Stories	2	2																			
Number	3	4																			<b>7</b>

BR/BA	SF	Units										Total Units	Total SF									
1	1	712	4																		12	8,544
2	2	950	4																		12	11,400
2	2	963		8																	32	30,816
3	2	1,142	8																		24	27,408
Units per Building			16	8																	<b>80</b>	<b>78,168</b>

SITE ISSUES					
Total Size:	<u>12.05</u> acres	Scattered site?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Flood Zone:	<u>B and C</u>	Within 100-yr floodplain?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Zoning:	<u>N/A</u>	Needs to be re-zoned?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> N/A
Comments:	<u>No zoning.</u>				
TDHCA SITE INSPECTION					
Inspector:	<u>TDRA Staff</u>	Date:	<u>4/15/2010</u>		
Overall Assessment:	<input type="checkbox"/> Excellent <input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Questionable <input type="checkbox"/> Poor <input type="checkbox"/> Unacceptable				
Surrounding Uses:					
North:	<u>FM 1132/Evangeline Dr., residential, commercial &amp; vacant</u>	East:	<u>Ash Street, residential &amp; vacant</u>		
South:	<u>residential, commercial &amp; vacant</u>	West:	<u>FM 105/N. Main St., vacant &amp; commercial</u>		
HIGHLIGHTS of ENVIRONMENTAL REPORTS					
Provider:	<u>Terracon Consultants, Inc.</u>	Date:	<u>3/9/2010</u>		
Recognized Environmental Conditions (RECs) and Other Concerns:	<ul style="list-style-type: none"> <li>▫ "Terracon did not identify RECs which, in our opinion, warrant additional investigation at this time." (p. iii)</li> <li>▫ "North Main Street (FM Highway 105) runs adjacent west of the site. In accordance with U.S. Department of Housing and Urban Development guidelines and based on the proximity of a major roadway to the site, Terracon recommends that a noise study be conducted." (p. ii)</li> </ul>				
Comments:	<ul style="list-style-type: none"> <li>▫ Receipt, review, and acceptance, before the 10% Test, of documentation that a comprehensive noise assessment has been completed to determine the requirements for the proposed development to satisfy HUD guidelines, and that any subsequent recommendations have been incorporated into the development plans.</li> <li>▫ Receipt, review, and acceptance, by Cost Certification, of documentation that all noise assessment recommendations were implemented.</li> </ul>				
MARKET ANALYSIS					
Provider:	<u>Apartment MarketData</u>	Date:	<u>2/24/2010</u>		
Contact:	<u>Darrell Jack</u>	Phone:	<u>(210) 530-0040</u>		
Number of Revisions:	<u>None</u>	Date of Last Applicant Revision:	<u>N / A</u>		
Primary Market Area (PMA):	<u>137</u> sq. miles	<u>7</u> mile equivalent radius			
<u>The Primary Market Area is defined by 6 census tracts that make up the area of Vidor, TX.</u>					

This section intentionally left blank.

ELIGIBLE HOUSEHOLDS BY INCOME								
Orange County Income Limits								
HH size	30% of AMI		40% of AMI		50% of AMI		60% of AMI	
	min	max	min	max	min	max	min	max
1	\$10,457	\$11,400	---	---	\$17,417	\$19,000	\$20,914	\$22,800
2	\$10,457	\$13,050	---	---	\$17,417	\$21,700	\$20,914	\$26,040
3	\$12,549	\$14,650	---	---	\$20,949	\$24,450	\$25,131	\$29,340
4	\$14,503	\$16,300	---	---	\$24,171	\$27,150	\$29,006	\$32,580
5	\$14,503	\$17,600	---	---	\$24,171	\$29,300	\$29,006	\$35,160
6	---	---	---	---	---	---	---	---

AFFORDABLE HOUSING INVENTORY in PRIMARY MARKET AREA							
File #	Development			Type	Target Population	Comp Units	Total Units
Proposed, Under Construction, and Unstabilized Comparable Developments							
None							
Other Affordable Developments in PMA since 2006							
060092	Twelve Oaks Apts			new	family	n/a	70
Stabilized Affordable Developments in PMA ( pre-2006 )							
Total Properties ( pre-2006 )				1	Total Units	48	

Proposed, Under Construction, and Unstabilized Comparable Supply:

There are no proposed or unstabilized comparable developments in the PMA. The most recent development is Twelve Oaks Apartments, a 2006 project that has achieved stabilized operation.

There are numerous recent developments just west of the PMA in Beaumont; but the market areas for each of these were west of the Neches River, and therefore do not target the population of the subject PMA.

OVERALL DEMAND ANALYSIS		
	Market Analyst	Underwriter
Total Households in the Primary Market Area	10,343	10,343
Potential Demand from the Primary Market Area	790	746
Potential Demand from Other Sources	0	0
<b>GROSS DEMAND</b>	<b>790</b>	<b>746</b>
Subject Affordable Units	80	80
Unstabilized Comparable Units	0	0
<b>RELEVANT SUPPLY</b>	<b>80</b>	<b>80</b>
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>10.1%</b>	<b>10.7%</b>

Demand Analysis:

The Market Analyst identifies Gross Demand for 790 units based on all income-eligible households in the PMA; and a Gross Capture Rate of 10.1% for the subject 80 units. The Underwriter calculates Gross Demand for 746 units based on households of 1-5 persons; and a Gross Capture Rate of 10.7%.

The maximum Gross Capture Rate for rural developments targeting family households is 30%; the analysis indicates sufficient demand to support the proposed development.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	44	1	0	2%	20	1	0	5%
1 BR/50%	65	5	0	8%	34	5	0	15%
1 BR/60%	117	6	0	5%	26	6	0	23%
2 BR/30%	26	3	0	12%	21	3	0	14%
2 BR/50%	44	19	0	43%	39	19	0	49%
2 BR/60%	53	22	0	42%	41	22	0	53%
3 BR/30%	19	1	0	5%	13	1	0	8%
3 BR/50%	31	11	0	35%	20	11	0	55%
3 BR/60%	56	12	0	21%	31	12	0	39%

**Primary Market Occupancy Rates:**

The market study presents data indicating overall occupancy of 94.9% for a total of 156 units in the PMA.

**Absorption Projections:**

"Vidor 12 Oaks' (LIHTC) 70 units were built in 2008 and reached a stabilized occupancy after 5 months of leasing." (p. 50)

**Market Impact:**

"The proposed project is not likely to have a dramatically detrimental effect on the balance of supply and demand in this market. Affordable family units have been easily absorbed. Today, affordable projects are 93.2% occupied." (p. 54)

**Comments:**

The market study provides sufficient information on which to base a funding recommendation.

**OPERATING PROFORMA ANALYSIS**

Income:      Number of Revisions:      1      Date of Last Applicant Revision:      6/29/2010

The Applicant's projected rents collected per unit were calculated by subtracting tenant-paid utility allowances as of January 1, 2010 maintained by Housing Authority of the City of Orange, from the 2009 program gross rent limits. Tenants will be required to pay electric, water, and sewer costs.

Of note, it is unclear whether the Housing Authority of the City of Orange has jurisdiction in the City of Vidor. For the purpose of this analysis, the utility allowance from the Housing Authority of the City of Orange has been used. In addition, the Underwriter performed a sensitivity analysis to determine the range of utility allowances in which the development's DCR would fall within a 1.15 to 1.35 and in which the neither the analysis nor recommendation for funding would be materially affected. This range is: \$53-79 for one bedroom units, \$69-103 for two bedroom units, and \$86-129 for three bedroom units. Therefore, this report is conditioned on receipt, by commitment, of evidence from the Housing Authority of the City of Orange that it has jurisdiction over utility allowances in Vidor, or alternatively, receipt of evidence of Department approval of other utility allowances within this range.

Although 2010 rent limits have been released, for consistency with the analyses published earlier this year, the Underwriter has continued to utilize the 2009 program, in accordance with §1.32(d)(1)(iii) of the 2010 REA rules. Rent limits have increased by approximately 2.3%, and if used in the Underwriter's and Applicant's pro formas, DCR would increase to 1.26 and 1.23, respectively (assuming City of Orange utility allowances), and the recommended tax credit amount would not be affected. Tenants will be required to pay electric, water, and sewer costs.

The Applicant's secondary income and vacancy and collection loss assumptions are in line with current TDHCA underwriting guidelines and, effective gross income is within 5% of the Underwriter's estimate.

Expense:      Number of Revisions:      1      Date of Last Applicant Revision:      6/28/2010

The Applicant's total annual operating expense projection at \$3,832 per unit is within 5% of the Underwriter's estimate of \$3,789, derived from the TDHCA database, and third-party data sources. Of note, the Applicant's estimates of repairs and maintenance and utilities are 9% and 16% higher respectively, than the Underwriter's estimate; however, both items are in-line with the databases and therefore considered reasonable.

Also of note, the Applicant provided an insurance quote for the Subject from Brunswick Companies for a total annual insurance cost of \$15,888. The Underwriter has utilized this amount. Finally, the Applicant's estimate of property tax is 19% lower than the Underwriter's adjusted estimate. The Underwriter's estimate of \$24K/unit is based on a 10% cap rate, a 50% exemption and the Underwriter's NOI; however, the Subject qualifies as a CHDO, and as such, the Applicant's lower property tax estimate is reasonable. The Applicant did not provide documentation from the taxing jurisdiction to support the claimed 50% tax exemption; therefore, this report is conditioned on receipt, review, and acceptance, by carryover, of evidence from the local taxing jurisdiction confirming that a 50% property tax exemption will be available to the development.

**Conclusion:**

The Applicant's effective gross income, operating expenses, and net operating income are within 5% of the Underwriter's estimates; therefore, the Applicant's year one pro forma will be used to determine the development's debt capacity. The proposed permanent financing structure results in an initial year's debt coverage ratio (DCR) of 1.15, which is within the Department's DCR guideline of 1.15 to 1.35.

**Feasibility:**

The underwriting 30-year proforma utilizes a 2% annual growth factor for income and a 3% annual growth factor for expenses in accordance with current TDHCA guidelines. As noted above, the Applicant's base year effective gross income, expense and net operating income were utilized resulting in a debt coverage ratio that remains above 1.15 and continued positive cashflow. Therefore, the development can be characterized as feasible for the long-term.

**ACQUISITION INFORMATION**

**ASSESSED VALUE**

Land Only:      15.3 acres	<u>\$76,452</u>	Tax Year:	<u>2009</u>
Existing Buildings:	<u>\$20,940</u>	Valuation by:	<u>Orange CAD</u>
1 acre:	<u>\$4,990</u>	Tax Rate:	<u>2.45567</u>
Total Pro rata:    12.0 acres	<u>\$81,024</u>		

**EVIDENCE of PROPERTY CONTROL**

Type: <u>Agreement to Purchase Unimproved Real Estate</u>	Acreage: <u>± 12.04</u>
Contract Expiration: <u>12/17/2010</u>	Valid Through Board Date? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Acquisition Cost: <u>\$113,440</u>	Other: _____
Seller: <u>Richard &amp; Jodi Woodard</u>	Related to Development Team? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**CONSTRUCTION COST ESTIMATE EVALUATION**

*COST SCHEDULE*      Number of Revisions:      2      Date of Last Applicant Revision:      7/9/2010

**Acquisition Value:**

The site cost of \$9,422 per acre or \$1,418 per unit is assumed to be reasonable since the acquisition is an arm's-length transaction.



Off-Site Cost:

The Applicant claimed off-site costs of \$300K for sewer laterals and provided sufficient third party certification through an architect to justify these costs.

Sitework Cost:

The Applicant claimed sitework costs are over the \$9K per unit threshold that requires additional information largely due to extensive excavation, on-site concrete & paving, utilities & landscaping. The Applicant provided sufficient third party certification through a detailed certified cost estimate by an architect to justify these costs. In addition, these costs have been reviewed by the Applicant's CPA, Novogradac & Company, to preliminarily opine that all of the total \$1,123,384 will be considered eligible. The CPA has indicated that this opinion of eligibility has taken into account the effect of the recent IRS Technical Advisory Memorandums on the eligibility of sitework costs.

Direct Construction Cost:

The Applicant's direct construction cost estimate is \$293K or 7% higher than the Underwriter's Marshall & Swift Residential Cost Handbook-derived estimate.

Reserves:

The Applicant provided documentation to support \$81,907 in lease-up reserves in addition to the standard operating reserves allowed pursuant to REA rules. Therefore, the Underwriter has included this amount in addition to standard operating reserves.

Contingency & Fees:

The Applicant included \$125K of soft cost contingency in the indirect cost line item. Per REA Rules, the Underwriter moved this cost to the contingency line item. Because of this, the Applicant's contingency exceeds the 7% maximum by a total of \$14,311 based on their own construction costs. Consequently the Applicant's eligible fees in these areas have been reduced by the same amount. The Applicant's developer fee also exceeds 15% of the Applicant's adjusted eligible basis by \$1,154 and therefore the eligible portion of the Applicant's developer fee must be reduced by the same amount.

30% Increase to Eligible Basis

The development qualifies for a 30% increase in eligible basis because it is located in a rural area.

Conclusion:

The Applicant's total development cost is within 5% of the Underwriter's estimate; therefore, the Applicant's cost schedule will be used to determine the development's need for permanent funds and to calculate eligible basis. An eligible basis of \$9,405,816 supports annual tax credits of \$1,100,480. This figure will be compared to the Applicant's request and the tax credits calculated based on the gap in need for permanent funds to determine the recommended allocation.

**PROPOSED FINANCING STRUCTURE**

SOURCES & USES Number of Revisions: None Date of Last Applicant Revision: N/A

Source: Lifestyle Neighborhood Co. Type: Interim Financing

Principal: \$220,000 Interest Rate: 7.0%  Fixed Term: 15 months

Comments:

Lifestyle Neighborhood Co. has provided a commitment for a construction period loan of \$220K. The interest rate will be the greater of prime + 2.0% or 7.0%. The loan has a term of the lesser of 15 months or completion of construction. Of note, interim interest from this source was not used to justify the Applicant's claimed eligible interim interest.

This section intentionally left blank.

Source: TDHCA-HOME Type: Interim to Permanent Financing  
 Principal: \$500,000 Interest Rate: 1.0%  Fixed Amort: 360 months  
 Term: 30 years

Comments:

The Applicant has requested this interim-to-permanent HOME loan that will be in a second lien position. The permanent component is requested to have a 30 year term and 30 year amortization. Of note, the Underwriter has recommended an 18 year term, consistent with the first lien.

Source: Orange County HOME Type: Interim to Permanent Financing  
 Principal: \$950,000 Interest Rate: 1.0%  Fixed Term: 360 months

Comments:

The Applicant has applied for the local HOME funds. The application indicates a request for the funds loaned at a 1% interest rate (accruing, not compounding) and amortized over 30 years, with payments subject to available cash flow. Of note, should the requested HOME funds ultimately not be received, there is not sufficient developer fee to fill the gap in financing, and the deal would be rendered infeasible. Receipt, review and acceptance by commitment of a firm commitment for these funds at the proposed terms is a condition of this report.

Because this loan is federally sourced, if the loan cannot be repaid, it must be treated as a grant and removed from eligible basis. Based on the recommended pro forma, there is insufficient cash flow to repay the loan on or before the year 30 maturity. Therefore, this report is conditioned on receipt, review and acceptance, by cost certification, of an attorney's opinion affirming that the loan can be repaid at or by maturity and can be considered valid debt.

Source: Oak Grove Capital Type: Interim to Permanent Financing  
 Interim: \$6,250,000 Interest Rate: 6.50%  Fixed Amort: 24 months  
 Permanent: \$1,600,000 Interest Rate: 9.00%  Fixed Amort: 360 months

Comments:

The interim loan will be interest only for 24 months. The permanent loan will be amortized over 30 years and have an 18 year term.

Source: Red Stone Equity Partners, Inc. Type: Syndication  
 Proceeds: \$7,494,073 Syndication Rate: 68% Anticipated HTC: \$ 1,102,070  
 Amount: \$11,805 Type: Deferred Developer Fees

This section intentionally left blank.

## CONCLUSIONS

### Recommended Financing Structure:

The Applicant's total development cost estimate less the \$1.6M permanent loan, requested \$500K TDHCA HOME funds, & \$950K local HOME funds indicates the need for \$7,505,878 in gap funds. Based on the submitted syndication terms, a tax credit allocation of \$1,103,806 annually would be required to fill this gap in financing. The three possible tax credit allocations are:

<b>Allocation determined by eligible basis:</b>	<b>\$1,100,480</b>
Allocation determined by gap in financing:	\$1,103,806
Allocation requested by the Applicant:	\$1,102,290

The allocation amount determined by the eligible basis derived calculation is recommended. A tax credit allocation of \$1,100,480 per year for 10 years results in total equity proceeds of \$7,483,264 at a syndication rate of \$0.68 per tax credit dollar.

The Underwriter's recommended financing structure indicates the need for \$22,614 in additional permanent funds. Deferred developer and contractor fees in this amount appear to be repayable from development cashflow within one year of stabilized operation.

The HOME award amount is below the 221(d)(3) limit for this project. In addition, the HOME award is below the prorata share of development cost based on the number HOME units to total units.

Underwriter:	_____	Date:	_____
	<i>Diamond Unique Thompson</i>		July 28, 2010
Manager of Real Estate Analysis:	_____	Date:	_____
	<i>Audrey Martin</i>		July 28, 2010
Director of Real Estate Analysis:	_____	Date:	_____
	<i>Brent Stewart</i>		July 28, 2010

**UNIT MIX/RENT SCHEDULE**  
**Auburn Square, Vidor, 9% HTC/HOME #10126**

LOCATION DATA		UNIT DISTRIBUTION			Other Unit Designation							OTHER ASSUMPTIONS		
CITY:	Vidor	# Beds	# Units	% Total	PROGRAMS:			HOME				DEVELOPMENT ACTIVITY:	New	
COUNTY:	Orange	Eff			Rent Limit	Eff	1	2	3	4	Total Units	REVENUE GROWTH:	2.00%	
SUB-MARKET:		1	12	15.0%	LH	\$475	\$508	\$611	\$705	\$787	2	EXPENSE GROWTH:	3.00%	
PROGRAM REGION:	5	2	44	55.0%	HH	\$504	\$565	\$676	\$838	\$869	6	HIGH COST ADJUSTMENT:	130%	
RURAL RENT USED:	No	3	24	30.0%								APPLICABLE FRACTION:	100.00%	
IREM REGION:	NA	4										APP % - ACQUISITION:	N/A	
		<b>TOTAL</b>	<b>80</b>	<b>100.0%</b>								APP % - CONSTRUCTION:	9.00%	

UNIT MIX / MONTHLY RENT SCHEDULE																			
UNIT DESCRIPTION						PROGRAM RENT LIMITS			APPLICANT RENTS				TDHCA RENTS				OTHER UNIT DESIGNATION	MARKET RENTS	
Type	Other Designation	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Paid Utilities (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	HOME	Market Rent	TDHCA Savings to Market
TC 30%	LH / 30% Income	1	1	1	712	\$305	\$79	\$226	\$0	\$0.32	\$226	\$226	\$226	\$226	\$0.32	\$0	\$508	\$694	\$468
TC 50%	HH / 50% Income	2	1	1	712	\$508	\$79	\$429	\$1	\$0.60	\$430	\$860	\$858	\$429	\$0.60	\$0	\$565	\$694	\$265
TC 50%		3	1	1	712	\$508	\$79	\$429	\$1	\$0.60	\$430	\$1,290	\$1,287	\$429	\$0.60	\$0		\$694	\$265
TC 60%		6	1	1	712	\$610	\$79	\$531	\$0	\$0.75	\$531	\$3,186	\$3,186	\$531	\$0.75	\$0		\$694	\$163
TC 30%	LH / 30% Income	1	2	2	950	\$366	\$103	\$263	\$0	\$0.28	\$263	\$263	\$263	\$263	\$0.28	\$0	\$611	\$805	\$542
TC 50%	HH / 50% Income	1	2	2	950	\$611	\$103	\$508	\$0	\$0.53	\$508	\$508	\$508	\$508	\$0.53	\$0	\$676	\$805	\$297
TC 50%		4	2	2	950	\$611	\$103	\$508	\$0	\$0.53	\$508	\$2,032	\$2,032	\$508	\$0.53	\$0		\$805	\$297
TC 60%		6	2	2	950	\$733	\$103	\$630	\$0	\$0.66	\$630	\$3,780	\$3,780	\$630	\$0.66	\$0		\$805	\$175
TC 30%	HH / 30% Income	2	2	2	963	\$366	\$103	\$263	\$0	\$0.27	\$263	\$526	\$526	\$263	\$0.27	\$0	\$676	\$811	\$548
TC 50%		14	2	2	963	\$611	\$103	\$508	\$0	\$0.53	\$508	\$7,112	\$7,112	\$508	\$0.53	\$0		\$811	\$303
TC 60%		16	2	2	963	\$733	\$103	\$630	\$0	\$0.65	\$630	\$10,080	\$10,080	\$630	\$0.65	\$0		\$811	\$181
TC 30%	HH / 30% Income	1	3	2	1,142	\$423	\$129	\$294	\$0	\$0.26	\$294	\$294	\$294	\$294	\$0.26	\$0	\$838	\$869	\$575
TC 50%		11	3	2	1,142	\$705	\$129	\$576	\$0	\$0.50	\$576	\$6,336	\$6,336	\$576	\$0.50	\$0		\$869	\$293
TC 60%		12	3	2	1,142	\$846	\$129	\$717	\$0	\$0.63	\$717	\$8,604	\$8,604	\$717	\$0.63	\$0		\$869	\$152
<b>TOTAL:</b>		<b>80</b>				<b>78,168</b>						<b>\$45,097</b>	<b>\$45,092</b>						
<b>AVG:</b>						<b>977</b>				<b>\$0</b>	<b>\$0.58</b>	<b>\$564</b>		<b>\$564</b>	<b>\$0.58</b>	<b>\$0</b>	<b>\$64</b>	<b>\$810</b>	<b>(\$246)</b>
<b>ANNUAL:</b>												<b>\$541,164</b>	<b>\$541,104</b>						

