

# **SUPPLEMENTAL BOARD BOOK OF SEPTEMBER 7, 2017**



**J. B. Goodwin, Chair**  
**Leslie Bingham Escareño, Vice-Chair**  
**Paul Braden, Member**  
**Asusena Reséndiz, Member**  
**Sharon Thomason, Member**  
**Leo Vasquez, III, Member**

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

**A G E N D A**  
**9:00 AM**  
**September 7, 2017**

**John H. Reagan Building**  
**JHR 140, 105 W 15<sup>th</sup> Street**  
**Austin, Texas 78701**

**CALL TO ORDER**

**ROLL CALL**

**J.B. Goodwin, Chair**

**CERTIFICATION OF QUORUM**

*Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.*

*Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*

Resolution recognizing October as *National Energy Awareness Month*

**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 Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for June 29, 2017, and July 13, 2017
- b) Presentation, discussion, and possible action on Board action authorizing of Chair to conduct performance review, and establish salary of Executive Director

**J. Beau Eccles**  
Board Secretary

**J.B. Goodwin**  
Chair

**LEGAL**

- c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Southdale Apartments (HTC 92179 / CMTS 1090)
- d) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Autumn Oaks of Corinth (HTC 01144 / CMIS 386)
- e) Presentation, discussion, and possible action regarding the adoption of Agreed Final Orders concerning related properties, Enchanted Oaks (HTC 70082 / CMTS 911) and Lively Oaks (HTC 92043 / CMTS 1042)
- f) Presentation, discussion and possible action on a final order in the matter of Texas Department of Housing and Community Affairs v. DeCarlo and Veletta Coleman; State Office of Administrative Hearings ("SOAH") Docket No. 332-17-2472.HCA

**Jeffrey T. Pender**  
Deputy General Counsel

**HOUSING RESOURCE CENTER**

- g) Presentation, discussion, and possible action on a draft amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan

**Elizabeth Yevich**  
Director

**HOME AND HOMELESS PROGRAMS**

- h) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program ("HOME") Single Family Programs Homebuyer Assistance ("HBA") and Tenant-Based Rental Assistance ("TBRA") Open Cycle Notice of Funding Availability ("NOFA")

**Jennifer Molinari**  
Director

## TEXAS HOMEOWNERSHIP

- i) Presentation, discussion, and possible action on the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs Participating Lender List

**Cathy Gutierrez**  
Director

## COMMUNITY AFFAIRS

- j) Presentation, discussion, and possible action on the Section 8 Program 2018 Streamlined Annual Public Housing Agency (“PHA”) Plan for the Housing Choice Voucher Program and update on revisions to the Section 8 Administrative Plan

**Michael DeYoung**  
Director

## ASSET MANAGEMENT

- k) Presentation, discussion and possible action regarding a material amendment to the Housing Tax Credit Application (“HTC”) Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s) 8609  
13608 Decatur-Angle Apartments Fort Worth
- l) Presentation, discussion and possible action to approve a material amendment to the Housing Tax Credit (“HTC”) Land Use Restriction Agreement (“LURA”) and Resolution No. 18-001 relating to the Second Amended and Restated Regulatory and Land Use Restriction Agreement  
05613 Providence Mockingbird Dallas
- m) Presentation, discussion and possible action regarding material amendment to the Housing Tax Credit Application  
16034 Conrad Lofts Plainview
- n) Presentation, discussion and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for City Square Apartment Homes  
15247 City Square Apartment Homes Garland
- o) Presentation, discussion and possible action regarding a material amendment to the Housing Tax Credit (“HTC”) Application, a change in the ownership structure of the Development Owner, Developer and Guarantors prior to issuance of IRS Form(s) 8609, and a waiver of §11.9(b)(2) of the Qualified Allocation Plan (“QAP”)   
16114 The Veranda Townhomes Plano

**Raquel Morales**  
Director

## MULTIFAMILY FINANCE

- p) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer  
17413 Flora Lofts Dallas  
17414 Silver Gardens Apartments Dallas  
17430 Chelsea Apartments El Paso
- q) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds  
17423 Palladium Glenn Heights Glenn Heights
- r) Presentation, discussion, and possible action on Inducement Resolution No. 18-005 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List  
17624 Vista on Gessner Houston

**Marni Holloway**  
Director

## RULES

- s) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 10, Uniform Multifamily Rules Subchapter F, Compliance Monitoring, §10.610 concerning Written Policies and Procedures and §10.613 concerning Lease Requirements and directing that they be published in the *Texas Register*
- t) Presentation, discussion, and possible action on proposed new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published in the *Texas Register*