**PROFORMA ANALYSIS & DEVELOPMENT COSTS**

**Auburn Square, Vidor, 9% HTC/HOME #10126**

<b>INCOME</b>		Total Net Rentable Sq Ft:		<b>TDHCA</b>	<b>APPLICANT</b>			
<b>POTENTIAL GROSS RENT</b>								
Secondary Income		Per Unit Per Month:	\$7.50	\$541,104	\$541,164			
				7,200	7,200	\$7.50	Per Unit Per Month	
Other Support Income:						\$0.00	Per Unit Per Month	
<b>POTENTIAL GROSS INCOME</b>								
				\$548,304	\$548,364			
Vacancy & Collection Loss		% of Potential Gross Income:	-7.50%	(41,123)	(41,124)	-7.50%	of Potential Gross Income	
Employee or Other Non-Rental Units or Concessions				0				
<b>EFFECTIVE GROSS INCOME</b>								
				\$507,181	\$507,240			
<b>EXPENSES</b>	<b>% OF EGI</b>	<b>PER UNIT</b>	<b>PER SQ FT</b>			<b>PER SQ FT</b>	<b>PER UNIT</b>	<b>% OF EGI</b>
General & Administrative	5.66%	\$359	0.37	\$28,726	\$30,000	\$0.38	\$375	5.91%
Management	5.00%	\$317	0.32	25,359	25,362	0.32	317	5.00%
Payroll & Payroll Tax	11.86%	\$752	0.77	60,172	61,760	0.79	772	12.18%
Repairs & Maintenance	11.18%	\$709	0.73	56,726	62,000	0.79	775	12.22%
Utilities	3.11%	\$197	0.20	15,768	18,240	0.23	228	3.60%
Water, Sewer, & Trash	5.75%	\$365	0.37	29,160	28,000	0.36	350	5.52%
Property Insurance	3.13%	\$199	0.20	15,888	15,840	0.20	198	3.12%
Property Tax	2.45567	\$313	0.32	25,048	19,120	0.24	239	3.77%
Reserve for Replacements	3.94%	\$250	0.26	20,000	20,000	0.26	250	3.94%
TDHCA Compliance Fees	0.63%	\$40	0.04	3,200	3,200	0.04	40	0.63%
Other: Supportive Services	4.54%	\$288	0.29	23,040	23,040	0.29	288	4.54%
<b>TOTAL EXPENSES</b>	<b>59.76%</b>	<b>\$3,789</b>	<b>\$3.88</b>	<b>\$303,088</b>	<b>\$306,562</b>	<b>\$3.92</b>	<b>\$3,832</b>	<b>60.44%</b>
<b>NET OPERATING INC</b>	<b>40.24%</b>	<b>\$2,551</b>	<b>\$2.61</b>	<b>\$204,094</b>	<b>\$200,678</b>	<b>\$2.57</b>	<b>\$2,508</b>	<b>39.56%</b>

<b>DEBT SERVICE</b>							
Oak Grove Capital				\$154,488	\$154,488		
TDHCA-HOME				\$19,298	\$19,298		
Orange County HOME				\$0			
Additional Financing				0			
Additional Financing				0			
<b>TOTAL DEBT SERVICE</b>				<b>173,786</b>	<b>173,786</b>		
<b>NET CASH FLOW</b>				<b>\$30,308</b>	<b>\$26,892</b>		
<b>AGGREGATE DEBT COVERAGE RATIO</b>				<b>1.17</b>	<b>1.15</b>		
<b>RECOMMENDED DEBT COVERAGE RATIO</b>					<b>1.15</b>		

<b>CONSTRUCTION COST</b>					<b>TDHCA</b>	<b>APPLICANT</b>			
Description	Factor	% of TOTAL	PER UNIT	PER SQ FT			PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		1.12%	\$1,418	\$1.45	\$113,440	\$113,440	\$1.45	\$1,418	1.07%
Off-Sites		2.96%	\$3,750	\$3.84	300,000	300,000	3.84	3,750	2.84%
Sitework		11.08%	\$14,042	\$14.37	1,123,384	1,123,384	14.37	14,042	10.64%
Direct Construction		40.64%	\$51,480	\$52.69	4,118,369	4,411,067	56.43	55,138	41.79%
Contingency	7.00%	3.62%	\$4,587	\$4.69	366,923	401,723	5.14	5,022	3.81%
Contractor's Fees	14.00%	8.03%	\$10,170	\$10.41	813,563	813,563	10.41	10,170	7.71%
Indirect Construction		10.29%	\$13,035	\$13.34	1,042,762	1,042,762	13.34	13,035	9.88%
Ineligible Costs		3.86%	\$4,887	\$5.00	390,982	390,982	5.00	4,887	3.70%
Developer's Fees	15.00%	11.64%	\$14,748	\$15.09	1,179,868	1,228,000	15.71	15,350	11.63%
Interim Financing		3.95%	\$5,010	\$5.13	400,783	400,783	5.13	5,010	3.80%
Reserves		2.81%	\$3,557	\$3.64	284,544	330,174	4.22	4,127	3.13%
<b>TOTAL COST</b>		<b>100.00%</b>	<b>\$126,682.73</b>	<b>\$129.65</b>	<b>\$10,134,618</b>	<b>\$10,555,878</b>	<b>\$135.04</b>	<b>\$131,948</b>	<b>100.00%</b>
<b>Construction Cost Recap</b>		<b>63.37%</b>	<b>\$80,278</b>	<b>\$82.16</b>	<b>\$6,422,239</b>	<b>\$6,749,737</b>	<b>\$86.35</b>	<b>\$84,372</b>	<b>63.94%</b>

<b>SOURCES OF FUNDS</b>					<b>TDHCA</b>	<b>APPLICANT</b>	<b>RECOMMENDED</b>	
Oak Grove Capital		15.79%	\$20,000	\$20.47	\$1,600,000	\$1,600,000	\$1,600,000	Developer Fee Available
TDHCA-HOME		4.93%	\$6,250	\$6.40	500,000	500,000	500,000	\$1,226,846
Orange County HOME		9.37%	\$11,875	\$12.15	950,000	950,000	950,000	
Red Stone Equity Partners, Inc.		73.95%	\$93,676	\$95.87	7,494,073	7,494,073	7,483,264	% of Dev. Fee Deferred
Deferred Developer Fees		0.12%	\$148	\$0.15	11,805	11,805	22,614	2%
Additional (Excess) Funds Req'd		-4.16%	(\$5,266)	(\$5.39)	(421,260)	0	0	15-Yr Cumulative Cash Flow
<b>TOTAL SOURCES</b>					<b>\$10,134,618</b>	<b>\$10,555,878</b>	<b>\$10,555,878</b>	<b>\$496,463</b>

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**

*Auburn Square, Vidor, 9% HTC/HOME #10126*

**DIRECT CONSTRUCTION COST ESTIMATE**

*Marshall & Swift Residential Cost Handbook  
Average Quality Multiple Residence Basis*

CATEGORY	FACTOR	UNITS/SQ FT	PER SF	AMOUNT
Base Cost			\$54.91	\$4,292,365
<b>Adjustments</b>				
Exterior Wall Finish	0.00%		\$0.00	\$0
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.00%		1.65	128,771
Roofing			0.00	0
Subfloor			(0.16)	(12,507)
Floor Cover			2.41	188,385
Breezeways	\$22.48	8,612	2.48	193,598
Balconies	\$22.48	5,389	1.55	121,146
Plumbing Fixtures	\$845	204	2.21	172,380
Rough-ins	\$420	160	0.86	67,200
Built-In Appliances	\$1,850	80	1.89	148,000
Exterior Stairs	\$1,900	20	0.49	38,000
Enclosed Corridors	\$44.99	0	0.00	0
Carpets	\$9.70	0	0.00	0
Heating/Cooling			1.85	144,611
Garages	\$30.00	0	0.00	0
Comm &/or Aux Bldgs	\$77.58	2,193	2.18	170,130
Other: fire sprinkler	\$2.25	78,168	2.25	175,878
<b>SUBTOTAL</b>			<b>74.56</b>	<b>5,827,957</b>
Current Cost Multiplier	0.99		(0.75)	(58,280)
Local Multiplier	0.88		(8.95)	(699,355)
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>			<b>\$64.86</b>	<b>\$5,070,323</b>
Plans, specs, survy, bld perm	3.90%		(\$2.53)	(\$197,743)
Interior Construction Interest	3.38%		(2.19)	(171,123)
Contractor's OH & Profit	11.50%		(7.46)	(583,087)
<b>NET DIRECT CONSTRUCTION COSTS</b>			<b>\$52.69</b>	<b>\$4,118,369</b>

**PROPOSED PAYMENT COMPUTATION**

<b>Oak Grove Capital</b>	\$1,600,000	Amort	360
Int Rate	9.00%	DCR	1.32

<b>TDHCA-HOME</b>	\$500,000	Amort	360
Int Rate	1.00%	Subtotal DCR	1.17

<b>Orange County HC</b>	\$950,000	Amort	0
Int Rate	1.00%	Aggregate DCR	1.17

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Subtotal DCR	1.17

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.17

**RECOMMENDED FINANCING STRUCTURE**

**APPLICANT'S NOI:**

Oak Grove Capital	\$154,488
TDHCA-HOME	19,298
Orange County HOME	0
Additional Financing	0
Additional Financing	0
<b>TOTAL DEBT SERVICE</b>	<b>\$173,786</b>

<b>Oak Grove Capital</b>	\$1,600,000	Amort	360
Int Rate	9.00%	DCR	1.30

<b>TDHCA-HOME</b>	\$500,000	Amort	360
Int Rate	1.00%	Subtotal DCR	1.15

<b>Orange County HC</b>	\$950,000	Amort	0
Int Rate	1.00%	Aggregate DCR	1.15

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Subtotal DCR	1.15

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.15

**OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE (APPLICANT'S NOI)**

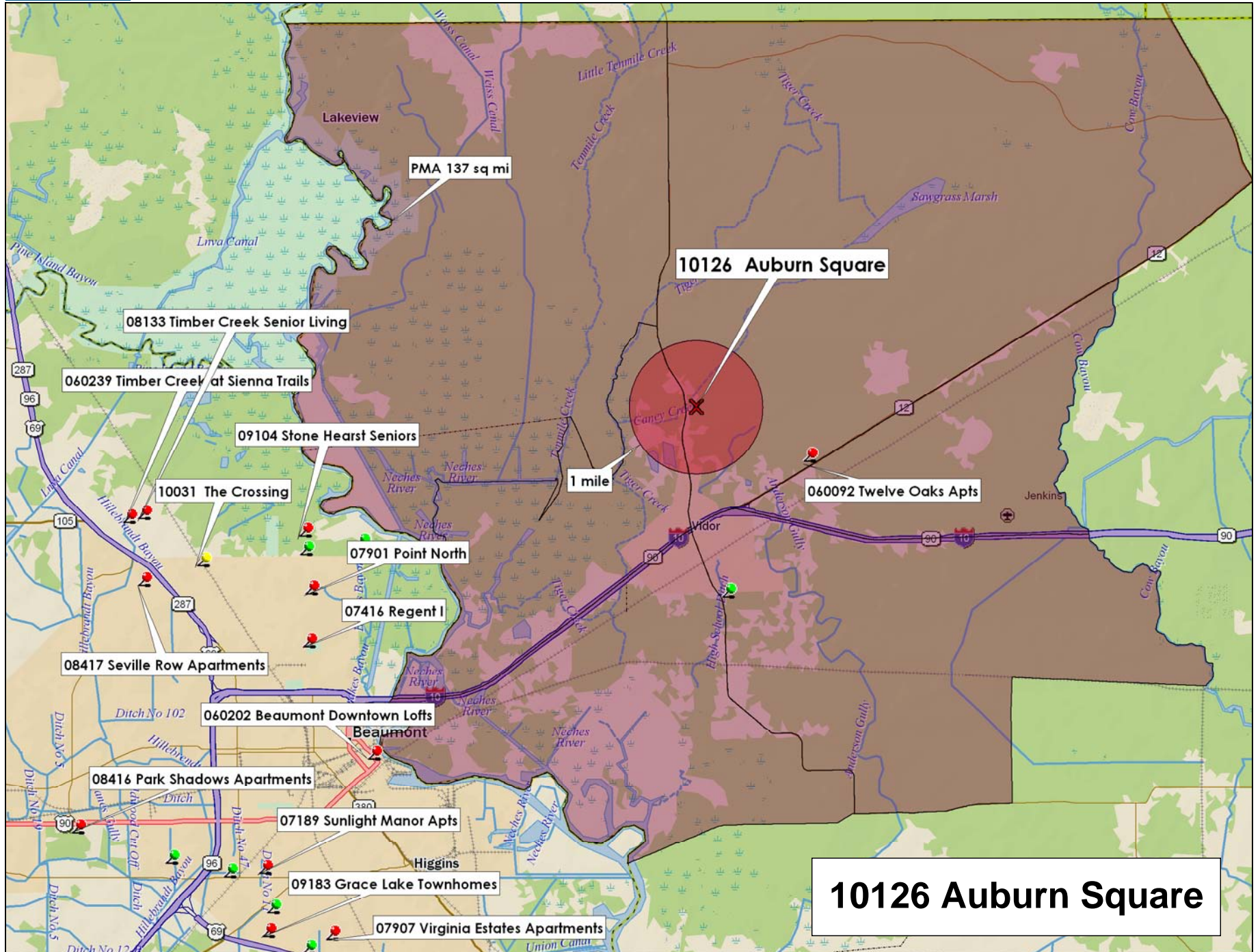
INCOME at 2.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
POTENTIAL GROSS RENT	\$541,164	\$551,987	\$563,027	\$574,288	\$585,773	\$646,741	\$714,054	\$788,374	\$961,023
Secondary Income	7,200	7,344	7,491	7,641	7,794	8,605	9,500	10,489	12,786
Other Support Income:	0	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME	548,364	559,331	570,518	581,928	593,567	655,346	723,555	798,863	973,809
Vacancy & Collection Loss	(41,124)	(41,950)	(42,789)	(43,645)	(44,518)	(49,151)	(54,267)	(59,915)	(73,036)
Employee or Other Non-Rental U	0	0	0	0	0	0	0	0	0
<b>EFFECTIVE GROSS INCOME</b>	<b>\$507,240</b>	<b>\$517,381</b>	<b>\$527,729</b>	<b>\$538,284</b>	<b>\$549,049</b>	<b>\$606,195</b>	<b>\$669,288</b>	<b>\$738,948</b>	<b>\$900,774</b>
EXPENSES at 3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
General & Administrative	\$30,000	\$30,900	\$31,827	\$32,782	\$33,765	\$39,143	\$45,378	\$52,605	\$70,697
Management	25,362	25,869.0717	26,386	26,914	27,452	30,310	33,464	36,947	45,039
Payroll & Payroll Tax	61,760	63,613	65,521	67,487	69,511	80,583	93,418	108,297	145,541
Repairs & Maintenance	62,000	63,860	65,776	67,749	69,782	80,896	93,781	108,717	146,107
Utilities	18,240	18,787	19,351	19,931	20,529	23,799	27,590	31,984	42,984
Water, Sewer & Trash	28,000	28,840	29,705	30,596	31,514	36,534	42,353	49,098	65,984
Insurance	15,840	16,315	16,805	17,309	17,828	20,668	23,959	27,776	37,328
Property Tax	19,120	19,694	20,284	20,893	21,520	24,947	28,921	33,527	45,058
Reserve for Replacements	20,000	20,600	21,218	21,855	22,510	26,095	30,252	35,070	47,131
TDHCA Compliance Fee	3,200	3,296	3,395	3,497	3,602	4,175	4,840	5,611	7,541
Other	23,040	23,731	24,443	25,176	25,932	30,062	34,850	40,401	54,295
<b>TOTAL EXPENSES</b>	<b>\$306,562</b>	<b>\$315,505</b>	<b>\$324,712</b>	<b>\$334,189</b>	<b>\$343,946</b>	<b>\$397,212</b>	<b>\$458,805</b>	<b>\$530,033</b>	<b>\$707,705</b>
<b>NET OPERATING INCOME</b>	<b>\$200,678</b>	<b>\$201,876</b>	<b>\$203,018</b>	<b>\$204,095</b>	<b>\$205,104</b>	<b>\$208,983</b>	<b>\$210,483</b>	<b>\$208,915</b>	<b>\$193,069</b>
<b>DEBT SERVICE</b>									
First Lien Financing	\$154,488	\$154,488	\$154,488	\$154,488	\$154,488	\$154,488	\$154,488	\$154,488	\$154,488
Second Lien	19,298	19,298	19,298	19,298	19,298	19,298	19,298	19,298	19,298
Other Financing	0	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0	0
<b>NET CASH FLOW</b>	<b>\$26,892</b>	<b>\$28,090</b>	<b>\$29,232</b>	<b>\$30,309</b>	<b>\$31,318</b>	<b>\$35,197</b>	<b>\$36,698</b>	<b>\$35,129</b>	<b>\$19,283</b>
<b>DEBT COVERAGE RATIO</b>	<b>1.15</b>	<b>1.16</b>	<b>1.17</b>	<b>1.17</b>	<b>1.18</b>	<b>1.20</b>	<b>1.21</b>	<b>1.20</b>	<b>1.11</b>

**HTC ALLOCATION ANALYSIS -Auburn Square, Vidor, 9% HTC/HOME #10126**

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>Acquisition Cost</b>				
Purchase of land	\$113,440	\$113,440		
Purchase of buildings				
<b>Off-Site Improvements</b>	\$300,000	\$300,000		
<b>Sitework</b>	\$1,123,384	\$1,123,384	\$1,123,384	\$1,123,384
<b>Construction Hard Costs</b>	\$4,411,067	\$4,118,369	\$4,411,067	\$4,118,369
<b>Contractor Fees</b>	\$813,563	\$813,563	\$813,563	\$785,215
<b>Contingencies</b>	\$401,723	\$366,923	\$387,412	\$366,923
<b>Eligible Indirect Fees</b>	\$1,042,762	\$1,042,762	\$1,042,762	\$1,042,762
<b>Eligible Financing Fees</b>	\$400,783	\$400,783	\$400,783	\$400,783
<b>All Ineligible Costs</b>	\$390,982	\$390,982		
<b>Developer Fees</b>			\$1,226,846	\$1,175,615
Developer Fees	\$1,228,000	\$1,179,868		
<b>Development Reserves</b>	\$330,174	\$284,544		
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$10,555,878</b>	<b>\$10,134,618</b>	<b>\$9,405,816</b>	<b>\$9,013,051</b>

<b>Deduct from Basis:</b>			
All grant proceeds used to finance costs in eligible basis			
B.M.R. loans used to finance cost in eligible basis			
Non-qualified non-recourse financing			
Non-qualified portion of higher quality units [42(d)(3)]			
Historic Credits (on residential portion only)			
<b>TOTAL ELIGIBLE BASIS</b>		\$9,405,816	\$9,013,051
High Cost Area Adjustment		130%	130%
<b>TOTAL ADJUSTED BASIS</b>		\$12,227,561	\$11,716,967
Applicable Fraction		100%	100%
<b>TOTAL QUALIFIED BASIS</b>		\$12,227,561	\$11,716,967
Applicable Percentage		9.00%	9.00%
<b>TOTAL AMOUNT OF TAX CREDITS</b>		\$1,100,480	\$1,054,527

<b>Syndication Proceeds</b>	<b>0.6800</b>	<b>\$7,483,264</b>	<b>\$7,170,781</b>
<b>Total Tax Credits (Eligible Basis Method)</b>		<b>\$1,100,480</b>	<b>\$1,054,527</b>
<b>Syndication Proceeds</b>		<b>\$7,483,264</b>	<b>\$7,170,781</b>
<b>Requested Tax Credits</b>		<b>\$1,102,290</b>	
<b>Syndication Proceeds</b>		<b>\$7,495,569</b>	
<b>Gap of Syndication Proceeds Needed</b>		<b>\$7,505,878</b>	
<b>Total Tax Credits (Gap Method)</b>		<b>\$1,103,806</b>	
<b>Recommended Tax Credits</b>		<b>1,100,480</b>	
<b>Syndication Proceeds</b>		<b>\$7,483,264</b>	



Data use subject to license.

© DeLorme. XMap® 7.

www.delorme.com





REPORT DATE: 07/26/10 PROGRAM: 9% HTC / HOME FILE NUMBER: 10153

**DEVELOPMENT**

Britain Way

Location: 1954 Shoaf Region: 3

City: Irving County: Dallas Zip: 75061  OCT  DDA

Key Attributes: Multifamily, General, Urban, Acquisition/Rehabilitation

**ALLOCATION**

TDHCA Program	REQUEST			RECOMMENDATION			
	Amount	Interest	Amort/Term	Amount	Interest	Amort/Term	Lien Position
HOME Activity Funds	\$500,000	1.00%	20/20	\$500,000	1.00%	30/30	2
Housing Tax Credit (Annual)	\$1,627,680			\$1,627,680			

**CONDITIONS**

- 1 Receipt, review, and acceptance, by commitment, of a commitment from the Capital Area Housing Finance Corporation for the proposed \$950,000 with the terms clearly stated.
- 2 Receipt, review, and acceptance, by Cost Certification, of documentation that a comprehensive survey was completed to identify the presence of asbestos-containing-materials or lead-based paint, and that appropriate abatement procedures, consistent with all relevant regulations, were followed for the demolition and removal of any such materials.
- 3 Receipt, review, and acceptance, by Cost Certification, of documentation that a comprehensive survey was completed to identify the presence of lead in the drinking water as a result of the subject property plumbing, and that appropriate abatement procedures, consistent with all relevant regulations, were followed for the elimination of any identified sources of lead.
- 4 Should the terms and rates of the proposed debt or syndication change, the transaction should be re-evaluated and an adjustment to the credit allocation amount may be warranted.

**SALIENT ISSUES**

TDHCA SET-ASIDES for LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	9
50% of AMI	50% of AMI	76
60% of AMI	60% of AMI	83

This section intentionally left blank.

**STRENGTHS/MITIGATING FACTORS**

- Overall occupancy in the PMA is 94.4%, and existing affordable projects are 96.3% occupied.
  
- The Gross Capture Rate for the subject is 2.1%.
- Unit capture rates for all unit types are 11% or less.
- Estimated rents are on average 5% below market.