**Patricia Murphy**  
Director, Compliance

**Brooke Boston**  
Deputy Executive Director

- u) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication for public comment in the *Texas Register*

**Jennifer Molinari**  
Director, HOME and  
Homeless Programs

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) TDHCA Outreach Activities, (August-September)
- b) Report on Department’s Fair Housing Activities
- c) Report on the Reallocation of Program Year 2016 Low Income Home Energy Assistance Program (“LIHEAP”) Comprehensive Energy Assistance Program (“CEAP”) funds
- d) Presentation and discussion on the final 2017 State of Texas National Housing Trust Fund Allocation Plan

**Michael Lyttle**  
Chief, External Affairs  
**Suzanne Hemphill**  
Fair Housing Project Mgr  
**Michael DeYoung**  
Director, Community  
Affairs

**Marni Holloway**  
Director, MF Finance

**ACTION ITEMS**

**ITEM 3: EXECUTIVE OFFICE**

Presentation, discussion, and possible action regarding the taking of necessary programmatic, contractual, and other actions with respect to the use of state or federal funds for disaster response and recovery efforts for qualified persons and households most impacted by Hurricane Harvey, and directing the Executive Director and his designees to take certain actions without prior Board approval

**J.B Goodwin**  
Chair

**ITEM 4: INTERNAL AUDIT**

- a) Review of Operations in TDHCA's Information Systems Division
- b) Report on the meeting of the Audit and Finance Committee
- c) Review and possible approval of 2018 annual internal audit plan

**Mark Scott**  
Director

**ITEM 5: COMMUNITY AFFAIRS**

- a) Presentation, discussion, and possible action on the reprogramming of non-contracted 2016 Community Services Block Grant (“CSBG”) non-discretionary funds, and 2016 and 2017 discretionary and administrative funds, for disaster recovery efforts to be distributed to existing CSBG eligible entities in areas affected by Hurricane Harvey conditioned on approval of such reprogramming by the U.S. Department of Health and Human Services and Designation of this Department Board meeting as a hearing opportunity to accept public input on such reprogramming
- b) Presentation, discussion, and possible action on the recommendation to the Governor to select an Eligible Entity to administer the Community Services Block Grant (“CSBG”) to provide services in Dallas County

**Brooke Boston**  
Deputy Executive Director

**ITEM 6: ASSET MANAGEMENT**

- a) Presentation, discussion and possible action regarding a material amendment to the Housing Tax Credit (“HTC”) Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s) 8609 for
  - 16352 Commissioners’ Corner El Paso
  - 16354 Gonzalez Apartments El Paso
- b) Presentation, discussion and possible action regarding Direct Loan terms for:
  - 16185 Merritt Heritage Georgetown
  - 16210 Merritt Monument Midland

**Raquel Morales**  
Director



## ITEM 7: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on timely filed appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to Appeals and other Provisions  
17010 Baxter Lofts Harlingen
- b) Presentation, discussion and possible action on regarding the Issuance of Multifamily Housing Revenue Bonds (Casa Brendan) Series 2017 Resolution No. 18-002 and a Determination Notices of Housing Tax Credits
- c) Presentation, discussion and possible action on regarding the Issuance of Multifamily Housing Revenue Bonds (Nuestro Hogar) Series 2017 Resolution No. 18-003 and a Determination Notices of Housing Tax Credits
- d) Presentation, discussion and possible action on regarding the Issuance of Multifamily Housing Revenue Bonds (Casa, Inc.) Series 2017 Resolution No. 18-004 and a Determination Notices of Housing Tax Credits
- e) Presentation, discussion and possible action on Determination Notices for Housing Tax Credits with another Issuer  
17431 Commissioner's Corner II El Paso
- f) Presentation, discussion, and possible action regarding alternative financing structures under the 2017-1 Multifamily Direct Loan Notice of Funding Availability

Marni Holloway  
Director

## ITEM 8: RULES

- a) Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*
- b) Presentation, discussion, and possible action on proposed amendments of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*

Marni Holloway  
Director, MF Finance

## PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

### EXECUTIVE SESSION

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

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 §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
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 Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
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; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

J.B. Goodwin  
Chair

## **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.

## **ADJOURN**

To access this agenda and 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 Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nicole Krueger, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