**WEAKNESSES/RISKS**

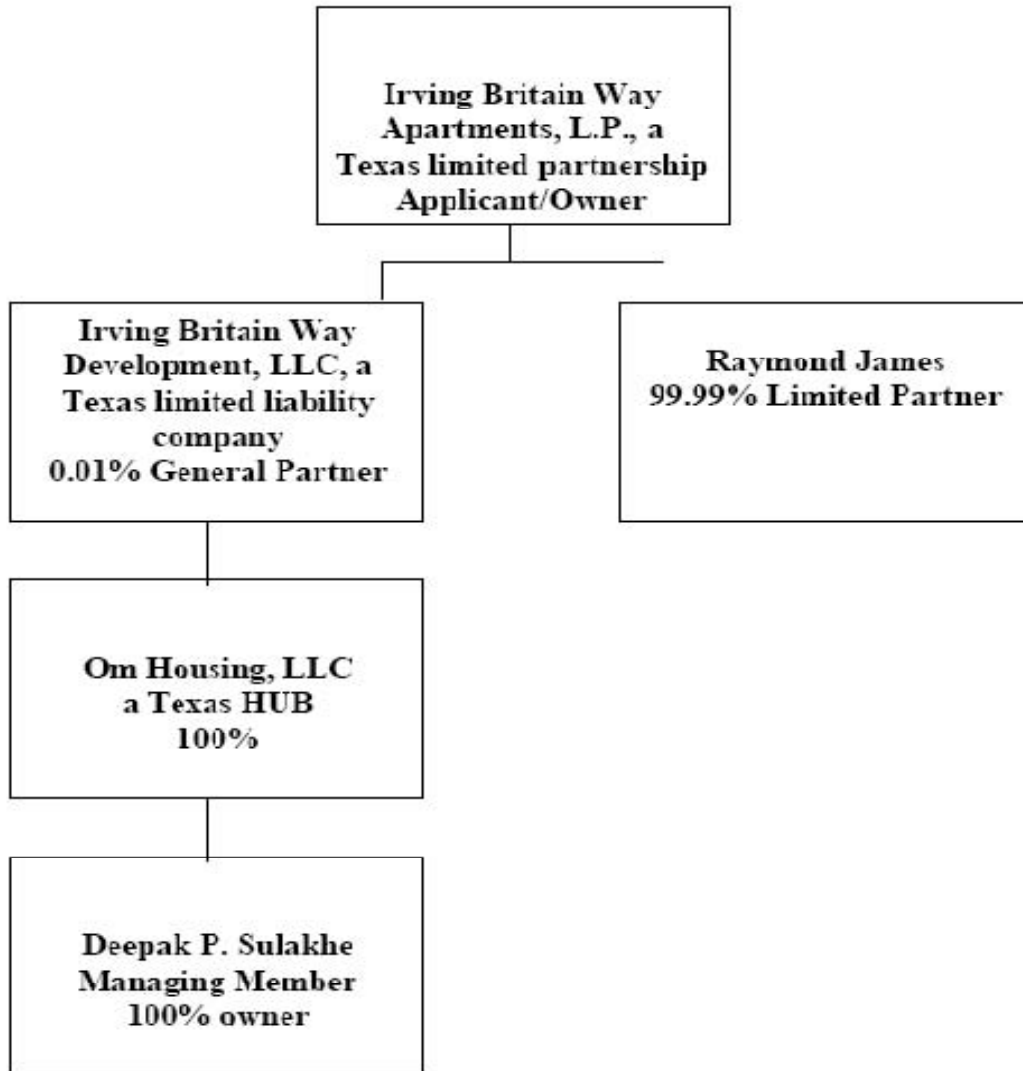
- The Applicant's experience with HTC development is limited to a project management role, never an ownership position, with 19 projects in Texas between 2004 and 2006; and nine projects in other states between 1999 and 2001.

**PREVIOUS UNDERWRITING REPORTS**

None

**DEVELOPMENT TEAM**

**OWNERSHIP STRUCTURE**



**CONTACT**

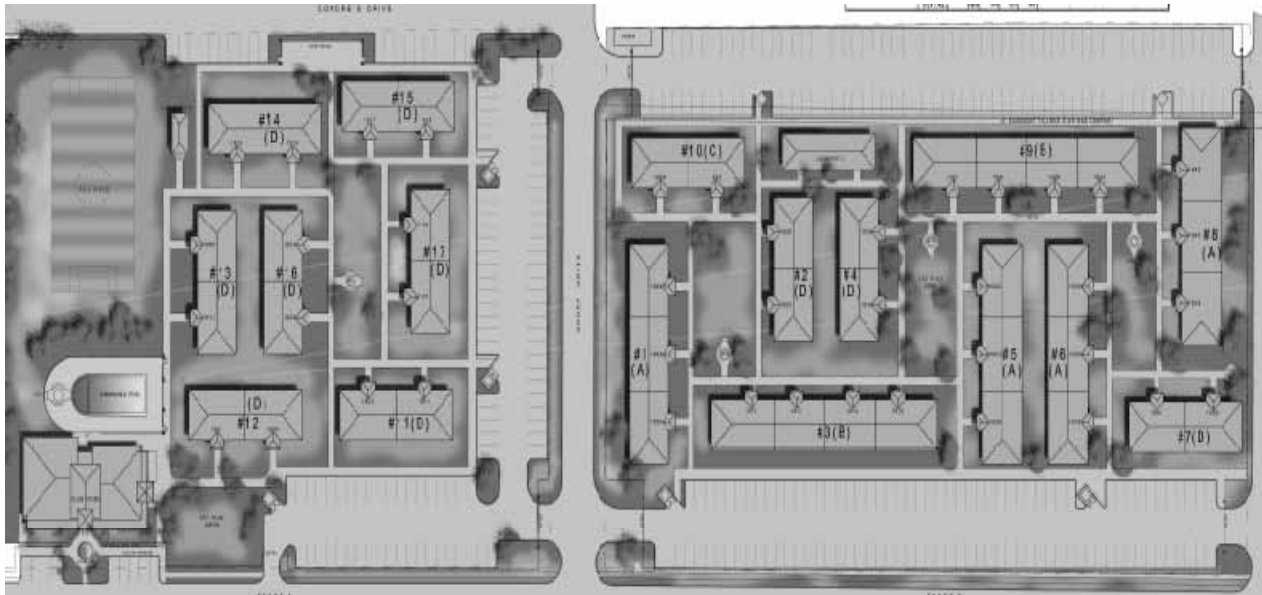
Contact: Deepak Sulakhe Phone: (214) 632-1565 Fax: (214) 594-9753  
 Email: d.sulakhe@att.net

**IDENTITIES of INTEREST**

- The Applicant and Developer are related entities. These are common relationships for HTC-funded developments.

**PROPOSED SITE**

**SITE PLAN**



**BUILDING CONFIGURATION**

Building Type	A	B	C	D	E	F	G	H	I	J	Total Buildings
Floors/Stories	2	2	2	2							
Number	4	2	1	10							

BR/BA	SF	Units										Total Units	Total SF
1	1	510	4	4		2						44	22,440
2	1	770	4	8	8	4						80	61,600
3	1	910	4	4		2						44	40,040
Units per Building			12	16	8	8						<b>168</b>	<b>124,080</b>

**Rehabilitation Activities:**

The Property Condition Assessment reports that "based on several conversations with the developer, the following work is anticipated to be included in the renovation: Grading and drainage improvements within the landscaped areas; Replacement of deteriorated sidewalk; Replacement of playground equipment; Construction of new Clubhouse/Leasing Office Building; Construction of new swimming pool; Construction of new property identification signage; Replacement of site fencing; Installation of new site lighting fixtures as required; Replacement of original windows and building entrance doors; Replacement of vinyl siding at mansards with cementitious siding; Construction of sloped roofs with architectural shingles at apartment buildings; Additional evaluation of the apartment building foundations and repairs, as necessary; Replacement of apartment appliances; Replacement of original cabinets, countertops and kitchen sinks; Replacement of original/older interior lighting fixtures; Conversion from existing chiller/boiler system to individual split DX systems or rehabilitation of existing systems; Installation of individual electrical meters and HVAC meters if existing HVAC system remains.

Tenant Relocation Plan:

Due to the substantial rehabilitation required, tenant relocation will be necessary. All tenants will need to be relocated. This relocation will be done in two separate phases. The tenants are currently on lease durations of 6 months each. We will coordinate with the current management agent to stop renewing any leases 6 months prior to start of construction. Tenants would then be placed on a month-to-month lease and would be required to vacate the unit upon a one-month notice prior to the start of the construction of each phase. Relocated tenants will be offered the opportunity to relocate into a vacant unit in the complex if one is available. If a unit is not available or the tenant does not want to relocate into a vacant unit in the complex, then assistance will be provided to help the tenant locate another rental unit in the Irving area. A list of apartment complexes with vacant units will be maintained by the management company to assist in this process.

SITE ISSUES

Total Size: 9.5488 acres Scattered site?  Yes  No  
Flood Zone: X Within 100-yr floodplain?  Yes  No  
Zoning: R-MF-2 Needs to be re-zoned?  Yes  No  N/A

TDHCA SITE INSPECTION

Inspector: Manufactured Housing Staff Date: 5/11/2010  
Overall Assessment:  
 Excellent  Acceptable  Questionable  Poor  Unacceptable  
Surrounding Uses:  
North: Apartments, Motel, and Vacant Land (Owned by TXDOT)  
South: Single Family Homes & Church  
East: Vacant Land & Vacant Retail  
West: Vacant Land (Owned by Subject) & Single Family Homes  
Comments:  
"Apartment building has been undergoing rehabilitation. The units are older but are nice. The complex is large and is well maintained. Landscaping is very nice. Unit are nice size and are in good repair."

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Southwest GeoScience Date: 3/26/2010  
Recognized Environmental Conditions (RECs) and Other Concerns:  
▫ "This assessment has revealed no evidence of recognized environmental conditions." (p. iii)  
▫ "if not intended for future use, the drum of Water Treatment WT-11 chemical should be removed from the Site and properly disposed of in accordance with local, state and federal regulations." (p. iii)  
▫ "Given the age of the on-Site structures (constructed in 1963), comprehensive asbestos and lead-based paint surveys, which should include wipe samples and air samples to evaluate the presence of residual asbestos related to the historic rehabilitation/renovations, should be conducted prior to any renovation, construction, or demolition activities." (p. iii)  
▫ "Testing for lead in the drinking water is not required pursuant to local, state, and federal laws; however, based on the age of construction of the structures on Site (1963), there is a potential for lead in the drinking water as a result of the on-Site plumbing, fixtures and solder. However, testing of the drinking water at the Site would be needed to further evaluate the presence of lead in drinking water at the Site." (ESA addendum 07/19/10)

Comments:

Receipt, review, and acceptance, by Cost Certification, of documentation that a comprehensive survey was completed to identify the presence of asbestos-containing-materials or lead-based paint, and that appropriate abatement procedures, consistent with all relevant regulations, were followed for the demolition and removal of any such materials.

Receipt, review, and acceptance, by Cost Certification, of documentation that a comprehensive survey was completed to identify the presence of lead in the drinking water as a result of the subject property plumbing, and that appropriate abatement procedures, consistent with all relevant regulations, were followed for the elimination of any identified sources of lead.

**MARKET ANALYSIS**

Provider: Apartment MarketData Date: 3/1/2010  
 Contact: Darrell Jack Phone: (210) 530-0040  
 Number of Revisions: None Date of Last Applicant Revision: N / A

Primary Market Area (PMA): 24.54 sq. miles 3 mile equivalent radius  
 The Primary Market Area is defined by 26 census tracts in Irving.

ELIGIBLE HOUSEHOLDS BY INCOME								
Dallas County Income Limits								
HH size	30% of AMI		40% of AMI		50% of AMI		60% of AMI	
	min	max	min	max	min	max	min	max
1	\$13,029	\$14,200	---	---	\$21,703	\$23,650	\$26,057	\$28,380
2	\$13,029	\$16,250	---	---	\$21,703	\$27,050	\$26,057	\$32,460
3	---	---	---	---	\$26,057	\$30,400	\$31,269	\$36,480
4	---	---	---	---	\$30,103	\$33,800	\$36,137	\$40,560
5	---	---	---	---	\$30,103	\$36,500	\$36,137	\$43,800
6	---	---	---	---	---	---	---	---

AFFORDABLE HOUSING INVENTORY in PRIMARY MARKET AREA					
File #	Development	Type	Target Population	Comp Units	Total Units
Proposed, Under Construction, and Unstabilized Comparable Developments					
None					
Stabilized Affordable Developments in PMA ( pre-2006 )					
Total Properties ( pre-2006 )			10	Total Units	1,119

Proposed, Under Construction, and Unstabilized Comparable Supply:  
 There are no unstabilized comparable developments in the PMA.

OVERALL DEMAND ANALYSIS		
	Market Analyst	Underwriter
Total Households in the Primary Market Area	36,506	36,506
Potential Demand from the Primary Market Area	8,695	8,146
Potential Demand from Other Sources	0	0
<b>GROSS DEMAND</b>	<b>8,695</b>	<b>8,146</b>
Subject Affordable Units	168	168
Unstabilized Comparable Units	0	0
<b>RELEVANT SUPPLY</b>	<b>168</b>	<b>168</b>
<b>Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE</b>	<b>1.9%</b>	<b>2.1%</b>

**Demand Analysis:**

The Market Analyst identifies Gross Demand for 8,695 units based on all income eligible renter households in the PMA; and a Gross Capture Rate of 1.9% for the subject 168 units. The Underwriter calculates Gross Demand for 8,146 units based on households of five persons or less; and a Gross Capture Rate of 2.1%.

The maximum Gross Capture Rate for urban developments targeting family households is 10%; the analysis indicates sufficient demand to support the proposed development.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE								
Unit Type	Market Analyst				Underwriter			
	Demand	Subject Units	Comp Units	Unit Capture Rate	Demand	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	417	9	0	2%	179	9	0	5%
1 BR/50%	881	16	0	2%	405	16	0	4%
1 BR/60%	1,430	19	0	1%	444	19	0	4%
2 BR/50%	606	44	0	7%	503	44	0	9%
2 BR/60%	1,016	36	0	4%	479	36	0	8%
3 BR/50%	479	16	0	3%	253	16	0	6%
3 BR/60%	789	28	0	4%	266	28	0	11%

**Primary Market Occupancy Rates:**

The market study reports overall occupancy of 94.4% for a total of 18,644 units in the PMA. (p. 50) The Applicant's rent roll indicates the subject property is currently 81.5% occupied. This has likely been allowed to decline in anticipation of the proposed rehabilitation.

**Absorption Projections:**

"The most recently completed LIHTC project was Reserve at Las Brisas II, which was completed in 2006. This community is presently 96% occupied." (p. 54)

**Market Impact:**

"The proposed project is not likely to have a dramatically detrimental effect on the balance of supply and demand in this market. Newer affordable family units have been easily absorbed. Today, affordable projects are 96.3% occupied" (p. 59)

**Comments:**

The market study provides sufficient information on which to base a funding recommendation.

**OPERATING PROFORMA ANALYSIS**

Income:      Number of Revisions:      2      Date of Last Applicant Revision:      7/22/2010

For units with rent and income restrictions at 30% and 50% of AMI, the Applicant's rents are based on the maximum program rents adjusted for utility allowances dated 8/01/08 from the City of Dallas County, Texas. For units restricted at 60%, the Applicant shows rents that are lower than the program maximum. The market study confirms that market rents are lower than the 60% program rents, but the Applicant's rents are slightly lower even than the indicated market rents. The Applicant states that "to retain the current tenant base, I have attempted to keep overall housing expenses to as close to current as possible", and also that the subject will be at a market disadvantage for several years due to highway construction.

The Applicant's secondary income, and allowance for losses to vacancy and collection, are consistent with underwriting guidelines.

The underwriting estimates for the 30% and 50% units are based on the maximum program rents adjusted for utility allowances from the Dallas County Housing Authority dated 10/01/09; the rents for the 60% units are equal to the rents indicated in the market study.

The Applicant's proposed Effective Gross Income is within 3% of the underwriting estimate.

Expense:      Number of Revisions:      2      Date of Last Applicant Revision:      7/22/2010

The Applicant's proposed annual operating expenses are equal to \$4,223 per unit; this is within 4% of the underwriting estimate of \$4,402. Line items with the most significant variation are general & administrative (the Applicant's proposed expense is 28% higher than the underwriting estimate); repairs & maintenance (the Applicant's proposed expense is 20% higher); utilities (the Applicant's proposed expense is 41% lower); and property tax (the Applicant's proposed expense is 25% lower).

The Applicant's explained that general and administrative expenses are anticipated to be high due to tax credit compliance requirements. Regarding repairs and maintenance, the Applicant stated that the maintenance plan will be of a much higher quality than what is existing today, which will cause a higher repairs expense. The Applicant explained that the renovated project is expected to have several green initiatives incorporated which will lower the utility expenses. The Underwriter's higher property tax expense is based on net operating income, as required by REA Rules.

**Conclusion:**

The Applicants income, expenses, and net operating income are each within 5% of the underwriting estimates; the Applicant's pro forma has therefore been used to determine debt capacity. The Applicant's first year pro forma and proposed financing structure result in a debt coverage ratio of 1.15; this equals the minimum acceptable debt coverage under the REA guidelines.

**Feasibility:**

The Applicant's income and expenses and the recommended financing structure are used to create a 30-year operating pro forma, applying a 2% growth factor to income and 3% to expenses. This analysis indicates continued positive cash flow and debt coverage that remains above 1.15 throughout the period; the proposed development can therefore be considered financially feasible.

**ACQUISITION INFORMATION**

**APPRAISED VALUE**

Provider:	<u>Butler Burgher Group</u>	Date:	<u>3/23/2010</u>
Number of Revisions:	<u>None</u>	Date of Last Applicant Revision:	<u>N / A</u>
Land Only:	<u>9.55 acres</u>	<u>\$940,000</u>	As of: <u>3/23/2010</u>
Existing Buildings: (as-is)		<u>\$2,835,000</u>	As of: <u>3/23/2010</u>
Total Development: (as-is)		<u>\$3,775,000</u>	As of: <u>3/23/2010</u>

**ASSESSED VALUE**

Land Only:	<u>9.55 acres</u>	<u>\$1,251,330</u>	Tax Year:	<u>2009</u>
Existing Buildings:		<u>\$1,848,670</u>	Valuation by:	<u>Dallas CAD</u>
Total Assessed Value:		<u>\$3,100,000</u>	Tax Rate:	<u>2.567812</u>

**EVIDENCE of PROPERTY CONTROL**

Type:	<u>Purchase and Sale Contract</u>	Acreage:	<u>9.5488</u>
Contract Expiration:	<u>12/31/2010</u>	Valid Through Board Date?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Acquisition Cost:	<u>\$4,200,000</u>	Other:	<u></u>
Seller:	<u>1954, Ltd.</u>	Related to Development Team?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Comments:**

The original Purchase and Sale contract, executed Nov 30, 2009, indicates Summit Britain Way Apartments, Ltd. as the Buyer. Summit submitted the pre-application for the subject development, and the Applicant was to be a participant as a HUB contractor. Summit subsequently withdrew from the transaction; the Applicant has provided a Reinstatement, Assignment and Amendment of Purchase and Sale Agreement, executed Mar 1, 2010, indicating that the contract has been assigned to Om Housing, LLC., the 100% owner of the General Partner of the Applicant.

## CONSTRUCTION COST ESTIMATE EVALUATION

*COST SCHEDULE* Number of Revisions: 1 Date of Last Applicant Revision: 7/23/2010

### Acquisition Value:

The contract acquisition price for the subject property is \$4,200,000. The Applicant has allocated \$940,000 of this to the land (the "as vacant" value reported by the Appraiser), and calculated acquisition tax credits based on an acquisition value of \$3,260,000 for the buildings.

However, the Dallas CAD assessed value of the land is \$1,251,330. The Real Estate Analysis Rules require that "In the case where the land value indicated by either the appraisal or tax assessment is greater than the prorata land value attributed to the sales price ... the greater of the land value in the appraisal or tax assessment is deducted from the sales price to determine the acquisition basis."

Therefore, the assessed value of \$1,251,330 is deducted from the sales price of \$4,200,000, resulting in an acquisition basis of \$2,948,670.

### Sitework Cost:

The Applicant proposes sitework of \$1.1M, or \$6,739 per unit. This is less than the \$9,000 per unit underwriting guideline, above which third party certification would be required.

### Direct Construction Cost:

The Applicant's originally proposed direct construction budget was \$6.27M. The PCA provider reports that all of the proposed items appear adequate, with the exception that the PCA provider recommends "a supplemental budget of approximately \$110,500 for the "Doors and Windows" category." The Applicant subsequently revised the development cost schedule to include the additional cost recommended in the PCA. The underwriting estimate reflects the PCA estimate.

### Interim Interest Expense:

The Applicant has included \$1,048,588 of interim interest in eligible basis. However, the Real Estate Analysis Rules limit eligible interim interest to one year of fully drawn interest on interim financing. One year of interest on the primary construction loan amount is \$409K, one year of interest on the equity bridge loan is \$375,000, and one year of interest on the CAHFC loan at AFR would be \$37K. The Underwriter has therefore adjusted the Applicant's proposed eligible interim interest to \$822K, and shifted the difference to ineligible cost.

### Contingency & Fees:

The Applicant overstated the eligible developer fee by \$31K; the Underwriter has adjusted the Applicant's proposed fee to the eligible limit, and shifted the difference to ineligible costs.

### Reserves:

The Applicant provided documentation from the lender indicating the requirement for \$603K in reserve funding.

### 30% Increase to Eligible Basis

The development qualifies for a 30% increase in eligible basis because it is located in an eligible QCT with less than 40% HTC units per households in the tract.

### Conclusion:

The underwriting estimates for sitework and direct construction are based on the third-party Property Condition Assessment; any variations from the Applicant's cost schedule are the result of program rule limits and guidelines. The Underwriter's development cost schedule has therefore been used to determine eligible basis and the need for permanent financing. An acquisition basis of \$3,390,971 (including developer fee) supports \$118,684 in credits; and \$12,987,924 in eligible development costs support \$1,519,587 in credits; resulting in \$1,638,271 total credits based on eligible basis. This will be compared to the Applicant's request and the gap in financing in order to determine any recommended allocation.