## **NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:**

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

## **NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

1p

**17413 Flora Lofts, Dallas, has been pulled from the agenda**

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation, discussion and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#17414 Silver Gardens Apartments, Dallas)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Silver Gardens Apartments, sponsored by Dominion Development & Acquisition, was submitted to the Department on April 14, 2017;

**WHEREAS**, the Certificate of Reservation from the Texas Bond Review Board was issued on June 9, 2017, and will expire on November 6, 2017;

**WHEREAS**, the proposed issuer of the bonds is the Dallas Housing Finance Corporation; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 4 Portfolio and deemed acceptable, by the Executive Award and Review Advisory Committee (“EARAC”) after review and discussion and subject to the conditions as noted herein;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$790,787 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Silver Gardens Apartments is hereby approved as presented to this meeting, subject to the following conditions from EARAC:

1. All Texas Dominion site staff who work on tenant files will attend TDHCA training annually (either First Thursday or HTC Training, depending on job duties of the site staff).
2. All Texas operations’ Vice Presidents and Regional Managers will attend TDHCA HTC training annually.
3. Dominion will not apply for a 9% transaction until Dominion becomes a Category 2 status under the Previous Participation rules.
4. Upon request, from the Department, the management company will provide documentation that reflects the implementation of these measures.

## **BACKGROUND**

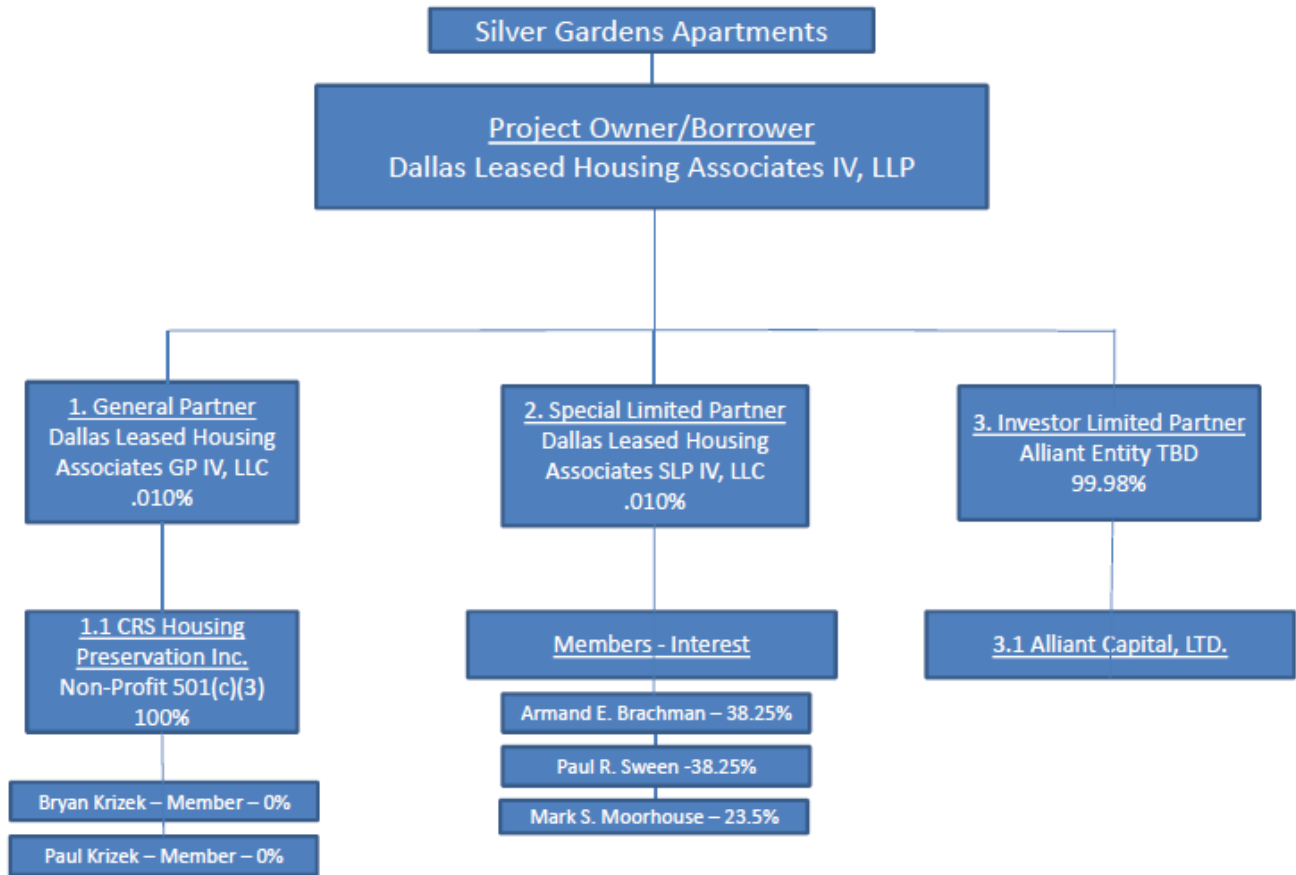
*General Information:* Silver Gardens Apartments, proposed to be located at 2620 Ruidosa Avenue in Dallas, Dallas County, involves the acquisition and rehabilitation of 202 units. All of the 202 units will be rent and income restricted at 60% of Area Median Family Income (“AMFI”). The property will continue to receive Section 8 Housing and Rental Assistance for a 20 year term. The development will continue to serve an elderly preference population and is currently zoned appropriately. Although considered elderly preference, the property currently has a HUD Section 202 contract and corresponding Use Agreement which requires the property lease to someone with a disability, whether elderly or not. The applicant has confirmed that the tenant selection criteria per 10 TAC §10.610(b) will have to state the requirements of at least one member is elderly or one member has a disability. The census tract (0127.01) has a median household income of \$39,595, is in the fourth quartile and has a poverty rate of 29.60%.