**PROPOSED FINANCING STRUCTURE**

*SOURCES & USES* Number of Revisions: 1 Date of Last Applicant Revision: 7/22/2010

Source: Dougherty Mortgage Type: Interim to Permanent Financing

Principal: \$6,196,600 Interest Rate: 6.61%  Fixed Amort: 480 months  
Term: 480 years

Comments:

The Term Sheet does not specify an interim period, stating that the loan "would be inclusive of the construction stage for such project, and the permanent financing aspect on a long-term amortizing basis", with "Term / Amortization of Loan Up to 40 years plus Rehab Period".

Source: Raymond James Type: Equity Bridge Loan

Principal: \$5,000,000 Interest Rate: 7.50%  Fixed Term: 18 months

Comments:

"The bridge loan shall close simultaneously with the Equity investment and will have a term of the greater of 18 months or construction completion. The Bridge Loan shall have an interest rate of Prime Rate plus 4.25% (currently 7.50 %). The bridge loan will be paid off from the Federal Tax Credit Equity provided by RJTCF at the Maturity."

Source: Capital Area Housing Finance Corp. Type: Interim Financing

Principal: \$950,000 Interest Rate: AFR  Fixed Term: TBD months

Comments:

A term of one (1) year or the placed in service date, whichever is longer, at an interest rate of AFR or less. A commitment for this source was not provided, therefore, this report is conditioned on receipt, review, and acceptance, by commitment, of a commitment from the Capital Area Housing Finance Corporation for the proposed \$950,000 with the terms clearly stated.

Source: Manchester Place, LLC Type: Interim Financing

Principal: \$395,000 Interest Rate: TBD  Fixed Term: 12 months

Comments:

The repayment term of the loan is expected to last one year, the terms of which will be determined should the application receive an award from TDHCA. The interest rate was not defined in the commitment. Therefore, the interest for this source of funds was not used to substantiate the Applicant's claimed eligible interim interest cost.

Source: Raymond James Type: Syndication

Proceeds: \$11,718,124 Syndication Rate: 0.72 Anticipated HTC: \$ 1,627,680

Amount: \$759,516 Type: Deferred Developer Fees

This section intentionally left blank.

## CONCLUSIONS

### Recommended Financing Structure:

The Underwriter's total development cost estimate less the permanent loan of \$6,196,600 and the \$500,000 HOME loan indicates the need for \$12,399,797 in gap funds. Based on the submitted syndication terms, a tax credit allocation of \$1,722,366 annually would be required to fill this gap in financing. The three possible tax credit allocations are:

Allocation determined by eligible basis:	\$1,638,271
Allocation determined by gap in financing:	\$1,722,366
<b>Allocation requested by the Applicant:</b>	<b>\$1,627,680</b>

The revised development cost schedule requests \$1,681,325 in credits; however, the allocation is limited to the amount requested in the original application. The Applicant's original request of \$1,627,680 in annual credits is recommended, resulting in total equity proceeds of \$11,718,124 at a syndication rate of \$0.72 per tax credit dollar.

The Underwriter's recommended financing structure indicates the need for \$681,673 in additional permanent funds. Deferred developer fees in this amount appear to be repayable from development cashflow within 10 years of stabilized operation.

The HOME award amount is below the 221(d)(3) limit for this project. In addition, the HOME award is below the prorata share of development cost based on the number HOME units to total units.

Underwriter:	_____	Date:	July 26, 2010
	<i>Thomas Cavanagh</i>		
Manager of Real Estate Analysis:	_____	Date:	July 26, 2010
	<i>Audrey Martin</i>		
Director of Real Estate Analysis:	_____	Date:	July 26, 2010
	<i>Brent Stewart</i>		

## UNIT MIX/RENT SCHEDULE

*Britain Way, Irving, 9% HTC / HOME #10153*

LOCATION DATA		UNIT DISTRIBUTION			Other Unit Designation							OTHER ASSUMPTIONS		
CITY:	Irving	# Beds	# Units	% Total	PROGRAMS:			HOME				DEVELOPMENT ACTIVITY:	Acq/Rehab	
COUNTY:	Dallas	Eff			Rent Limit	Eff	1	2	3	4	Total Units	REVENUE GROWTH:	2.00%	
SUB-MARKET:		1	44	26.2%	LH	\$591	\$633	\$760	\$878	\$980	17	EXPENSE GROWTH:	3.00%	
PROGRAM REGION:	3	2	80	47.6%								HIGH COST ADJUSTMENT:	130%	
RURAL RENT USED:	No	3	44	26.2%								APPLICABLE FRACTION:	100.00%	
IREM REGION:	Dallas	4										APP % - ACQUISITION:	3.50%	
		<b>TOTAL</b>	<b>168</b>	<b>100.0%</b>	MISC	#N/A	#N/A	#N/A	#N/A	#N/A		APP % - CONSTRUCTION:	9.00%	

## UNIT MIX / MONTHLY RENT SCHEDULE

UNIT DESCRIPTION					PROGRAM RENT LIMITS			APPLICANT RENTS				TDHCA RENTS				OTHER UNIT DESIGNATION	MARKET RENTS		
Type	Other Designation	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Paid Utilities (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	HOME	Market Rent	TDHCA Savings to Market
TC 30%	LH / 30% Income	2	1	1	510	\$380	\$71	\$309	(\$17)	\$0.57	\$292	\$584	\$618	\$309	\$0.61	\$0	\$633	\$600	\$291
TC 30%	LH / 30% Income	7	1	1	510	\$380	\$71	\$309	(\$17)	\$0.57	\$292	\$2,044	\$2,163	\$309	\$0.61	\$0	\$633	\$600	\$291
TC 50%	LH / 50% Income	8	1	1	510	\$633	\$71	\$562	(\$17)	\$1.07	\$545	\$4,360	\$4,496	\$562	\$1.10	\$0	\$633	\$600	\$38
TC 50%		8	1	1	510	\$633	\$71	\$562	(\$17)	\$1.07	\$545	\$4,360	\$4,496	\$562	\$1.10	\$0		\$600	\$38
TC 60%		19	1	1	510	\$760	\$71	\$689	(\$94)	\$1.17	\$595	\$11,305	\$11,400	\$600	\$1.18	(\$89)		\$600	\$0
TC 50%		44	2	1	770	\$760	\$89	\$671	(\$22)	\$0.84	\$649	\$28,556	\$29,524	\$671	\$0.87	\$0		\$715	\$44
TC 60%		36	2	1	770	\$912	\$89	\$823	(\$128)	\$0.90	\$695	\$25,020	\$25,740	\$715	\$0.93	(\$108)		\$715	\$0
TC 50%		16	3	1	910	\$878	\$104	\$774	(\$29)	\$0.82	\$745	\$11,920	\$12,384	\$774	\$0.85	\$0		\$815	\$41
TC 60%		28	3	1	910	\$1,054	\$104	\$950	(\$155)	\$0.87	\$795	\$22,260	\$22,820	\$815	\$0.90	(\$135)		\$815	\$0
<b>TOTAL:</b>		<b>168</b>				<b>124,080</b>						<b>\$110,409</b>	<b>\$113,641</b>						
<b>AVG:</b>						<b>739</b>			<b>(\$75)</b>	<b>\$0.89</b>	<b>\$657</b>			<b>\$676</b>	<b>\$0.92</b>	<b>(\$56)</b>	<b>\$64</b>	<b>\$711</b>	<b>(\$35)</b>
<b>ANNUAL:</b>												<b>\$1,324,908</b>	<b>\$1,363,692</b>						

**PROFORMA ANALYSIS & DEVELOPMENT COSTS**

**Britain Way, Irving, 9% HTC / HOME #10153**

**INCOME**

Total Net Rentable Sq Ft:

**POTENTIAL GROSS RENT**

Secondary Income	Per Unit Per Month:	\$15.00
Other Support Income:		
Other Support Income:		

**POTENTIAL GROSS INCOME**

Vacancy & Collection Loss	% of Potential Gross Income:	-7.50%
Employee or Other Non-Rental Units or Concessions		

**EFFECTIVE GROSS INCOME**

**EXPENSES**

	<u>% OF EGI</u>	<u>PER UNIT</u>	<u>PER SQ FT</u>			<u>PER SQ FT</u>	<u>PER UNIT</u>	<u>% OF EGI</u>
General & Administrative	4.74%	\$364	0.49	\$61,119	\$78,120	\$0.63	\$465	6.23%
Management	5.00%	\$384	0.52	64,469	62,676	0.51	373	5.00%
Payroll & Payroll Tax	12.38%	\$950	1.29	159,659	150,951	1.22	899	12.04%
Repairs & Maintenance	7.52%	\$577	0.78	96,975	116,656	0.94	694	9.31%
Utilities	3.45%	\$265	0.36	44,460	26,040	0.21	155	2.08%
Water, Sewer, & Trash	4.50%	\$346	0.47	58,074	58,750	0.47	350	4.69%
Property Insurance	2.55%	\$196	0.27	32,926	33,600	0.27	200	2.68%
Property Tax 2.567812	12.17%	\$934	1.26	156,854	117,600	0.95	700	9.38%
Reserve for Replacements	3.91%	\$300	0.41	50,400	50,400	0.41	300	4.02%
TDHCA Compliance Fees	0.52%	\$40	0.05	6,720	6,720	0.05	40	0.54%
Other: Security	0.61%	\$47	0.06	7,910	7,910	0.06	47	0.63%
<b>TOTAL EXPENSES</b>	<b>57.36%</b>	<b>\$4,402</b>	<b>\$5.96</b>	<b>\$739,566</b>	<b>\$709,423</b>	<b>\$5.72</b>	<b>\$4,223</b>	<b>56.60%</b>
<b>NET OPERATING INC</b>	<b>42.64%</b>	<b>\$3,273</b>	<b>\$4.43</b>	<b>\$549,821</b>	<b>\$544,085</b>	<b>\$4.38</b>	<b>\$3,239</b>	<b>43.40%</b>

**DEBT SERVICE**

Dougherty Mortgage	\$441,181	\$445,527
TDHCA HOME	\$27,594	\$27,594
Additional Financing	\$0	
<b>TOTAL DEBT SERVICE</b>	<b>468,775</b>	<b>473,121</b>
<b>NET CASH FLOW</b>	<b>\$81,046</b>	<b>\$70,964</b>
<b>AGGREGATE DEBT COVERAGE RATIO</b>	<b>1.17</b>	<b>1.15</b>
<b>RECOMMENDED DEBT COVERAGE RATIO</b>		<b>1.18</b>

**CONSTRUCTION COST**

<u>Description</u>	<u>Factor</u>	<u>% of TOTAL</u>	<u>PER UNIT</u>	<u>PER SQ FT</u>	<u>TDHCA</u>	<u>APPLICANT</u>	<u>PER SQ FT</u>	<u>PER UNIT</u>	<u>% of TOTAL</u>
Acquisition Cost (site or bldg)		22.05%	\$25,060	\$33.93	\$4,210,000	\$4,210,000	\$33.93	\$25,060	21.96%
Off-Sites		0.00%	\$0	\$0.00	0	0	0.00	0	0.00%
Sitework		5.93%	\$6,739	\$9.12	1,132,131	1,132,131	9.12	6,739	5.90%
Direct Construction		33.42%	\$37,988	\$51.43	6,381,915	6,381,915	51.43	37,988	33.28%
Contingency	6.47%	2.54%	\$2,893	\$3.92	486,000	486,000	3.92	2,893	2.53%
Contractor's Fees	13.14%	5.50%	\$6,256	\$8.47	1,051,065	1,051,065	8.47	6,256	5.48%
Indirect Construction		5.74%	\$6,523	\$8.83	1,095,800	1,095,800	8.83	6,523	5.71%
Ineligible Costs		4.47%	\$5,076	\$6.87	852,765	852,765	6.87	5,076	4.45%
Developer's Fees	15.00%	11.19%	\$12,717	\$17.22	2,136,378	2,214,221	17.85	13,180	11.55%
Interim Financing		6.01%	\$6,827	\$9.24	1,146,936	1,146,936	9.24	6,827	5.98%
Reserves		3.16%	\$3,592	\$4.86	603,407	603,407	4.86	3,592	3.15%
<b>TOTAL COST</b>		<b>100.00%</b>	<b>\$113,669.03</b>	<b>\$153.90</b>	<b>\$19,096,397</b>	<b>\$19,174,240</b>	<b>\$154.53</b>	<b>\$114,132</b>	<b>100.00%</b>
<b>Construction Cost Recap</b>		<b>47.40%</b>	<b>\$53,876</b>	<b>\$72.95</b>	<b>\$9,051,111</b>	<b>\$9,051,111</b>	<b>\$72.95</b>	<b>\$53,876</b>	<b>47.20%</b>

**SOURCES OF FUNDS**

				<u>TDHCA</u>	<u>APPLICANT</u>	<u>RECOMMENDED</u>	
Dougherty Mortgage	32.45%	\$36,885	\$49.94	\$6,196,600	\$6,196,600	\$6,196,600	Developer Fee Available
TDHCA HOME	2.62%	\$2,976	\$4.03	500,000	500,000	500,000	\$2,183,077
Raymond James	61.36%	\$69,751	\$94.44	11,718,124	11,718,124	11,718,124	% of Dev. Fee Deferred
Deferred Developer Fees	3.98%	\$4,521	\$6.12	759,516	759,516	681,673	31%
Additional (Excess) Funds Req'd	-0.41%	(\$463)	(\$0.63)	(77,843)	0	0	15-Yr Cumulative Cash Flow
<b>TOTAL SOURCES</b>				<b>\$19,096,397</b>	<b>\$19,174,240</b>	<b>\$19,096,397</b>	<b>\$1,657,630</b>

**MULTIFAMILY COMPARATIVE ANALYSIS (continued)**

*Britain Way, Irving, 9% HTC / HOME #10153*

**DIRECT CONSTRUCTION COST ESTIMATE**

*Marshall & Swift Residential Cost Handbook  
Average Quality Multiple Residence Basis*

CATEGORY	FACTOR	UNITS/SQ FT	PER SF	AMOUNT
Base Cost				\$0
<b>Adjustments</b>				
Exterior Wall Finish	0.00%		\$0.00	\$0
Elderly			0.00	0
9-Ft. Ceilings	0.00%		0.00	0
Roofing			0.00	0
Subfloor			1.33	165,440
Floor Cover			2.41	299,033
Breezeways	\$23.05	0	0.00	0
Balconies	#DIV/0!	0	#DIV/0!	#DIV/0!
Plumbing Fixtures	\$845	(840)	(5.72)	(709,800)
Rough-ins	\$420	0	0.00	0
Built-In Appliances	\$1,850	168	2.50	310,800
Exterior Stairs	\$1,900	0	0.00	0
Enclosed Corridors	(\$9.92)		0.00	0
Other:			0.00	0
Other:			0.00	0
Carports	\$9.70	0	0.00	0
Heating/Cooling			1.85	229,548
Garages	\$30.00	0	0.00	0
Comm &/or Aux Bldgs	\$0.00	0	0.00	0
Other: fire sprinkler	\$2.25	124,080	2.25	279,180
<b>SUBTOTAL</b>			#DIV/0!	#DIV/0!
Current Cost Multiplier	0.99		#DIV/0!	#DIV/0!
Local Multiplier			#DIV/0!	#DIV/0!
<b>TOTAL DIRECT CONSTRUCTION COSTS</b>				#DIV/0!
Plans, specs, survy, bld prmt	3.90%		#DIV/0!	#DIV/0!
Interim Construction Interest	3.38%		#DIV/0!	#DIV/0!
Contractor's OH & Profit	11.50%		#DIV/0!	#DIV/0!
<b>NET DIRECT CONSTRUCTION COSTS</b>			#DIV/0!	#DIV/0!

**PROPOSED PAYMENT COMPUTATION**

<b>Dougherty Mortgage</b>	\$6,196,600	Amort	480
Int Rate	6.61%	DCR	1.25

<b>TDHCA HOME</b>	\$500,000	Amort	240
Int Rate	1.00%	Subtotal DCR	1.17

<b>Additional Financing</b>	\$0	Amort	
Int Rate		Aggregate DCR	1.17

<b>Additional Financing</b>	\$0	Amort	
Int Rate		Subtotal DCR	1.17

<b>Additional Financing</b>	\$0	Amort	
Int Rate		Aggregate DCR	1.17

**RECOMMENDED FINANCING STRUCTURE**

**APPLICANT'S NOI:**

Dougherty Mortgage	\$441,181
TDHCA HOME	19,298
Additional Financing	0
Additional Financing	0
Additional Financing	0
<b>TOTAL DEBT SERVICE</b>	<b>\$460,480</b>

<b>Dougherty Mortgage</b>	\$6,196,600	Amort	480
Int Rate	6.61%	DCR	1.23

<b>TDHCA HOME</b>	\$500,000	Amort	360
Int Rate	1.00%	Subtotal DCR	1.18

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.18

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Subtotal DCR	1.18

<b>Additional Financing</b>	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.18

**OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE (APPLICANT'S NOI)**

INCOME at 2.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
POTENTIAL GROSS RENT	\$1,324,908	\$1,351,406	\$1,378,434	\$1,406,003	\$1,434,123	\$1,583,388	\$1,748,188	\$1,930,141	\$2,352,831
Secondary Income	30,240	30,845	31,462	32,091	32,733	36,140	39,901	44,054	53,702
Other Support Income:	0	0	0	0	0	0	0	0	0
Other Support Income:	0	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME	1,355,148	1,382,251	1,409,896	1,438,094	1,466,856	1,619,527	1,788,089	1,974,195	2,406,532
Vacancy & Collection Loss	(101,640)	(103,669)	(105,742)	(107,857)	(110,014)	(121,465)	(134,107)	(148,065)	(180,490)
Employee or Other Non-Rental L	0	0	0	0	0	0	0	0	0
<b>EFFECTIVE GROSS INCOME</b>	<b>\$1,253,508</b>	<b>\$1,278,582</b>	<b>\$1,304,154</b>	<b>\$1,330,237</b>	<b>\$1,356,842</b>	<b>\$1,498,063</b>	<b>\$1,653,982</b>	<b>\$1,826,130</b>	<b>\$2,226,042</b>
EXPENSES at 3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
General & Administrative	\$78,120	\$80,464	\$82,878	\$85,364	\$87,925	\$101,929	\$118,164	\$136,984	\$184,095
Management	62,676	63929.7189	65,208	66,512	67,843	74,904	82,700	91,307	111,303
Payroll & Payroll Tax	150,951	155,480	160,144	164,948	169,897	196,957	228,327	264,693	355,726
Repairs & Maintenance	116,656	120,156	123,760	127,473	131,297	152,210	176,453	204,557	274,908
Utilities	26,040	26,821	27,626	28,455	29,308	33,976	39,388	45,661	61,365
Water, Sewer & Trash	58,750	60,513	62,328	64,198	66,124	76,655	88,865	103,018	138,448
Insurance	33,600	34,608	35,646	36,716	37,817	43,840	50,823	58,918	79,181
Property Tax	117,600	121,128	124,762	128,505	132,360	153,441	177,881	206,212	277,132
Reserve for Replacements	50,400	51,912	53,469	55,073	56,726	65,761	76,235	88,377	118,771
TDHCA Compliance Fee	6,720	6,922	7,129	7,343	7,563	8,768	10,165	11,784	15,836
Other	7,910	8,147	8,392	8,643	8,903	10,321	11,965	13,870	18,640
<b>TOTAL EXPENSES</b>	<b>\$709,423</b>	<b>\$730,079</b>	<b>\$751,342</b>	<b>\$773,230</b>	<b>\$795,762</b>	<b>\$918,762</b>	<b>\$1,060,963</b>	<b>\$1,225,382</b>	<b>\$1,635,405</b>
<b>NET OPERATING INCOME</b>	<b>\$544,085</b>	<b>\$548,503</b>	<b>\$552,812</b>	<b>\$557,006</b>	<b>\$561,079</b>	<b>\$579,301</b>	<b>\$593,020</b>	<b>\$600,748</b>	<b>\$590,638</b>
<b>DEBT SERVICE</b>									
First Lien Financing	\$441,181	\$441,181	\$441,181	\$441,181	\$441,181	\$441,181	\$441,181	\$441,181	\$441,181
Second Lien	19,298	19,298	19,298	19,298	19,298	19,298	19,298	19,298	19,298
Other Financing	0	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0	0
<b>NET CASH FLOW</b>	<b>\$83,605</b>	<b>\$88,023</b>	<b>\$92,332</b>	<b>\$96,527</b>	<b>\$100,600</b>	<b>\$118,821</b>	<b>\$132,540</b>	<b>\$140,268</b>	<b>\$130,158</b>
<b>DEBT COVERAGE RATIO</b>	<b>1.18</b>	<b>1.19</b>	<b>1.20</b>	<b>1.21</b>	<b>1.22</b>	<b>1.26</b>	<b>1.29</b>	<b>1.30</b>	<b>1.28</b>

**HTC ALLOCATION ANALYSIS -Britain Way, Irving, 9% HTC / HOME #10153**

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
<b>Acquisition Cost</b>						
Purchase of land	\$950,000	\$1,261,330				
Purchase of buildings	\$3,260,000	\$2,948,670	\$3,260,000	\$2,948,670		
<b>Off-Site Improvements</b>						
<b>Sitework</b>	\$1,132,131	\$1,132,131			\$1,132,131	\$1,132,131
<b>Construction Hard Costs</b>	\$6,381,915	\$6,381,915			\$6,381,915	\$6,381,915
<b>Contractor Fees</b>	\$1,051,065	\$1,051,065			\$1,051,065	\$1,051,065
<b>Contingencies</b>	\$486,000	\$486,000			\$486,000	\$486,000
<b>Eligible Indirect Fees</b>	\$1,095,800	\$1,095,800			\$1,095,800	\$1,095,800
<b>Eligible Financing Fees</b>	\$1,146,936	\$1,146,936			\$1,146,936	\$1,146,936
<b>All Ineligible Costs</b>	\$852,765	\$852,765				
<b>Developer Fees</b>			\$489,000	\$442,301	\$1,694,077	\$1,694,077
Developer Fees	\$2,214,221	\$2,136,378				
<b>Development Reserves</b>	\$603,407	\$603,407				
<b>TOTAL DEVELOPMENT COSTS</b>	\$19,174,240	\$19,096,397	\$3,749,000	\$3,390,971	\$12,987,924	\$12,987,924

<b>Deduct from Basis:</b>						
All grant proceeds used to finance costs in eligible basis						
B.M.R. loans used to finance cost in eligible basis						
Non-qualified non-recourse financing						
Non-qualified portion of higher quality units [42(d)(3)]						
Historic Credits (on residential portion only)						
<b>TOTAL ELIGIBLE BASIS</b>			\$3,749,000	\$3,390,971	\$12,987,924	\$12,987,924
High Cost Area Adjustment					130%	130%
<b>TOTAL ADJUSTED BASIS</b>			\$3,749,000	\$3,390,971	\$16,884,302	\$16,884,302
Applicable Fraction			100%	100%	100%	100%
<b>TOTAL QUALIFIED BASIS</b>			\$3,749,000	\$3,390,971	\$16,884,302	\$16,884,302
Applicable Percentage			3.50%	3.50%	9.00%	9.00%
<b>TOTAL AMOUNT OF TAX CREDITS</b>			\$131,215	\$118,684	\$1,519,587	\$1,519,587

<b>Syndication Proceeds</b>	<b>0.7199</b>	<b>\$944,654</b>	<b>\$854,439</b>	<b>\$10,939,933</b>	<b>\$10,939,933</b>
<b>Total Tax Credits (Eligible Basis Method)</b>				<b>\$1,650,802</b>	<b>\$1,638,271</b>
<b>Syndication Proceeds</b>				<b>\$11,884,587</b>	<b>\$11,794,372</b>
<b>Requested Tax Credits</b>				<b>\$1,627,680</b>	
<b>Syndication Proceeds</b>				<b>\$11,718,124</b>	
<b>Gap of Syndication Proceeds Needed</b>				<b>\$12,477,640</b>	<b>\$12,399,797</b>
<b>Total Tax Credits (Gap Method)</b>				<b>\$1,733,179</b>	<b>\$1,722,366</b>



**HOME PROGRAM DIVISION**

**BOARD ACTION REQUEST**

**September 9, 2010**

**Recommended Action**

Approve as presented revisions to the 2010 HOME Single Family Development (SFD) Program for Community Housing Development Organizations (CHDOs) Notice of Funding Availability (NOFA) for publication in the *Texas Register*.

**WHEREAS**, the 2010 HOME Single Family Development Program for Community Housing Development Organizations NOFA has an unsubscribed balance of \$3,024,189, and

**WHEREAS**, changes to the HOME Program Rule at 10 TAC Chapter 53 are being considered under a separate board item, therefore

**RESOLVED**, the Executive Director and his designees and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to publish the revised 2010 HOME Single Family Development (SFD) Program for Community Housing Development Organizations (CHDOs) Notice of Funding Availability in the *Texas Register* in the form presented to this meeting and in connection therewith to make such non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing.

**Background**

On May 12, 2010, the Board approved the revised 2010 Single Family Development (SFD) Program for Community Housing Development Organizations (CHDOs) NOFA, which made \$3,024,189 in funds available for the development of affordable single-family housing. The application acceptance period runs through December 3, 2010. The Department has yet to receive applications for funding under this NOFA but has had several inquiries from interested parties.

The 2010 HOME Program Rule is being considered today under a separate board item. The proposed HOME Program Rule incorporates many requirements for the various programs into the rule itself; therefore, many NOFA requirements are redundant and can be deleted. Therefore, the SFD NOFA has been streamlined due to the deletion of several passages containing information already in the proposed HOME Rule, including requirements regarding design items and amenities, evidence of property control, and financial capacity. The description of the review process has been deleted as well. As a result, the SFD NOFA is considerably more brief.



There are no substantive changes to NOFA requirements. If approved, funds available under this NOFA will remain at \$3,024,189, with the application acceptance period ending December 3, 2010. Funding will continue to be limited to \$1,000,000 per Application.

The availability and use of these funds are subject to the Department's HOME Program Rule (10 TAC Chapter 53), the federal regulations governing the HOME Program (24 CFR Part 92), and the Department's Real Estate Analysis Rules and Guidelines (10 TAC §§1.32-1.37). An open application cycle will be used to process applications received in response to this NOFA and the Regional Allocation Formula (RAF) does not apply to funds that are being reprogrammed.

The final and blacklined NOFA reflecting changes made are attached behind this action item.



## **Texas Department of Housing and Community Affairs HOME Investment Partnerships Program**

### **Single Family Development Program for Community Housing Development Organizations (CHDOs) Notice of Funding Availability (NOFA)**

#### **1) Summary.**

The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of approximately \$3,024,189 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDOs) to develop new and rehabilitate existing single family housing for low-income Texans. The availability and use of these funds is subject to the Department’s HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (“HOME Rules”) in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

#### **2) Allocation of HOME Funds.**

- a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The program is designed to create housing options affordable to individuals and families of low income who would otherwise move into substandard housing. All funds released under this NOFA are to be used for the creation of affordable housing for low-income Texans earning 60% or less of the Area Median Family Income (AMFI).
- b) In accordance with 10 TAC §53.20, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Funding made available under this NOFA is not subject to the Regional Allocation Formula (RAF). Based on the availability of funds, applications will be accepted until 5:00 p.m. on **December 3, 2010**.
- c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC Chapter 53. Project funds awards are limited to no more than \$1 million per application and per CHDO.

- d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies.

**3) Eligible and Prohibited Activities.**

- a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205 and §92.254 and at 10 TAC §§53.70-53.72, which involve the construction of single family affordable housing.
- b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214.
- c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the State of Texas Consolidated Plan One-Year Action Plan.

**4) Eligible and Ineligible Applicants.** Eligible Applicants are Community Housing Development Organizations (CHDOs) that meet the requirements of 10 TAC §53.90 at the time of application and recertify annually in accordance with 10 TAC §53.91.

**5) Public Notifications.** Applicants must request at least fourteen (14) days prior to submission of an Application and submit with the Application a list of Neighborhood Organizations on record with the county and state in accordance with 10 TAC §50.9(h)(8)(A)(i). The Department shall publicly notify all individuals and entities required by §2306.1114 of Texas Government Code.

**6) Application and Threshold Criteria.** An Application must be compliant with the Threshold requirements in 10 TAC §§53.24 and 53.70 and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 53.

- a) **Financing Documentation.** A written narrative describing the financing plan for the units including the funding sources for the construction of the units. Bona fide commitment letters or term sheets for all sources of construction financing must be provided. If other sources of down payment assistance are proposed, commitment letters evidencing these sources must be provided;
- b) **Application Certifications.** All Applicants may be required to certify to compliance with the following:
  - i) Affirmative Marketing (24 CFR §92.351);
  - ii) Davis-Bacon Act (24 CFR §92.354);
  - iii) Environmental standards (24 CFR Parts 50 & 58);
  - iv) Uniform Relocation Act (49 CFR Part 24); and
  - v) Lead Safe Housing Rule (24 CFR Part 35).
  - vi) Other certifications may be required as specifically stated in the ASPM current at the time of Application.
  - vii) **Audit Certification.** An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).

- c) **CHDO Certification.** CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.90, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.90 at the time of Application submission.
- 6) **Review Process.** All Applications will be reviewed in accordance with 10 TAC §53.22.
- 7) **Tie Breaker Factors.** In the event that two or more Applications receive the same priority based upon the provisions of §9 of this NOFA and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Application will receive a preference in consideration for an awarded of funds.
  - a) Applications involving any Rehabilitation or Reconstruction of existing units will win this first tier tie breaker over Applications involving solely New Construction.
  - b) The Application with the least amount of HOME funds per unit will win this second tier tie breaker.
- 8) **Application Submission.**
  - a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on **December 3, 2010**. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Chris Law at (512) 305-8854 or via e-mail at [chris.law@tdhca.state.tx.us](mailto:chris.law@tdhca.state.tx.us).
  - b) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.
  - c) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.
  - d) Third party reports – If all applicable third party reports are not received at the time of application submission, the Application will be terminated.
  - e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
  - f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$300.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care,

nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

g) Application Workshops. The Department will present several one-day HOME Program application workshops to provide an overview of the Single Family Development Program, application preparation and submission, evaluation criteria, and information about the major Federal and State requirements that would impact the development. The workshop schedule and registration will be posted on the Department's website at [www.tdhca.state.tx.us/home-division/sf-home/index.htm](http://www.tdhca.state.tx.us/home-division/sf-home/index.htm).

h) Applications must be sent via overnight delivery to:

**HOME Division  
Texas Department of Housing and Community Affairs  
Attn: Chris Law  
221 East 11<sup>th</sup> Street  
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**HOME Division  
Texas Department of Housing and Community Affairs  
Attn: Chris Law  
Post Office Box 13941  
Austin, TX 78711-3941**

***NOTE:** This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Single Family Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*



## Texas Department of Housing and Community Affairs HOME Investment Partnerships Program

### Single Family Development Program for Community Housing Development Organizations (CHDOs) Notice of Funding Availability (NOFA)

#### 1) Summary.

The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of approximately \$3,024,189 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDOs) to develop new and rehabilitate existing single family housing for low-income Texans. The availability and use of these funds is subject to the Department’s HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (“HOME Rules”) in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §§85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

#### 2) Allocation of HOME Funds.

- a) These funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The program is designed to create housing options affordable to individuals and families of low income who would otherwise move into substandard housing. All funds released under this NOFA are to be used for the creation of affordable housing for low-income Texans earning 60% or less of the Area Median Family Income (AMFI).
- b) In accordance with 10 TAC §53.4820, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Funding made available under this NOFA is not subject to the Regional Allocation Formula (RAF). ~~Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.~~ Based on the availability of funds, applications will be accepted until 5:00 p.m. on **December 3, 2010**.
- c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10

TAC ~~§53.41~~Chapter 53. Project funds awards are limited to no more than \$1 million per application and per CHDO.

- d) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies. ~~Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed \$50,000 in accordance with 10 TAC §53.47(a)(4). Awards for operating expenses will be drawn over a two (2) year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.~~

### 3) Eligible and Prohibited Activities.

- a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205 and §92.254 and at 10 TAC ~~§§53.70-53.72~~§53.35 and §53.50, which involve the construction of ~~affordable development~~single family affordable housing.

~~b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214. b) and 10 TAC §53.37.~~

- c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the State of Texas Consolidated Plan One-Year Action Plan.

~~d) A portion of funds for single family development are set aside for eligible CHDOs and may be used for pre development costs, land acquisition, lot development, on site infrastructure, construction, and down payment assistance to qualified homebuyers. Onsite infrastructure includes costs for individual service lines, approved septic installation, sidewalks, curbs and site improvements. Examples of excluded infrastructure costs are water, sewer, electrical, main or transfer lines, streets and other improvements that serve the whole community.~~

~~e) CHDO Applicants must be the developer, Contract Administrator, and construction loan borrower for the proposed development. Partnerships between CHDOs and other developers may be allowable provided the CHDO remains actively engaged and is the primary contact and any other developer partner or affiliate/related party to the partner does not also have current ownership of the property to be used for development. The Applicant must demonstrate compliance with this requirement if requested by the Department.~~

~~f) Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §49.50.5 excluding subsections (5) — (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.~~

~~4) Documenting Sources of Funds. Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the~~

Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match as applicable.

**4) Eligible and Ineligible Applicants.** Eligible Applicants are Community Housing Development Organizations (CHDOs) that meet the requirements of 10 TAC §53.90 at the time of application and recertify annually in accordance with 10 TAC §53.91.

**5) Affordability Requirements.** The affordability period for each newly developed unit is based on the amount of HOME funds invested pursuant to 24 CFR §92.254. In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority unless the balance on the Loan will be paid at closing.

**6) Site and Development Restrictions.**

a) Pursuant to 24 CFR §92.251, single family new construction housing that is constructed or rehabilitated with HOME funds must meet all applicable local building codes (plus any amendments) and building and zoning ordinances in effect at the time of project completion. In the absence of a locally adopted building code for new construction or rehabilitation, HOME assisted new construction or rehabilitation must meet the building code and version (plus any amendment) that is adopted by the county seat in which the development is located. Home assisted new construction located in counties that have not adopted building codes must meet the 2000 International Residential Code (IRC) applicable to non-electrical aspects of residential construction, and for electrical aspects of residential construction, the 1999 National Electrical Code (NEC). Developments in unincorporated areas and counties without code enforcement procedures must have construction inspections performed as required by the Texas Residential Construction Commission (TRCC).

b) Accessibility requirements of §2306.514 of the Texas Government Code apply to all newly developed units. To the extent that a prospective buyer of a unit requests specific accessible modifications in addition to those required under §2306.514, the special modification must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and the technical design requirements of the Uniform Federal Accessibility Standards (UFAS). All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

c) Newly constructed homes must also meet energy standards as verified by RESCHECK™ certification and the energy conservation sections of the 2003 International Residential Code (IRC) and the 2003 International Energy Conservation Code, if applicable, as required by Chapter 388 of the Texas Health and Safety Code, as applicable. Housing assisted with HOME funds must have passed an environmental review in accordance with 24 CFR Part 58. Single Family Accessibility Standards must also be met when applicable.

d) Housing that is constructed with HOME funds within the Designated Catastrophe Area (Texas first tier coastal counties and certain areas located in Harris County east of HWY 146) must meet the stricter of either the locally adopted building code (plus any amendment) or the 2006



~~International Residential Code (IRC) with Texas Revisions. At the completion of construction all developments must be certified for windstorm insurability by a physical engineer licensed and registered in Texas. Note that an engineer's design and an engineer's during construction inspections will be necessary to receive the windstorm certification.~~

~~Unit types and lot locations may, with the approval of the Department, differ from those indicated at initial application submission according to the preferences of homebuyers. If changes to lot locations or unit sizes are made, applicants will be required to submit updated documentation required under sections (8)(d), (8)(h), and (8)(i) of this NOFA, as applicable.~~

**5) Public Notifications.** Applicants must request at least fourteen (14) days prior to submission of an Application and submit with the Application a list of Neighborhood Organizations on record with the county and state in accordance with 10 TAC §50.9(h)(8)(A)(i). The Department shall publicly notify all individuals and entities required by §2306.1114 of Texas Government Code.

~~7)The Department will notify all persons and organizations regarding the proposed development as required by 10 TAC §53.8 within 14 Days of Application receipt. In order to meet this requirement, the Applicant must request a list of Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:~~

~~a)Not later than fourteen (14) days prior to submission of the Application, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;~~

~~9)-~~

~~b)If no reply letter is received from the local elected officials by seven (7) days prior to the submission of the Application, then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application;~~

~~11)-~~

~~e)The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.~~

~~13)~~

**8)6) Application and Threshold Criteria.** An Application must be compliant with the Threshold requirements in 10 TAC §§53.24 and 53.70 and the Threshold Criteria listed in this section at the time of Application submission unless specifically indicated otherwise. The following Threshold Criteria listed in this section are mandatory requirements at the time of Application submission unless specifically indicated otherwise. In addition, an Application must be consistent with the Program and Administrative requirements in 10 TAC Chapter 53.

a)**Uniform Application.** Completion and submission of the entire uniform application applicable to the program and any other supplemental documentation that may be required by the Department.

b) **Unit Amenities.** A certification that each home will have all of the following amenities:

- i) Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room;
- ii) Blinds or window coverings for all windows;
- iii) Disposal and Energy Star or equivalently rated dishwasher (must be provided as option to homebuyer);
- iv) Oven/Range;  
~~Washer/dryer connections;~~
- v) Exhaust/vent fans (vented to the outside) in bathrooms;  
~~Ceiling fans in each bedroom;~~
- vi) Energy Star or equivalently rated lighting in all rooms, which may include compact fluorescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and
- vii) Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car.

e) **Unit Sizes.** A certification that each home will meet the minimum applicable unit size as provided in the following clauses of this subsection:

- i) No unit shall contain less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;
- ii) Each bedroom must be no less than 100 square feet; have a length or width no less than 8 feet; be self-contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to contain at least 5 feet of hanging space;
- iii) No less than 800 total net square feet for a two-bedroom home;
- iv) No less than 1000 total net square feet for a three-bedroom and two-bathroom home; and
- v) No less than 1200 total net square feet for a four-bedroom and two-bathroom home.

d) **Design Items.** All of the architectural drawings identified in this subsection must contain an accurate and legible scale or dimensions (full size construction quality plans are not required.)

- i) A site plan for each lot or set of contiguous lots with the unit and paved parking area reflected (the actual unit reflected on a particular lot may change based on the home buyer's final selection of one of the units provided under §(2) of this NOFA);
- ii) A floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition. Unit plans should be consistent with other documentation in the application; and
- iii) A FEMA Issued Flood Map that includes that location of the subject site or sites. An Applicant must identify the location of each site on the Flood Map(s).

e) **Households Served.** All units must be constructed for households at or below 60% of AMI and households at or below 60% of AMI are eligible to receive 100% of the purchase price (less ineligible costs) in the form of a 0% interest first lien mortgage amortized over 30 years and up to \$15,000 in down payment assistance structured as a deferred forgivable second lien.

f) **Unit Cost Limits.** Each unit must meet the following requirements:

- i) The total hard construction cost does not exceed \$73.00 per square foot;
- ii) The total development cost and purchase price do not exceed the 95% of the Single Family Mortgage Limits under Section 203(b) of the National Housing Act as required in 24 CFR §92.252(a)(2);
- iii) The sales price may not exceed the per square foot valuation documented in the appraisal.

~~For projects involving rehabilitation of existing housing, total hard construction costs for each unit may not exceed \$30.00 per square foot30,000.~~

~~g) **Financing Documentation.** All Applicants must provide evidence of the estimated development costs and sources of financing as described in the following paragraphs of this subsection.~~

~~i)a) **AA** written narrative describing the financing plan for the units including the funding sources for the construction of the units. Bona fide commitment letters or term sheets for all sources of construction financing must be provided. If other sources of down payment assistance are proposed, commitment letters evidencing these sources must be provided;~~

~~ii) The “Development Cost Schedule” provided in the application. This schedule must be completed with the estimated mix of units and the Department may place restrictions on the funding based upon this mix in order to ensure that the approved funding is sufficient to complete the total number of proposed units;~~

~~iii) An “Affordability Analysis” for each unit based upon the proposed down payment assistance and estimated permanent mortgage terms;~~

~~h) **Evidence of Property Control.** All Applicants are required to document control of each lot that is proposed to be used under this program. In addition, Applicants must provide the following, as follows:~~

~~i) A recorded warranty deed with corresponding executed settlement statement; or~~

~~ii) A contract or option for the purchase of the proposed lots that is valid for at least one hundred twenty (120) days from the date of application submission.~~

~~iii) The appraisal required in §(8)(n)(i) of this NOFA must also include the “as vacant” value of at least one of the proposed lots if one of the following is true:~~

~~(I) The Applicant has an Identity of Interest with the seller or current owner of the property; or~~

~~(II) Any of the proposed property is part of a newly developed or under development subdivision in which at least three other third-party sales cannot be evidenced.~~

~~iv) If any lot proposed for use in the program is already owned by the person(s) that will own the completed home, the current owner must sign a certification indicating that they understand that ownership of the lot will be relinquished during the period that construction and development occurs.~~

~~v) The purchase price of any lot in which the current owner has an Identity of Interest with the Applicant cannot exceed the lesser of the following:~~

~~(I) The original third-party acquisition cost plus verifiable costs of owning, holding, or improving the property since the date of original acquisition; and~~

~~(II) The appraised value of the lot or comparable lot as reflected in the required appraisal.~~

~~vi) Evidence that the property is zoned for the proposed use.~~

~~i) **Evidence of Adequate Utilities.** The Applicant must provide letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable.~~

~~j) **Development Team.** The Applicant must provide essential contact information and Tax Identification Numbers (TINs) each organization participating in the activities identified in the application. The Applicant and owners of the Applicant must also provide documentation of any previous participation with the Department’s programs.~~

~~k) **Financial Capacity.** If the Department’s loan(s) amount to more than 50% of the total development cost, the Application will include:~~

~~i) A letter from a third party CPA verifying the capacity of the owner or developer to provide at least 10% of the total development cost as a short term loan for development; and~~

~~ii) A letter from the developer’s or owner’s bank(s) confirming funds amounting to 10% of the total development cost are available; or~~

~~iii) Evidence of a line of credit or equivalent source of credit equal to at least 10% of the total development cost from a financial institution that is available for use during the proposed development activities.~~

~~l) **Resolution.** A resolution from the Applicant's direct governing body authorizing the submission of the application and designating a person or persons authorized to execute legal documents on the Applicant's behalf.~~

~~m) **Colonia Evidence.** If submitted under section (2)(d) of this NOFA, a map and any other documentation required in the Application to evidence that the proposed development meets the definition in section (2)(d)(i) of this NOFA regarding location of development entirely within a Colonia.~~

~~n) **Third Party Reports.** The following third party reports must be submitted with the application unless specifically indicated otherwise.~~

~~i) **Appraisal report.** An "as complete" Appraisal for at least one unit that is:~~

~~(I) Prepared by a qualified Third Party;~~

~~\_\_\_\_\_ Dated not more than 6 months from the date that the application is submitted; and~~

~~\_\_\_\_\_ Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and 10 TAC §1.34, as applicable. Appraisal requirements identified in 10 TAC §1.34 that are generally only applicable for income producing property must not be met.~~

~~ii) **Phase I Environmental Site Assessment.** If any unit(s) is/are proposed to be located on currently unimproved property (without infrastructure), a Phase I Environmental Site Assessment is required and must meet be:~~

~~(I) Prepared by a qualified Third Party;~~

~~(II) Dated not more than 12 months from the date that the application is submitted; and~~

~~(III) Prepared in accordance with 10 TAC §1.35 of the Real Estate Analysis Rules and Guidelines.~~

~~o) b) **Application Certifications.** All Applicants may be required to certify to compliance with the following:~~

~~i) Affirmative Marketing (24 CFR §92.351);~~

~~ii) Davis-Bacon Act (24 CFR §92.354);~~

~~iii) Environmental standards (24 CFR Parts 50 & 58);~~

~~iv) Uniform Relocation Act (49 CFR Part 24); and~~

~~v) Lead Safe Housing Rule (24 CFR Part 35).~~

~~vi) Other certifications may be required as specifically stated in the ASPM current at the time of Application.~~

~~vii) **Audit Certification.** An Applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of Application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the Application deadline for funds or other assistance per 10 TAC §1.3(b).~~

~~viii) **Per 10 TAC §53.44(c) all entities receiving funds of \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.**~~

~~c) **CHDO Certification.** CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.950, Community Housing Development Organization (CHDO) Certification. CHDO Certification Applications must meet the requirements of 10 TAC §53.950 at the time of Application submission.~~

~~6) **Review Process.** All Applications will be reviewed in accordance with 10 TAC §53.22.~~

~~7) **Tie Breaker Factors.** In the event that two or more Applications receive the same priority based upon the provisions of §9 of this NOFA and are both practicable and economically feasible, the Department will utilize the factors in this section, in the order they are presented, to determine which Application will receive a preference in consideration for an awarded of funds.~~

p) Additionally, the following apply:

i) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development of the property, pursuant to 24 CFR §92.300.

ii) A separate Application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board.

iii) A new Application for CHDO certification must be submitted to the Department with each new Application for HOME CHDO Development funds. The CHDO Application package will be available with all other Application materials on the Department's website.