*Organizational Structure and Previous Participation:* The Borrower is Dallas Leased Housing Associates IV, LLP, and includes the entities and principals as illustrated in Exhibit A. The applicant’s portfolio is considered an Extra Large Category 4 and the previous participation was deemed acceptable by EARAC, subject to the aforementioned conditions, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

*Public Comment:* No letters of support or opposition for this Development have been received.



**EXHIBIT A**



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer (#17430 Chelsea Plaza Apartments, El Paso)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit application for Chelsea Plaza Apartments, sponsored by the Housing Authority of the City of El Paso (“HACEP”), was submitted to the Department on June 23, 2017;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on August 16, 2017 and will expire on January 13, 2018;

**WHEREAS**, the proposed issuer of the bonds is the Alamito Public Facilities Corporation;

**WHEREAS**, Chelsea Plaza Apartments was previously approved by the Board on February 28, 2017, but after additional predevelopment it was determined that more extensive abatement and replacement of plumbing, not reflected in the initial third party reviews, was necessary and as a result was unable to close; and

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 Portfolio and deemed acceptable, by the Executive Award and Review Advisory Committee (“EARAC”) after review and discussion and subject to the conditions as noted herein as have been placed on prior HACEP transactions and considered to be ongoing conditions;

**WHEREAS**, all parties understand and agree that failure to meet these conditions and provide evidence of compliance with these conditions upon request may result in a negative recommendation for future awards and/or ownership transfer requests;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,777,003 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Chelsea Plaza Apartments is hereby approved as presented to this meeting conditioned upon the following:

1. The Housing Authority of the City of El Paso agrees to ensure that the Compliance Monitoring and Tracking System ("CMTS") is updated with current and correct contact information within 10 days of a change. Quarterly reviews of CMTS should be conducted to ensure a responsible party is properly identified as the Owner contact for all affiliated Developments.

2. HACEP will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.
3. HACEP agrees that for future applications submitted through December 31, 2018, a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted as part of the application.