### **9) Review Process.**

a) Pursuant to 10 TAC §53.48, each application will be handled on a first come, first served basis as further described in this section. Each application will be assigned a Received Date based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their Received Date unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier Received Date but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

i) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and Application Submission Procedures Manual (ASPM) and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within forty five (45) days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

ii) Phase Two will include a comprehensive review for financial feasibility. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent in accordance with 10 TAC §1.32. REA The Department will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within forty five (45) days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

iii) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within thirty (30) days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not

~~cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.~~

~~iv) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.~~

~~b) Pursuant to 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.~~

~~e) A site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.~~

~~d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.~~

~~e) In accordance with §2306.082 of the Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 Texas Administrative Code §1.17.~~

~~f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.~~

## **10)Administration.**

All Applicants receiving an award under this NOFA will be required to enter into a contract with the Department and will be subject to the contract requirements in 10 TAC Chapter 53, Subchapters F and G. Additionally, Applicants are encouraged to request the Department's Manual for guidance on administration of awards and contracts made under this NOFA. This manual will also be posted to the Department's website ([www.tdhea.state.tx.us/home-division/manuals-rules.htm](http://www.tdhea.state.tx.us/home-division/manuals-rules.htm)).

b)Financing structure. There are two separate loan closing processes in the Department's SingeSingle Family Development Program, as follows:

i)Construction Loan(s). The first closing is on the Lot Acquisition and Interim Construction (LAIC) Loan for both the lot purchase and construction costs. The LAIC loan (from the Department to the Applicant/Contract Administrator) will equal the total development cost of the property, excluding the developer fee and any conventional construction financing, as applicable. The following clauses must be met prior to this closing:

(I)A qualified homebuyer must be identified for each home included in the closing and a sales contract must be executed with the homebuyer;

(II)Executed construction agreement between the contractor and the Contract Administrator; and

(III)All necessary and customary pre-closing due diligence identified by the Department.

ii)The construction loan may be for the construction of one or multiple homes provided that all other paragraphs of this subsection will be met.

iii)Developer fee or profit will be equal to the lesser of the amount approved by the Department's Governing Board, 15% of the total development costs less the fee itself and all other costs identified in 10 TAC §1.32(e)(7)(C), or the difference between the sales price and the construction financing attributed to a home and is paid at closing on the permanent homebuyer mortgage.

Homebuyer Mortgage and Down Payment Assistance. The second closing is on the loan between the Department and homebuyer, who will be identified and qualified by the Contract Administrator to purchase the home. To ensure that the home is affordable, the Department will enter into one and/or two loans with the homebuyer depending on the family's income and use of a conventional mortgage.

iv) The loans will be structured as follows:

(I)The **First Lien Loan** will be 30-year amortizing loan with total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no less than 25% and no greater than 30% of the homebuyer's gross income. Should the estimated housing payment be less than 25%, the Department shall reduce the amount of down payment assistance and/or charge an interest rate to the homebuyer such that the total estimated housing payment is no less than 25% of the homebuyer's gross income. In no instance shall the interest rate charged to the homebuyer exceed 5% or the current "unassisted" rate available through the Department's Texas First Time Homebuyer Program, whichever is greater. The Department shall use to the income certification described in §(10)(c)(i) of this NOFA to make this determination, which may be adjusted only if the income certification described in §(10)(c)(ii) of this NOFA reflects a material decrease in gross income.

(II)The **Down Payment Assistance** would be a 15-year deferred forgivable second lien that makes up the difference between the amount of the first lien loan and the purchase price. For example, for a \$92,000 home and a qualified homebuyer with a monthly payment of \$225, the first lien loan will be \$81,000 (\$225 x 360 payments) at zero percent interest (0%). The second lien loan in this example would be \$11,000 (\$92,000 - \$81,000) as a deferred forgivable. If a prospective homebuyer for the same home can afford a payment of \$300 per month they will not have a second lien loan. In this example, their income is enough to payoff a first lien loan of zero percent interest over thirty (30) years.

v)Applicants may collect an escrow feearnest money of no more than \$500 as a homebuyer's commitment. All of the fee will be credited to the homebuyer at closing against ineligible closing costs and the first housing payments. All other closing costs shall be paid by the Applicant and the funds

~~awarded under this NOFA may be used to pay such reasonable and customary closing costs. The Applicant should include these costs in the Development Cost Schedule, as applicable.~~

~~e) Homebuyer qualifications. Eligible homebuyers will be qualified based on gross household, verification of consistent income, satisfactory completion of a certified homebuyer counseling program, and a certification that all recurring debt payments [including expected principal, taxes, and insurance (PITI) to own the home] are less than or equal to 45% of the homebuyer's gross income. The applicant will certify homeowner eligibility twice, as follows:~~

~~i) Prior to executing a sales contract and development of the home in accordance with 24 CFR Part 92; and  
ii) Prior to closing the homebuyer's loan. The purpose of this second certification is to ensure that the homeowner's income and debt load have not changed during construction of the home such that the homebuyer's ability service the repayable debt is significantly adversely impacted.~~

~~d) If a homebuyer should become ineligible or otherwise cease participation and a new buyer is not located within ninety (90) days of the end of the construction period, all additional funding closings and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.~~

~~e) Draws. Consistent with HOME Program regulations, funding draws will be made on a reimbursement basis as completion occurs. The Applicant must provide a progress inspection from a third party inspector, photos, lien waivers from the contractor and subcontractors (or a down date endorsement), an itemization of actual costs incurred for each interim construction draw and in accordance with all applicable provisions of 10 TAC Chapter 53.~~

~~f) Performance benchmarks. The Contract term will not exceed 32 months. Performance under the contract will be based on the following benchmarks:~~

~~i) 6 months, environmental clearance must be complete for 25% of the units;  
ii) 8 months, lot acquisition and interim construction loans must be closed for 25% of the units;  
iii) 14 months, construction must be completed for 25% of the units; environmental clearance must be complete for 50% of the units;  
iv) 16 months, lot acquisition and interim construction loans must be closed for 50% of the units;  
v) 22 months, construction must be completed for 50% of the units; environmental clearance must be complete for 100% of the units;  
vi) 24 months, lot acquisition and interim construction loans must be closed for 100% of the units;  
vii) 30 months, construction must be completed for 100% of the units; and  
viii) 32 months, 100% of funds must be drawn.~~

a) Applications involving any Rehabilitation or Reconstruction of existing units will win this first tier tie breaker over Applications involving solely New Construction.

~~17)b) \_\_\_\_\_~~ The Application with the least amount of HOME funds per unit will win this second tier tie breaker.

#### ~~14)8) Application Submission.~~

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on **December 3, 2010**. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Chris Law at (512) 305-8854 or via e-mail at [chris.law@tdhca.state.tx.us](mailto:chris.law@tdhca.state.tx.us).



b) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.

c) The application consists of several parts as further described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.

d) Third party reports – If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department’s website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$300.00 per Application. Payment must be in the form of a check, cashier’s check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

g) Application Workshops. The Department will present several one-day HOME Program application workshops to provide an overview of the Single-Family Development Program, application preparation and submission, evaluation criteria, and information about the major Federal and State requirements that would impact the development. The workshop schedule and registration will be posted on the Department’s website at [www.tdhca.state.tx.us/home-division/sf-home/index.htm](http://www.tdhca.state.tx.us/home-division/sf-home/index.htm).

h) \_\_\_\_\_ Applications must be sent via overnight delivery to:

**HOME Division**  
**Texas Department of Housing and Community Affairs**  
**Attn: Chris Law**  
**221 East 11<sup>th</sup> Street**  
**Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**HOME Division**  
**Texas Department of Housing and Community Affairs**  
**Attn: Chris Law**  
**Post Office Box 13941**

**Austin, TX 78711-3941**

**NOTE:** This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME ~~CHDO~~ Single Family Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

## HOME PROGRAM DIVISION

### BOARD ACTION REQUEST

September 9, 2010

#### Recommended Action

Approve as presented the 2010 HOME Single Family Programs Notice of Funding Availability (NOFA) for publication in the *Texas Register*.

**RESOLVED**, the Executive Director and his designees and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to publish the 2010 HOME Single Family Programs Notice of Funding Availability in the *Texas Register* in the form presented to this meeting and in connection therewith to make such non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing.

#### Background

The Department has executed its 2010 Grant Agreement with HUD; therefore, 2010 funding is now available to be programmed for various uses in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP) approved by HUD. The Agreement includes \$43,593,825 for the Department's HOME Investment Partnerships Program and plans \$16,232,107 for Homeowner Rehabilitation Assistance (HRA), \$3,478,309 for Homebuyer Assistance (HBA), \$3,478,309 for Tenant-Based Rental Assistance (TBRA), a set-aside for Housing Programs for Persons with Disabilities for \$2,842,213, and a Contract for Deed Conversion set-aside for \$2,000,000. The remainder of the annual allocation is being made available in a separate NOFA for multifamily development activities and is utilized for administrative costs and CHDO operating expense grants. In addition to the 2010 Program Year HOME allocation, deobligated HOME funds in the amount of \$2,179,691 will be programmed for a HOME Disaster Relief Assistance Program, and \$1,000,000 of current and anticipated HOME program income will be programmed for the Rehabilitation with Refinance pilot program. Staff will transfer program income as it becomes available to meet the OYAP.

The availability and use of these funds are subject to the Department's 2010 HOME Program Rule (10 TAC Chapter 53) and the federal regulations governing the HOME Program (24 CFR Part 92). The proposed 2010 HOME Program Rule, recommended for adoption today under a separate action item, includes the development of a reservation system, a pilot program for rehabilitation with refinance, and defines, codifies, and streamlines the processes and documentation requirements for the administration of the Department's HOME Program. The Single Family Programs NOFA was developed in accordance with the proposed 2010 HOME Program Rule. An open application cycle will be used for contract awards and/or reservation system applications received in response to this NOFA. The Regional Allocation Formula (RAF) will be utilized to program set-asides subject to the RAF; however, HOME Program Income and reprogrammed funds are not subject to the RAF. The RAF tables are not included in the NOFA but will be available on the Department's website, as stated in the NOFA.

The proposed NOFA and RAF tables are attached behind this action item.



**Texas Department of Housing and Community Affairs  
HOME Investment Partnerships Program**

**2010 HOME Single Family Programs  
Notice of Funding Availability (NOFA)**

- 1) **Summary.** The Texas Department of Housing and Community Affairs (“the Department”) announces the availability of approximately \$31,212,551 in funding from the HOME Investment Partnerships Program (HOME) for single family housing programs. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 (“HOME Rules”) in effect at the time the Single Family or Reservation System Participation application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306 of the Texas Government Code. Other federal regulations apply, including but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §§85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.
  
- 2) **Allocation of HOME Funds.**
  - a) The funds are made available through the Department’s allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been programmed for single family housing assistance programs in accordance with the 2010 State of Texas Consolidated Plan One-Year Action Plan as follows. Balances available for each region and set-aside will be maintained by the Department and can be accessed at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).
    - i) **Homeowner Rehabilitation Assistance (HRA).** \$16,232,107 in funds is available for HRA, of which at least \$1,000,000 will be available solely through the Reservation System. HRA provides funds for the rehabilitation or demolition and reconstruction of single-family residences owned and occupied by low-income households. Specific program guidelines can be found at 10 TAC §§ 53.30-32.
    - ii) **Homebuyer Assistance (HBA).** \$3,478,309 is available for HBA, of which at least \$1,000,000 will be available solely through the Reservation System. HBA provides downpayment and closing cost assistance to low-income households. Additionally, assistance may be provided for accessibility modifications, if required. Specific program guidelines can be found at 10 TAC §§53.40-42.
    - iii) **Tenant Based Rental Assistance (TBRA).** \$3,478,309 in funds is available for TBRA, of which at least \$1,000,000 will be available solely through the Reservation System. TBRA provides rental subsidies to low-income households and may include deposits and utility deposits. Specific program guidelines can be found at 10 TAC §§53.60-62.

- iv) **Persons with Disabilities Set-Aside.** \$2,844,135 in funding is set-aside to assist Persons with Disabilities with TBRA or HBA. \$1,247,641 is reserved for use in any area of the state including within other Participating Jurisdictions, of which at least \$623,820 will be available only through the Reservation System. \$1,596,494 is reserved for use only in Non-Participating Jurisdictions (Non-PJ) areas and will be available only through the Reservation System.
- v) **Contract for Deed Conversion (CFDC).** \$2,000,000 in funding is set-aside for CFDC, which will be available solely through the Reservation System. CFDC provides funds to convert contracts for deed in colonias to warranty deeds. Additionally, assistance may be provided to rehabilitate or reconstruct the housing unit. Specific program guidelines can be found at 10 TAC §§53.50-52.
- vi) **Disaster Relief.** \$2,179,691 of Deobligated funds is set-aside for Disaster Relief and available solely through the Reservation System. Disaster Relief Assistance may be provided to eligible applicants who provide HRA, HBA, or TBRA assistance to victims of a natural disaster.
- vii) **Rehabilitation with Refinance.** At least \$1,000,000 in projected program, as available, in accordance with the 2010 Consolidated Plan One-Year Action Plan (OYAP) is available for Rehabilitation with Refinance and available solely through the Reservation System. Currently, approximately \$300,000 in program income is being made available and additional program income will be added when received throughout the year. Homeowner Rehabilitation with Refinance provides assistance to homeowners for the rehabilitation or reconstruction of their home and the refinance of an existing mortgage to ensure affordability. Specific program guidelines can be found at 10 TAC §§ 53.30-32.

- b) Reservations of Funds or Applications for Contract Awards will be accepted by the Department on an on-going basis until **5:00 p.m. Friday, April 29, 2011.**
- c) Any funds under the HRA, HBA, TBRA or Rehabilitation with Refinancing set-asides that have been requested or reserved prior to **5:00 p.m. Tuesday, November 30, 2010** are subject to the Regional Allocation Formula (RAF). The Contract for Deed Conversion, Persons with Disabilities, and Disaster Relief set-asides are not subject regional allocation.
- d) On **Wednesday, December 1, 2010**, any funds which have not been requested or reserved under §(2)(b) of this NOFA will collapse and be made available in any region and subregion. Funds will remain within each set-aside. Applications and Reservations of Funds submitted under this subsection will be accepted by the Department on an on-going basis until 5:00 p.m. **Monday, January 31, 2011**, regardless of method of delivery.
- e) After **Friday, January 7, 2011**, staff may reprogram all remaining funds, except for Persons with Disabilities set-aside funds available for use in PJs, to Program Activities with higher demand for funds. Additionally, at any time after this date funds may be redirected and made available under the Reservation System to satisfy excess demand.

### **3) Eligible and Prohibited Activities.**

- a) Prohibited activities include those at 24 CFR §92.214 and 10 TAC Chapter 53.

- b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications receiving funds under the Persons with Disabilities Set-Aside and designated for use in a PJ.
- c) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Authorities.

**4) Application Threshold Requirements.**

- a) **Threshold Criteria.** Threshold criteria in 10 TAC Chapter 53 are mandatory requirements at the time of application submission, unless specifically indicated otherwise, and will be included in the written agreement if funds are awarded.
- b) **Threshold Score.** In addition to the threshold requirements of 10 TAC §53.24, the applications for Contract Awards must meet the minimum threshold score of four (4). This score is tallied using points from the following categories:
  - i) **Additional Eligible Match:** In addition to the threshold match requirement in 10 TAC Chapter 53, the Applicant can receive one (1) point for each percentage of additional match.
  - ii) **Very Low Income Targeting.** Table 2 will be used to determine very low income targeting points awarded, as follows:

Table 2

Income Target	Points	Points (HBA only)
At least 25% of units at 60% AMFI (50% for TBRA)	1	4
At least 50% of units at 60% AMFI (50% for TBRA)	2	
At least 75% of units at 60% AMFI (50% for TBRA)	3	

- iii) **Extremely Low Income Targeting.** Table 3 will be used to determine extremely low income targeting points awarded, as follows:

Table 3

Income Target	Points
At least 25% of units at 30% AMFI	2
At least 50% of units at 30% AMFI	3
At least 75% of units at 30% AMFI	4

**5) Reservation System Applications.**

- a) Applicants may apply at any time to participate in the Reservation System.
- b) Applicants applying for Contract Awards may concurrently apply to become Reservation System Participants.

**6) Application Submission.**

- a) All applications submitted under this NOFA must be received on or before **5:00 p.m. Friday, April 29, 2011**, regardless of method of delivery. The Department will accept

applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays, from the date this NOFA is published in the Texas Register until the deadline date. For questions regarding this NOFA, please contact the HOME Division at (512) 463-8921 or via e-mail at HOME@tdhca.state.tx.us.

- b) All applications must be submitted and documentation provided as described in 10 TAC §53 and the Application Submission Procedures Manual (ASPM).
- c) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.
- d) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. The Application fee is not an allowable or reimbursable cost under the HOME Program. An Applicant that is a Nonprofit Organization may request a fee waiver in accordance with Chapter 2306.147(b) of the Texas Government Code.
- e) This NOFA does not include text of the various applicable regulatory provisions pertinent to the HOME Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.
- f) Applications must be sent via overnight delivery to:

**Texas Department of Housing and Community Affairs  
HOME Division  
221 East 11th Street  
Austin, TX 78701-2410**

Or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs  
HOME Division  
PO Box 13941  
Austin, TX 78711-394**

**2010 HOME Single Family Programs  
Regional Allocation Formula**

**TABLE 1  
AVAILABLE HOME FUNDS FOR SINGLE FAMILY ACTIVITIES**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$ 1,057,325	4.6%	\$ 1,057,059	100.0%	\$ 267	0.0%
2	Abilene	\$ 664,930	2.9%	\$ 647,907	97.4%	\$ 17,024	2.6%
3	Dallas/Fort Worth	\$ 4,631,757	20.0%	\$ 1,536,873	33.2%	\$ 3,094,884	66.8%
4	Tyler	\$ 2,282,755	9.8%	\$ 1,775,697	77.8%	\$ 507,057	22.2%
5	Beaumont	\$ 1,227,419	5.3%	\$ 1,091,701	88.9%	\$ 135,718	11.1%
6	Houston	\$ 2,106,382	9.1%	\$ 714,259	33.9%	\$ 1,392,123	66.1%
7	Austin/Round Rock	\$ 1,525,725	6.6%	\$ 686,040	45.0%	\$ 839,685	55.0%
8	Waco	\$ 890,310	3.8%	\$ 434,406	48.8%	\$ 455,905	51.2%
9	San Antonio	\$ 1,185,888	5.1%	\$ 761,080	64.2%	\$ 424,808	35.8%
10	Corpus Christi	\$ 1,405,094	6.1%	\$ 922,858	65.7%	\$ 482,236	34.3%
11	Brownsville/Harlingen	\$ 4,579,476	19.7%	\$ 2,115,261	46.2%	\$ 2,464,215	53.8%
12	San Angelo	\$ 1,014,957	4.4%	\$ 486,583	47.9%	\$ 528,375	52.1%
13	El Paso	\$ 616,707	2.7%	\$ 462,551	75.0%	\$ 154,156	25.0%
	<b>Total</b>	<b>\$ 23,188,725</b>	<b>100.0%</b>	<b>\$ 12,692,273</b>	<b>54.7%</b>	<b>\$ 10,496,452</b>	<b>45.3%</b>

**TABLE 2  
Allocation of funds for Homeowner Rehabilitation Assistance Program**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$ 740,128	4.6%	\$ 739,941	100.0%	\$ 187	0.0%
2	Abilene	\$ 465,451	2.9%	\$ 453,535	97.4%	\$ 11,917	2.6%
3	Dallas/Fort Worth	\$ 3,242,230	20.0%	\$ 1,075,811	33.2%	\$ 2,166,419	66.8%
4	Tyler	\$ 1,597,928	9.8%	\$ 1,242,988	77.8%	\$ 354,940	22.2%
5	Beaumont	\$ 859,193	5.3%	\$ 764,191	88.9%	\$ 95,003	11.1%
6	Houston	\$ 1,474,468	9.1%	\$ 499,981	33.9%	\$ 974,486	66.1%
7	Austin/Round Rock	\$ 1,068,007	6.6%	\$ 480,228	45.0%	\$ 587,779	55.0%
8	Waco	\$ 623,217	3.8%	\$ 304,084	48.8%	\$ 319,133	51.2%
9	San Antonio	\$ 830,122	5.1%	\$ 532,756	64.2%	\$ 297,365	35.8%
10	Corpus Christi	\$ 983,566	6.1%	\$ 646,001	65.7%	\$ 337,565	34.3%
11	Brownsville/Harlingen	\$ 3,205,633	19.7%	\$ 1,480,683	46.2%	\$ 1,724,950	53.8%
12	San Angelo	\$ 710,470	4.4%	\$ 340,608	47.9%	\$ 369,862	52.1%
13	El Paso	\$ 431,695	2.7%	\$ 323,785	75.0%	\$ 107,910	25.0%
	<b>Total</b>	<b>\$ 16,232,107</b>	<b>100.0%</b>	<b>\$ 8,884,591</b>	<b>54.7%</b>	<b>\$ 7,347,516</b>	<b>45.3%</b>



**TABLE 3****Allocation of funds for Homebuyer Assistance Program**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$158,599	4.6%	\$158,559	100.0%	\$40	0.0%
2	Abilene	\$99,740	2.9%	\$97,186	97.4%	\$2,554	2.6%
3	Dallas/Fort Worth	\$694,764	20.0%	\$230,531	33.2%	\$464,233	66.8%
4	Tyler	\$342,413	9.8%	\$266,355	77.8%	\$76,059	22.2%
5	Beaumont	\$184,113	5.3%	\$163,755	88.9%	\$20,358	11.1%
6	Houston	\$315,957	9.1%	\$107,139	33.9%	\$208,818	66.1%
7	Austin/Round Rock	\$228,859	6.6%	\$102,906	45.0%	\$125,953	55.0%
8	Waco	\$133,547	3.8%	\$65,161	48.8%	\$68,386	51.2%
9	San Antonio	\$177,883	5.1%	\$114,162	64.2%	\$63,721	35.8%
10	Corpus Christi	\$210,764	6.1%	\$138,429	65.7%	\$72,335	34.3%
11	Brownsville/Harlingen	\$686,921	19.7%	\$317,289	46.2%	\$369,632	53.8%
12	San Angelo	\$152,244	4.4%	\$72,987	47.9%	\$79,256	52.1%
13	El Paso	\$92,506	2.7%	\$69,383	75.0%	\$23,123	25.0%
	<b>Total</b>	<b>\$3,478,309</b>	<b>100.0%</b>	<b>\$1,903,841</b>	<b>54.7%</b>	<b>\$1,574,468</b>	<b>45.3%</b>

**TABLE 4****Allocation of funds for Tenant Based Rental Assistance Program**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$158,599	4.6%	\$158,559	100.0%	\$40	0.0%
2	Abilene	\$99,740	2.9%	\$97,186	97.4%	\$2,554	2.6%
3	Dallas/Fort Worth	\$694,764	20.0%	\$230,531	33.2%	\$464,233	66.8%
4	Tyler	\$342,413	9.8%	\$266,355	77.8%	\$76,059	22.2%
5	Beaumont	\$184,113	5.3%	\$163,755	88.9%	\$20,358	11.1%
6	Houston	\$315,957	9.1%	\$107,139	33.9%	\$208,818	66.1%
7	Austin/Round Rock	\$228,859	6.6%	\$102,906	45.0%	\$125,953	55.0%
8	Waco	\$133,547	3.8%	\$65,161	48.8%	\$68,386	51.2%
9	San Antonio	\$177,883	5.1%	\$114,162	64.2%	\$63,721	35.8%
10	Corpus Christi	\$210,764	6.1%	\$138,429	65.7%	\$72,335	34.3%
11	Brownsville/Harlingen	\$686,921	19.7%	\$317,289	46.2%	\$369,632	53.8%
12	San Angelo	\$152,244	4.4%	\$72,987	47.9%	\$79,256	52.1%
13	El Paso	\$92,506	2.7%	\$69,383	75.0%	\$23,123	25.0%
	<b>Total</b>	<b>\$3,478,309</b>	<b>100.0%</b>	<b>\$1,903,841</b>	<b>54.7%</b>	<b>\$1,574,468</b>	<b>45.3%</b>

**TABLE 5****Allocation of funds for Rehabilitation with Refinance Program**

Allocation of funds to the 13 Uniform State Service Regions and the corresponding rural and urban distribution within each region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	\$45,597	4.6%	\$45,585	100.0%	\$12	0.0%
2	Abilene	\$28,675	2.9%	\$27,941	97.4%	\$734	2.6%
3	Dallas/Fort Worth	\$199,742	20.0%	\$66,277	33.2%	\$133,465	66.8%
4	Tyler	\$98,442	9.8%	\$76,576	77.8%	\$21,867	22.2%
5	Beaumont	\$52,932	5.3%	\$47,079	88.9%	\$5,853	11.1%
6	Houston	\$90,836	9.1%	\$30,802	33.9%	\$60,034	66.1%
7	Austin/Round Rock	\$65,796	6.6%	\$29,585	45.0%	\$36,211	55.0%
8	Waco	\$38,394	3.8%	\$18,733	48.8%	\$19,661	51.2%
9	San Antonio	\$51,141	5.1%	\$32,821	64.2%	\$18,320	35.8%
10	Corpus Christi	\$60,594	6.1%	\$39,798	65.7%	\$20,796	34.3%
11	Brownsville/Harlingen	\$197,487	19.7%	\$91,219	46.2%	\$106,268	53.8%
12	San Angelo	\$43,769	4.4%	\$20,984	47.9%	\$22,786	52.1%
13	El Paso	\$26,595	2.7%	\$19,947	75.0%	\$6,648	25.0%
	<b>Total</b>	<b>\$1,000,000</b>	<b>100.0%</b>	<b>\$547,347</b>	<b>54.7%</b>	<b>\$452,653</b>	<b>45.3%</b>

**DISASTER RECOVERY DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Approve the request for an amendment to CDBG Disaster Recovery Contract No. 70060000002 with the City of Houston, a housing contract administered by TDHCA for CDBG Hurricane Rita Round II Funding.

**RESOLVED**, that the Executive Director and his designees are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the amendment, in the form presented to this meeting, to be provided to the City of Houston for Disaster Relief Contract, No. 70060000002 to extend the end date to May 31, 2011 to be drafted as approved and presented to this meeting, and to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**Summary of Request**

The closing and construction start dates for Regency Walk Apartments was delayed as a result of Hurricane Ike. The project is approximately 45% complete and is expected to be completed by May 31, 2011. Therefore, the City of Houston is requesting an extension to May 31, 2011. The contract budget will not be affected or changed as a result of the extension.

**Background**

Original funding of \$20 million was allocated to the Houston Police Department for the Housing Safety Component, composed of civilian and officer personnel. The Housing Safety and Apartment to Standards was allocated \$20,000,000 and executed contracts for two rehabilitation projects (Fondren Court & Regency Walk Apartments). A re-allocation of \$1,500,000 of administrative funds was provided to the Houston Police Department's Housing Safety Program in July of 2009, leaving an administrative budget of \$500,000.

The City of Houston has requested a contract extension through May 31, 2011 to complete the Apartment to Standards Program (Regency Walk Apartments) and is approximately 45% complete. The closing and construction start dates for Regency Walk Apartments was delayed as a result of Hurricane Ike. The Housing Safety Program is 94% expended and expected to be completed by August 31, 2010.

**City of Houston C 70060000003**

**DISASTER RECOVERY DIVISION  
BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Approve the request for an amendment to CDBG Disaster Recovery Contract No. 70060000003 with Harris County, a housing contract administered by TDHCA for CDBG Hurricane Rita Round II Funding.

**RESOLVED**, that the Executive Director and his designees are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the amendment, in the form presented to this meeting, to be provided to the Harris County for Disaster Relief Contract, No. 70060000003 to extend the end date to May 31, 2011 and to deobligate \$134,338 of unutilized administrative and \$2,686,760 of unutilized program funds, to be drafted as approved and presented to this meeting, and to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**Summary of Request**

Multi-Family Evacuee Housing Program is expected to be completed by May 31, 2011 when construction of the multifamily project Cranbrook Wood Estates is complete. Therefore, Harris County is requesting an extension to May 31, 2011.

Cranbrook Forest, the rehabilitation project allocated disaster recovery funds, is not able to go forward. The Department is requesting to deobligate \$134,338 of unutilized administrative and \$2,686,760 of unutilized program funds from the Harris County contract. The deobligation of administrative funds is in proportion to the reduction in program funds.

**Background**

Funding of \$20 million was allocated to provide services to the residents of Harris County among six different program components: Expanded Services to Hurricane Evacuees, Evacuee Medical Services, Katrina Crisis Counseling Program, Youth Offenders Services, Disaster Housing Assistance Program Component and the Multi-Family Evacuee Housing Program. The administrative fund budget is \$1,000,000.

The Multi-Family Evacuee Housing Program was allocated \$8,261,586 for rehabilitation (Cranbrook Forest) and a new construction (Cypress Wood Estates) project. The rehabilitation for Cranbrook Forest is being deobligated due to the owner's unresponsiveness regarding Program requirements.

Harris County is requesting a contract extension through May 31, 2011 to complete the new construction project for the Multi-Family Evacuee Housing Program.

**Harris County C 70060000003**

**DISASTER RECOVERY DIVISION**

**BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Approve request for an amendment to CDBG Disaster Recovery Contract No. 70090001 with the City of Houston, a housing contract administered by TDHCA for CDBG Hurricane Ike/Dolly Round 1 Funding.

**RESOLVED**, that the Executive Director and his designees are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the amendment, in the form presented to this meeting, to be executed and delivered to the City of Houston for Disaster Recovery Contract No. 70090001 to extend the end date to February 2, 2013 as approved and presented to this meeting, and to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**Background**

The City of Houston (City) is requesting an extension to their contract, currently scheduled to expire on August 2, 2011. The extension requested by the City will extend the contract eighteen months to February 2, 2013.

**City of Houston C 70090001**

The City of Houston's Housing and Community Development Department (HCDD) is requesting to extend the end date of Contract No. 70090001 by eighteen months until February 2, 2013. The request is being made because not all Rental or Homeowner Assistance projects have completed the application / obligation phase as of the current date in the City's Rental and Homeowner Assistance programs. The additional time will allow the City to post appropriate public notices, obtain City required approvals from City Council, and complete the activities within the contract time frame. The City stated that they will be unable to complete all of these activities by the current contract end date of August 2, 2011.

Although the requested extension is related to the Rental and Single Family Home Repair programs, approval of this request will extend the contract end date for the entire contract, which also includes funding for Down Payment Assistance activities.

Multifamily Rental	\$60,522,445	69%
Single Family Repair	\$9,583,434	11%
Downpayment Assistance	\$11,000,000	13%
Administrative and Project Delivery	<u>\$6,150,686</u>	<u>7%</u>
	\$87,256,565	93%

**DISASTER RECOVERY DIVISION**

**BOARD ACTION REQUEST  
September 9, 2010**

**Recommended Action**

Delegation of authority to approve Disaster Recovery Housing Program Guidelines with conditions

WHEREAS, in accordance with the provisions of the State of Texas' Conciliation Agreement resolving a fair housing complaint approved by the U. S. Department of Housing and Urban Development, a task force appointed by the Executive Director has been appointed and is in the process of developing across region guidelines for the equitable administration of housing recovery programs funded with the second allocation of CDBG disaster recovery funds relating to Hurricanes Ike and Dolly (the "Task Force"), and

WHEREAS, the development of these guidelines is crucial to the distribution of approximately \$800,000,000 in disaster recovery housing to thousands of Texans in need and the ability to move forward with the application for the disbursement of these funds requires the guidelines to be approved for use by applicants, and

WHEREAS, this Board acknowledges the cooperative spirit in bringing together representatives of the regional planning authorities, TDHCA staff, Complainants and allowing the public to participate through comments in open meetings and the extreme importance of moving forward in the most expeditious but fully compliant manner possible

It is hereby

RESOLVED, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of the Department, to approve the final version of the Disaster Recovery Housing Program Guidelines as recommended by the Task Force, provided that any priorities identified and expressed by this Board in its open meeting be incorporated therein to the fullest extent feasible.

**Background**

The Conciliation Agreement requires a Disaster Recovery Housing Guidelines Task Force assembled from Council of Government (COG) representatives and TDHCA staff with ex-officio representation by the complainants. Mr. Gerber officially appointed the task force to develop criteria, in one or more public meetings, to govern all housing programs to be carried out with Hurricanes Dolly and Ike Round 2 Disaster Recovery funds. Recommendations resulting from the Task Force, upon official adoption by the TDHCA, will direct the available scope of housing activities that Subrecipients of disaster recovery funding may carry out.

Specifically, the conciliation Agreement requires:

TDHCA must consider these recommendations and approve guidelines which shall include and address but not be limited to:

- i. A list of housing Program activities (including appropriate relocation and buyout activities) from which Recipients may select housing Programs that they will offer;
- ii. The cost and benefit criteria for each housing Program;
- iii. The Program participant eligibility and qualification criteria for each housing Program;
- iv. Housing quality standards for housing funded with Hurricane Recovery Funds;
- v. The priority factors that Recipients must consider in administering their overall housing Program, including prioritization for persons at various income levels, persons with special needs, and relocation Programs;
- vi. An evaluation of the income levels of disaster survivors and the establishment of reasonable guidelines to ensure that the housing needs of low, very low and extremely low-income households are assisted with housing in no less than the proportion to their relative percentages of the overall populations which suffered housing damage within the community being served by the Program;
- vii. Appropriate outreach and public awareness measures for housing Programs;
- viii. The recommendations will provide and allow for objectively determined regional adjustments for these criteria to reflect differences in the costs of delivery for benefits and the economic profile of local target populations.

Two meetings of the Task Force have occurred. One was held in Austin and the other in Houston on July 30, 2010 and August 20, 2010, respectively. The meetings have resulted in drafts of Disaster Recovery General Program Guidelines and activity-specific guidelines for Homeowner Assistance, Homebuyer Assistance and Rental Programs, along with a number of issues to be further refined and developed.

At least one additional public meeting has been determined to be necessary to finalize the guidelines. Approval of the guidelines is necessary prior to the final development and submission of applications for the thirty-three percent (33%) of Hurricanes Dolly and Ike Round 2 funding allowed to be obligated prior to the completion of the Phase 1 Analysis of Impediments (AI).

Due to the time constraints and exigency of the situation, the Disaster Recovery Division is requesting that the TDHCA Governing Board provide the Executive Director the authority to accept the recommendations of the Task Force and adopt them as TDHCA policy if he, or his designee, find them consistent with existing policies of the Governing Board.

**3 OFFICE OF RECOVERY ACT ACCOUNTABILITY AND OVERSIGHT**

**BOARD REPORT ITEM  
September 9, 2010**

**Report Item**

Presentation and Discussion on a Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This item provides an update on the status of the activity relating to each of the Recovery Act programs as well as a summary of the quarterly Section 1512 jobs reporting submitted for April through June 2010.

**Recovery Act Program Summary**

<b>Program</b>	<b>Activities</b>	<b>Program Status</b>	<b>Total Funding Expended to Date* Percent Expended</b>	<b>Served to Date**</b>	<b>1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^</b>	<b>Timeline / Contract Period</b>
Weatherization Assistance Program	Minor home repair to increase energy efficiency, maximum \$6,500 per household.  Households at or below 200% of poverty.	<ul style="list-style-type: none"> <li>Amended WAP Plan submitted to DOE in March was approved June 7.</li> <li>Contracts executed for 98% of funds, subrecipients drawing funds.</li> <li>Deobligation/reobligation rule in effect. No deobligations to date.</li> <li>Request made via for remaining 50% of funds on August 12, 2010</li> </ul>	\$326,975,732 \$67,621,770 20.68%	14,629 households	\$40,305,167.76  626.08 jobs	<ul style="list-style-type: none"> <li>Obligation required by September 30, 2010.</li> <li>Recipients will be required to expend all funds within a two year contract period (August 31, 2011).</li> <li>Federal funding expiration date is March 31, 2012.</li> </ul>
Homelessness Prevention and Rapid Re-Housing Program	Rental assistance, housing search, credit repair, deposits, moving cost assistance, and case management.  Persons at or below 50% AML.	<ul style="list-style-type: none"> <li>All contracts executed and subrecipients currently drawing funds.</li> </ul>	\$41,472,772 \$17,351,316 41.84%	22,422 persons	\$13,581,470.54  164.54 jobs	<ul style="list-style-type: none"> <li>HUD requires 60% of funds expended in 2 years; 100% in 3 years.</li> <li>Recipients will be required to expend all funds within a two year contract period (by August 21, 2011).</li> </ul>
Community Services Block Grant Program	Assists existing network of Community Action Agencies with services including child care, job training, and	<ul style="list-style-type: none"> <li>All contracts executed and subrecipients currently drawing funds. Expenditure rates have increased.</li> </ul>	\$48,148,071 \$42,879,513 89.06%	73,149 persons	\$33,635,106.73  309.99 jobs	<ul style="list-style-type: none"> <li>Obligation required by September 30, 2010.</li> <li>Recipients required to expend funds within a one year contract period (by Sept 30, 2010).</li> </ul>



Program	Activities	Program Status	Total Funding Expended to Date* Percent Expended	Served to Date**	1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^	Timeline / Contract Period
	poverty-related programs.  Persons at or below 200% of poverty.					
Tax Credit Assistance Program	Provides assistance for 2007, 2008 or 2009 Housing Tax Credit awarded developments.  Households at or below 60% AMI.	<ul style="list-style-type: none"> <li>Total of 56 TCAP awards (46 actual awards and 10 conditional awards) so far.</li> <li>Written Agreements executed for 46 out of 46 awards as of August 23, 2010. The ten (10) Round 3 &amp; 4 conditional awardees have not executed Written Agreements.</li> <li>Thirty (30) loans have closed; seven (5) more are waiting on the Development Owners to either return the completed loan document forms -OR- execute the documents at the title company; that makes 35 that should be closed.</li> </ul>	\$148,354,769 \$28,952,670 19.52%	4,459 households	\$10,696,637.75  187.88 jobs	<ul style="list-style-type: none"> <li>Commitment of 75% of funds required by February 17, 2010.</li> <li>Owners must expend 75% of funds by Feb 17, 2011.</li> <li>Owners must expend 100% of funds by February 17, 2012.</li> </ul>
Housing Tax Credit Exchange Program^^^	Provides assistance to 2007, 2008 or 2009 Housing Tax Credit awarded developments.  Households at or below 60% AMI.	<ul style="list-style-type: none"> <li>Written agreements have been executed for 70 out of 86 awards as of August 26, 2010.</li> </ul>	\$594,091,929 \$97,896,624 16.48%	6,835 households	6,464 jobs	<ul style="list-style-type: none"> <li>Unused funds to be returned by December 2011.</li> </ul>
Total			\$1,159,043,273 \$254,701,892 21.98%	95,571 persons 26,103 households	\$98,218,382.78  7,752.49 jobs	

\*This table includes updated expenditure data as of 8/20/10.

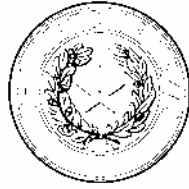
\*\*Total served data through 6/30/10 for HPRP and 7/30/2010 for CSBG; 9/1/10 for WAP, 8/30/2010 for TCAP; and 8/26/2010 for HTC Ex. For TCAP and HTC Ex, households represent closed transactions.

^Jobs created or retained between 4/1/10 and 6/30/10. Note that Section 1512 reporting is not required for HTC Exchange and the figure includes total estimated jobs to be created or retained as reported to the U.S. Department of Treasury for 6/30/10.

^^ Program expenditures reported for each program includes subrecipient and TDHCA admin expenses. Information is updated quarterly. Data was submitted to Recovery.gov for quarter ending 6/30/2010.

^^^ The Housing Tax Credit Exchange Program is not subject 1512 reporting requirements.

# REPORT ITEMS



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

---

**Memorandum**

**To:** Michael Gerber  
**From:** Gordon Anderson  
**cc:** Tim Irvine, Michael Lyttle  
**Date:** August 30, 2010  
**Re:** TDHCA Outreach Activities

The attached document highlights outreach activities on the part of TDHCA staff for the months of July and August 2010. The information provided focuses primarily on activities Executive and staff have taken on voluntarily; however, also included are mandated activities such as TEFRA and tax credit public hearings. This list may not account for every activity undertaken by staff, as there may be a limited number of events not brought to my attention.

For brevity sake, the chart provides the name of the event, its location, the date of the event, division(s) participating in the event, and an explanation of what role staff played in the event. Should you wish to obtain additional details regarding these events, I will be happy to provide you with this information.

## TDHCA Outreach Activities, July-August 2010

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
Mental Health Planning Advisory Council	Austin	July 1	Housing Resource Center	Participant
First Thursday Eligibility Training	Austin	July 1	Compliance & Asset Oversight	Training
Disability Advisory Workgroup	Austin	July 7	Housing Trust Fund, Housing Resource Center	Presentation, Participant
Housing & Health Services Coordination Council (HHSCC) meeting	Austin	July 9	Housing Resource Center	Participant
2011 QAP Roundtable	Austin	July 12	Multifamily Finance	Roundtable Hearing
Reentry Task Force	Austin	July 12	Housing Resource Center	Participant
Community Resource Coordination Group	Austin	July 13	Housing Resource Center	Participant
Natural Disaster Housing Reconstruction Advisory Committee Conference Call	Austin	July 14	Housing Resource Center	Participant
Promoting Independence Advisory Workgroup	Austin	July 15	Housing Resource Center	Participant
River Place Apartments Grand Opening	Sa n Angelo	July 20	Executive, Public Affairs	Remarks
Manufactured Housing Licensing Education Class	Austin	July 26	Manufactured Housing	Training
Texas Affiliation of Affordable Housing Providers Conference	Austin	July 26-28	Executive, Multifamily, Housing Resource Center, Public Affairs	Presentation, Exhibitor
City of Olton HOME TA Visit	Olton	July 27	HOME	Technical Assistance
Natural Disaster Housing Reconstruction Advisory Committee Conference Call	Austin	July 27	Housing Resource Center	Participant
Crane County HOME TA Visit	Crane	July 28	HOME	Technical Assistance
City of Huntsville HOME TA Visit	Huntsville	July 28	HOME	Technical Assistance
CDBG Disaster Recovery Public Meeting	Austin	July 30	Disaster Recovery	Public Hearing
TSHEP "Train the Trainer" Workshop	Austin	August 2-6	Homeownership	Training
Proposed 2010 HOME Program Rules hearing	Austin	August 3	HOME	Public Hearing
Housing Trust Fund/USDA 502 Loan Application Assistance Conference Call	Austin	August 4	Housing Trust Fund	Participant
First Thursday Eligibility Training	Austin	August 5	Compliance & Asset Oversight	Training
2010 Texas Habitat for Humanity Summer Leadership Conference	Austin	August 5-6	HOME, Housing Trust Fund, NSP, Housing Resource Center, Public Affairs	Presentation, Exhibitor
Housing Trust Fund/Rural Housing Expansion Workgroup	Austin	August 10	Housing Trust Fund	Presentation
Analysis of Impediments to Fair Housing Focus Group/DETCOG	Jasper	August 5-11	Disaster Recovery	Facilitator
Analysis of Impediments to Fair Housing Focus Group/SETRPC	Beaumont	August 5-11	Disaster Recovery	Facilitator

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
LRGVDC Method of Distribution Public Hearing	Harlingen	August 10-12	Disaster Recovery	Public Hearing
HHSCC Conference Call	Austin	August 6	Housing Resource Center	Participant
Rural Housing Workgroup	Austin	August 10	Housing Resource Center	Participant
MCC Lender Training	Houston	August 11	Homeownership	Training
Analysis of Impediments to Fair Housing Focus Group/H-GAC	Houston	August 12-24	Disaster Recovery	Facilitator
HUD Building Sustainable Housing Summit	Austin	August 13	Housing Resource Center	Participant
H-GAC Method of Distribution Public Hearing	Houston	August 16	Disaster Recovery	Public Hearing
MCC Lender Training	Dallas	August 17	Homeownership	Training
“United Texas” Realtor Workshop	Dallas	August 18	Homeownership	Training
Wells Fargo Homebuyer Workshop	Austin	August 19	Homeownership	Training
Housing Guideline Task Force Meeting	Houston	August 20	Disaster Recovery	Participant
“United Texas” Realtor Workshop	Arlington	August 23	Homeownership	Training
DETCOG Method of Distribution Public Hearing	Jasper	August 23	Disaster Recovery	Public Hearing
“United Texas” Realtor Workshop	Kerrville	August 24	Homeownership	Training
Compliance and Asset Oversight Roundtable	Austin	August 24	Compliance & Asset Oversight	Roundtable Hearing
DETCOG Method of Distribution Public Hearing	Nacogdoches	August 24	Disaster Recovery	Public Hearing
Homebuyer Assistance/Fort Worth Housing Authority TA Visit	Fort Worth	August 24	Housing Trust Fund	Technical Assistance
Homebuyer Assistance/Dallas Area Habitat for Humanity TA Visit	Dallas	August 24	Housing Trust Fund	Technical Assistance
Homebuyer Assistance/Trinity Habitat for Humanity TA Visit	Fort Worth	August 25	Housing Trust Fund	Technical Assistance
Veterans Rental Assistance/Catholic Charities of Fort Worth Application Outreach	Fort Worth	August 25	Housing Trust Fund	Training
Aging Texas Well Workgroup	Austin	August 25	Housing Resource Center	Participant
Disability Advisory Workgroup	Austin	August 25	Housing Resource Center	Participant
Natural Disaster Housing Reconstruction Advisory Committee Community Roundtable	Harlingen	August 25	Disaster Recovery, Housing Resource Center	Roundtable Hearing
Community Affairs Training Conference	Austin	August 25-27	Executive, Community Affairs	Remarks, Presentation, Training
Veterans Rental Assistance/City of Dallas TA Visit	Dallas	August 26	Housing Trust Fund	Technical Assistance
“United Texas” Realtor Workshop	San Antonio	August 27	Homeownership	Training
Homebuyer Assistance/Fort Hood Habitat for Humanity TA visit	Killeen	August 30	Housing Trust Fund	Technical Assistance
Veterans Rental Assistance/Killeen, CTCOG Application Outreach	Killeen	August 30	Housing Trust Fund	Training
Constitution Court Apartments Grand Opening	Copperas Cove	August 31	Public Affairs	Remarks
Natural Disaster Housing Reconstruction Advisory Committee Community Roundtable	Houston	August 31	Disaster Recovery, Housing Resource Center	Roundtable Hearing

**BOND FINANCE DIVISION**

**BOARD REPORT ITEM  
September 9, 2010**

**Report Item**

First Time Homebuyer Program update on Program 70 and Program 74 pipeline and loan originations.

**Background**

Single Family Mortgage Revenue Bonds 2007 Series B (Program 70) was released on September 21, 2007 and Residential Mortgage Revenue Bonds 2009 Series AB (Program 74) was released on August 19, 2009.

The following table illustrates the remaining funds as of **September 2, 2010**:

Program	Last Possible Certificate Purchase	Lendable Funds	Purchased by Master Servicer	In Pipeline	Remaining Funds
70	2/1/2011	\$166,829,030	\$164,891,443	\$ 4,606,840	(\$2,669,253)
74	10/1/2010	81,054,301	59,231,203	3,718,175	18,104,923

The Department intends to purchase the excess allocation of Program 70 funds from the Surplus Fund of the Single Family Indenture or from the monies available under Program 77.

The Department anticipates unexpended proceeds available for redemption of Residential Mortgage Revenue Bonds 2009 Series AB (Program 74) on November 1, 2010 in a principal amount of bonds equal to approximately \$18 million.

**BOND FINANCE DIVISION**

**BOARD REPORT ITEM**

**September 9, 2010**

**Report Item**

Discussion of the proposed partial sale of mortgage certificates and partial tender of bonds from Residential Mortgage Revenue Bonds Series 2001ABC, 2002A, and Single Family Mortgage Revenue Bonds Series 2002ABCD.

**Background**

Bond Finance has affirmed the feasibility of executing a mortgage certificate sale and redemption of the Residential Mortgage Revenue Bonds (RMRB) Series 2001ABC, 2002A and Single Family Mortgage Revenue Bonds Series 2002ABCD. Given the current market conditions, this transaction will generate a present value benefit to both the RMRB and Single Family indentures.

These bonds have not yet reached their ten-year optional call dates, so the Department would solicit bondholders to optionally tender their outstanding bonds at the then prevailing market price. The price paid by the Department for tendered bonds may be - and it is currently expected that the price paid for tender bonds will be - above par. The Department would then fund the optional tender of outstanding bonds by selling a like portion of the related MBS certificates.

Staff would work with the single family working group to prepare a secondary tender solicitation offering document and to prepare a recommendation as to Tender Agent, who will be selected from among our current group of investment bankers. The Staff would anticipate bringing these two items to the Board for approval at the November Board Meeting. Raymond James and Associates will act as Financial Advisor for the Department. Funds (net of cost of issuance) received from the sale of the MBS certificates will be used to fund the tender of bonds with respect to each related bond series. The proposed sale of MBS certificates will, in addition to strengthening both the RMRB and Single Family indentures, provide funds for the Department to fund future down payment assistance requirements for the First Time Homebuyer Program.



***Rebuilding Texas: Disaster Recovery from Hurricanes Rita and Katrina***

***Hurricane Rita First Supplemental (\$74.5 million) - Public Law 109-148***

Referred to Round I, these funds represent the first of two awards to help restore and rebuild in areas of the State most directly impacted by Hurricane Rita. These funds are administered by regional Council of Governments.

**Construction Activities as of August 24, 2010**

- 519 single family homes rehabilitated or reconstructed
- 12 single family homes remain to be reconstructed, which will be completed by September 2010.

**Financial Summary**

	<b>Current Budget</b>	<b>Admin \$ Drawn To Date</b>	<b>Project \$ Drawn To Date</b>	<b>Total Drawn</b>	<b>% of Funds Drawn</b>
DETCOG	\$6,674,546.00	\$674,361.00	\$6,000,185.00	\$6,674,546.00	100.00%
H-GAC	\$6,657,096.00	\$928,253.75	\$5,314,868.64	\$6,243,122.39	93.78%
SETRPC	\$27,421,536.00	\$3,161,691.28	\$22,393,136.38	\$25,554,827.66	93.19%
<b>Totals</b>	<b>\$40,753,178.00</b>	<b>\$4,764,306.03</b>	<b>\$33,708,190.02</b>	<b>\$38,472,496.05</b>	<b>94.40%</b>

***Hurricanes Rita and Katrina 2<sup>nd</sup> Supplemental (\$428.6 million) - Public Law 109-234***

The 2nd Supplemental is referred to as Round II and is the second allocation of CDBG funding to help restore and rebuild in areas of the State most directly impacted by Hurricane Rita. These funds also address needs of Katrina evacuees in Houston and Harris County.

**Construction Activities as of August 24, 2010**

**Homeowner Program**

- 1933 homes rehabilitated or reconstructed
- 226 homes currently under construction

**Rental Program**

- 1,180 rental units have been rehabilitated or reconstructed
- 958 rental units are currently under construction

**Financial Summary**

	<b>Current Budget</b>	<b>Cumulative Expenditures</b>	<b>Balance Remaining</b>	<b>Percentage Expended</b>
<b>Homeowner Assistance Program (HAP)</b>	\$210,371,273.00	\$156,297,450.78	\$54,073,822.22	74.30%
<b>Sabine Pass Restoration Program (SPRP)</b>	\$12,000,000.00	\$8,771,364.58	\$3,228,635.42	73.09%
<b>Rental Housing Stock Restoration Program (RHSRP)</b>	\$82,779,333.00	\$74,364,275.30	\$8,415,057.70	89.83%
<b>City of Houston</b>	\$41,500,000.00	\$32,134,398.28	\$9,365,601.72	77.43%
<b>Harris County</b>	\$20,000,000.00	\$11,371,267.83	\$8,628,732.17	56.86%
<b>Restoration of Critical Infrastructure Program (TDRA)</b>	\$42,000,000.00	\$30,814,647.73	\$11,185,352.27	73.37%
<b>State Administrative Funds (Admin Funds)</b>	\$19,933,592.00	\$11,535,016.13	\$8,398,575.87	57.87%
<b>Grand Total</b>	<b>\$428,584,198.00</b>	<b>\$325,288,420.63</b>	<b>\$103,295,777.37</b>	<b>75.90%</b>



## Rebuilding Texas: Disaster Recovery from Hurricanes Ike and Dolly

### Hurricane Ike and Dolly First Supplemental Appropriation (\$1.3 billion) Public Law 110-329

The Texas Department of Housing and Community Affairs (Department/TDHCA) has awarded \$621,448,377 for housing activities related to CDBG Disaster Recovery Funding in the hurricane impacted areas with reported housing damage. This funding is comprised of \$562,613,464 that has been awarded to 18 Subrecipients and \$59,926,832 for rental set-aside.

#### Summary of Activities as of August 24, 2010

##### Rental Program

- Over \$59 million has been awarded to 13 multifamily developments in the hurricane impacted area.
- 1,933 rental units are anticipated to be rehabilitated or reconstructed by the Ike awardees; no rental activities were proposed in the Dolly area.

##### Subrecipient Program

- Subrecipients continue to administer the different activities within the program.
- Subrecipients continue to submit project set-up and draws.

#### Financial Summary

Subrecipient Awards	Current Budget	Cumulative Expenditures	Balance Remaining	Percentage Expended
City of Galveston	\$160,432,233.00	\$2,417,982.42	\$158,014,250.58	0.151%
Galveston County	\$99,503,498.00	\$396,342.09	\$99,107,155.91	0.40%
South East Texas Regional Planning Commission	\$95,000,000.00	\$724,697.15	\$94,275,302.85	0.76%
City of Houston	\$87,256,565.00	\$13,117,661.05	\$74,138,903.95	15.03%
Harris County	\$56,277,229.00	\$4,068,880.60	\$52,208,348.40	7.23%
Houston-Galveston Area Council of Governments	\$11,076,980.00	\$0.00	\$11,076,980.00	0.00%
Liberty County	\$8,878,923.00	\$0.00	\$8,878,923.00	0.00%
Montgomery County	\$6,909,237.00	\$157,840.83	\$6,751,396.17	2.28%
Deep East Texas Council of Governments	\$5,931,070.00	\$142,526.54	\$5,788,543.46	2.40%
Cameron County	\$3,093,750.00	\$0.00	\$3,093,750.00	0.00%
Hidalgo County	\$2,000,000.00	\$62,163.54	\$1,937,836.46	3.11%
City of Brownsville	\$1,635,318.00	\$0.00	\$1,635,318.00	0.00%
Fort Bend County	\$1,582,107.00	\$19,479.00	\$1,562,628.00	1.23%
Brazos Valley Affordable Housing Corporation	\$948,930.00	\$0.00	\$948,930.00	0.00%
Willacy County	\$541,287.00	\$0.00	\$541,287.00	0.00%
East Texas Council of Governments (ETCOG)	\$415,117.00	\$16,471.21	\$398,645.79	3.97%
City of Mission	\$209,638.00	\$812.80	\$208,825.20	0.39%
Chambers County	\$20,921,582.00	\$0.00	\$20,921,582.00	0.00%
<b>Total:</b>	<b>\$562,613,464.00</b>	<b>\$21,124,857.23</b>	<b>\$544,938,606.77</b>	<b>3.73%</b>

## *Emergency Housing Programs*

### **FEMA Alternative Housing Pilot Program**

The Disaster Recovery Division is responsible for administration of the Federal Emergency Management Agency (FEMA) award of \$16,471,725 for the Alternative Housing Pilot Program (AHPP). The purpose of the AHPP is multi-faceted, including testing alternative housing types that can be quickly constructed in areas of disaster, exploring housing types that are readily accepted in communities, and testing the energy efficiency components. The AHPP program provides assistance to those with on-going housing needs due to Hurricane Katrina or Rita. A one-time exemption to the Stafford Act, AHPP permits the use of FEMA funding to study alternatives by examining cost-effective solutions that meet a variety of housing needs. Pursuant to FEMA requirements, the pre-fabricated units must be awarded within the 22 counties affected by the 2005 Hurricanes.

The Heston Group was selected to pilot a pre-fabricated, panelized solution which can be deployed quickly and built to accommodate a diverse population.

On July 31, 2009, TDHCA issued a notice of contract termination to the Heston Group for failure to provide sufficient responses to the requests outlined in the default notices issued on May 12, 2009 and June 25, 2009. The Department is currently working with the Heston Group as well as with their legal representation to build a transition to close out the contract. As a result of the contract termination, the Department has posted a Request for Proposal (RFP) for a contractor to complete the remaining portion of the program. The response deadline for the RFP was March 1, 2010 in order to allow more time to coordinate with the City of Houston (the City) with regard to the logistics of the group site.

Following an extended negotiation and planning period with the City, the City and TDHCA have decided not to pursue the group site application of AHPP any further due to the difficulty the City has encountered with locating the funding necessary for the currently approved group site.

Due to the difficulty encountered with the City's group site and the decision to remove the City from the program, the previously posted Request for Proposals (RFP) to solicit the participation of a replacement contractor for the Heston Group to install the AHPP units on the group site has been cancelled.

TDHCA staff held a conference call with FEMA HQ on Tuesday, June 8, 2010 to discuss next steps for the program in light of the decision made regarding the Houston group site. FEMA and TDHCA both agreed that it would be appropriate at this point to begin grant close out activities, bringing to an end the Houston group site planning and the Texas AHPP as a whole.

TDHCA sent a notification of plans to close out the grant to FEMA at the request of FEMA HQ AHPP staff on Friday, August 6, 2010. TDHCA is awaiting a response from FEMA HQ containing instructions for close out. In the interim, TDHCA is preparing a Notice of Product Availability (NOPA) for the public in order to find a vendor that will be able to utilize the Houston AHPP warehouse inventory for a program that supports a low to moderate income population.

## HOUSING RESOURCE CENTER

### BOARD ACTION REQUEST

September 9, 2010

#### Report Item

Housing & Health Services Coordination Council 2010-2011 Biennial Plan

#### Background

### **COUNCIL ACCOMPLISHMENTS**

The Housing and Health Services Coordination Council has been very active throughout this first year since inception. The first step undertaken by the Council was to engage in a public outreach process, inviting stakeholders from across the state to attend a series of public forums to provide feedback on the concept of service-enriched housing and the possible future directions of the Council.

Using this feedback, along with research on best practices from other states, the Council developed a definition of service-enriched housing that was adopted as a rule by the TDHCA Governing Board at its March 2<sup>nd</sup>, 2010 meeting. This definition helped to frame future actions of the Council, particularly the creation of its first Biennial Plan as required by statute.

Upon adoption of the rule, the Council next chose to embark on a series of Committee work sessions. The Council's two committees, the Policy & Barriers Committee and the Cross-Agency Education & Training Committee, each attended biweekly conference calls to discuss and develop concepts and recommendations for meeting statutory directives and increase service-enriched housing. These work sessions resulted in the creation of the Council's first Plan. The Plan has been approved by the Council and submitted to the Governor and Legislative Budget Board on September 1, 2010. A summary of the plan is noted below and the full content of the Plan can be found at <http://www.tdhca.state.tx.us/hhsc/index.htm>.

### **CONTENTS OF BIENNIAL PLAN**

The Biennial Plan is organized into four distinct sections. Additionally, within each chapter of the Plan, the Council sought to address a different statutory directive.

Section One addresses the need to contextualize the issue of service-enriched housing by assessing the current need for such housing models amongst persons with disabilities and persons who are elderly and identifying the barriers that prevent them from obtaining it. These barriers include those attributable to regulatory requirements, administrative limitations, funding constraints, and ineffective coordination. The public forum series played a critical role in informing the Council on the issues of existing need and barrier identification and also provided invaluable input as the

Council crafted a comprehensive definition of service-enriched housing and other relevant terminology.

Section Two of the Plan focuses on the research and information gathering efforts undertaken by Council staff to help inform the Council of methods for the implementation of service-enriched housing. Staff identified existing funding resources that could potentially be utilized for service-enriched housing. Additionally, staff presented the Council with an overview of efforts implemented in other states to increase service-enriched housing, a set of best practices which the Council evaluated for possible use in Texas.

Section Three of the Plan proposes recommendations to overcome the barriers identified in Section One and to achieve the overarching goal of increasing state efforts to offer service-enriched housing. Recommendations relating to the cross-education of state housing and health service agency staff were formulated and opportunities were identified for providing training and technical assistance to local provider organizations. Finally, policy recommendations for furthering state service-enriched housing efforts were developed.

Section Four of the Plan looks ahead to the possible implementation of Council recommendations, as well as the future direction of Council actions.

## **RECOMMENDATIONS OF THE COUNCIL**

The Council created several broad recommendation categories for developing a system to cross-educate selected staff in state housing and health services agencies. First, the Council sought to address the need for standardized educational training opportunities and resource materials through the creation of a simple, user-friendly reference guide and accompanying series of training modules. Second, the Council recommended a greater utilization of information technology to facilitate communication between State agency staff through partnership with the Texas Information and Referral Network, the creation of a “Quick Facts” webpage within each State agency’s website, and creation of a monthly interagency listserv email announcement system. Third, the Council sought to improve intra-agency communication through an increased utilization of each agency’s intranet as a tool for information dissemination as well as through the creation of a periodic agency newsletter. Finally, the Council emphasized ways of incorporating information sharing and training into current staff activities and encouraged each agency’s executive leadership to promote cross-agency training and communication with their staff.

In establishing recommendations for assisting and training local entities, the Council again offered the use of a reference guide and training module, but this time geared toward community service providers. Additionally, the Council recommended a Service Enriched Housing Specialist training and certification be established. The Council next addressed the need for increased communication and collaboration between local organizations by encouraging the state’s Aging and Disability Resource Centers to establish relationships with local housing providers and by increasing rural capacity through annual community roundtables. Finally, the Council sought to meet the need for increased outreach and education for consumers through various recommendations, including: modification of the Your Texas Benefits website to become an information clearinghouse for housing and health services, creation of a cross-agency informational brochure for consumers,

utilization of the Council's website as a resource for outreach materials, and the creation of an educational presentation for property managers and owners.

Finally, the Council offered eleven housing policy and eleven service policy recommendations for increasing and promoting production of service-enriched housing. On the housing side, the Council first sought to promote the use of multifamily rental housing funding sources for the set-aside of housing units for very low income persons with disabilities and persons who are elderly and establishing a targeting plan for connecting these individuals with off-site services and supports. Second, the Council recommends incentivizing partnerships between housing providers and local service entities and establishing criteria for measuring the strength of these connections. A third Council recommendation is to pursue collaborations with community development finance institutions and private foundations whose mission is to assist persons with disabilities and persons who are elderly. Finally, the Council seeks to address the need for greater outreach efforts, including outreach to private sector housing developers to promote service-enriched housing models, as well outreach and assistance to consumers at risk of institutionalization.

In regards to health and human services policy recommendations, the Council sought to support the expansion and increased funding of those programs and services that have proven successful at assisting persons with disabilities and persons who are elderly to remain living independently in community based settings. These include Medicaid 1915(c) waiver programs, nursing facility diversion programs, Aging and Disability Resource Centers, and nursing home relocation activities. The Council additionally sought to increase supports for persons with mental illness or substance abuse disorders by recommending the inclusion of behavioral health services within all Medicaid 1915(c) waiver programs, increasing funding to the Assertive Community Treatment service packages of the Resiliency and Disease Management Program, expanding the Peer Specialist Program to Local Mental Health Authorities statewide, and allocating additional funding towards community based services and supports for individuals leaving the state mental health system.

## **NEXT STEPS OF THE COUNCIL**

Given the statutory directives which guide the activities of the Council, the following outstanding tasks will direct the future actions of the Council moving forward:

Funding Requirements. In this first Biennial Plan, the Council was able to identify sources of state and federal funding that may be used to provide integrated housing and health services. Future plans will further this work by determining the requirements and application guidelines to obtain those funds.

Training Materials. In this first Biennial Plan, the Council made recommendations pertaining to the type and content of training modules for state agency staff as well as local provider organizations. Upcoming tasks for Council staff involve using Council recommendations to create such training materials and disseminate them, so to assist in the future development and financing of service-enriched housing.

Financial Feasibility Model. Another upcoming task for the Council and Council staff is to create a financial feasibility model that assists in making a preliminary determination of the financial viability

of proposed service-enriched housing projects. Further communication and coordination with identified best practice organizations will aid in the completion of this task.

Tracking Database. In this first Biennial Plan, the Council identified a number of current service-enriched housing projects underway in Texas, as well as in other states. A future task for the Council and Council staff will be to develop a database that identifies, describes, monitors and tracks the progress of service-enriched housing projects developed in Texas.

Capacity Evaluation. A barrier to service-enriched housing mentioned during the public forum series dealt with the lack of capacity by local provider organizations. In order to delve further into this issue, Council staff will conduct an evaluation regarding capacity of statewide long-term care providers and interest by housing developers in investing in service-enriched housing.

Information Clearinghouse. In this first Biennial Plan, the Council made recommendations pertaining to the creation of central online resource for information regarding service-enriched housing. Council staff will build upon these recommendations to craft and maintain a clearinghouse of information that contains tools and resources for entities seeking to create or finance service-enriched housing projects.