### **BACKGROUND**

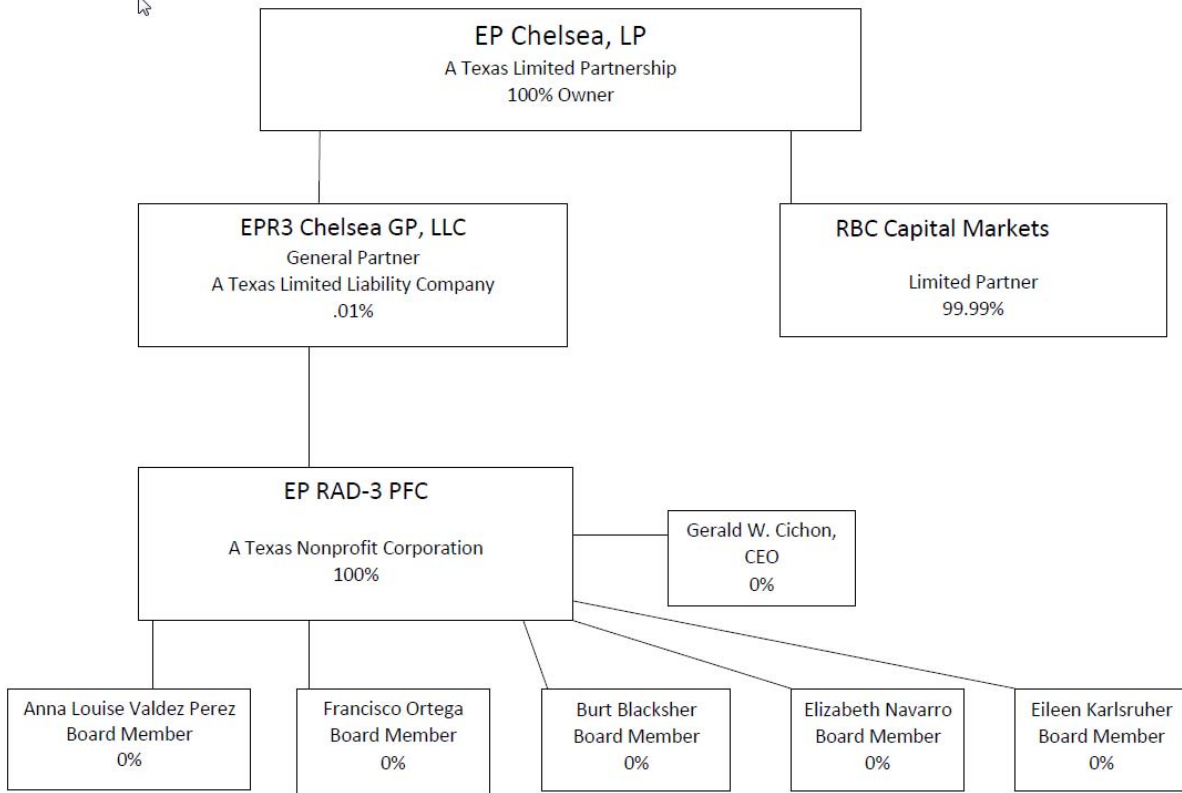
*General Information:* Chelsea Plaza Apartments is located at 600 Chelsea Street, El Paso, El Paso County, and consists of 330 units, all of which will be rent and income restricted at 60% AMFI. The units are currently occupied and operating as public housing owned and managed by the Housing Authority of the City of El Paso and will be converted through HUD's Rental Assistance Demonstration program. The development will serve the general population and conforms to current zoning. The census tract (0033.00) has a median household income of \$28,088 is in the third quartile and has a poverty rate of 20.10%.

The application was previously approved at the Board meeting of February 28, 2017. Subsequent to the Board meeting, HACEP did some more predevelopment demolition, and determined that more extensive abatement and replacement of plumbing was going to be required. According to the applicant, this was not identified in the originally submitted Environmental Site Assessment, initial inspection or thorough third party reviews. As a result, the development costs increased and necessitated a re-evaluation by staff.

*Organizational Structure:* The Borrower is EP Chelsea, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered an Extra Large Category 2 and the previous participation was deemed acceptable by EARAC, subject to the aforementioned conditions, after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

*Public Comment:* A letter of support was received as part of the original submission from David C. Stout, County Commissioner for the county of El Paso. An updated letter was not submitted.

**EXHIBIT A**



2d

**BOARD REPORT**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation and discussion of the final 2017 State of Texas National Housing Trust Fund Allocation Plan

On June 15, 2017, the U.S. Department of Housing and Urban Development (“HUD”) released the formula allocation amounts for the National Housing Trust Fund (“NHTF”) and published guidance on how to submit the 2017 NHTF Allocation Plan. The NHTF Allocation Plan was required to be submitted with the 2017 State of Texas Consolidated Plan: One-Year Action Plan no later than August 16, 2017.

At the meeting of June 29, 2017, staff presented the draft 2017 State of Texas NHTF Allocation Plan, which reports on the intended use of funds received by the State of Texas from HUD for Program Year (“PY”) 2017. The Board approved the draft plan, and because there would not be another meeting before the Plan was due to HUD, approved timely submission of the final plan after the public comment period. No public comment was received on the draft plan, resulting in no changes to the draft 2017 State of Texas NHTF Allocation Plan as previously presented.

On August 15, 2017, staff submitted the Final 2017 State of Texas NHTF Allocation Plan to HUD.



**National Housing Trust Fund**

**State of Texas**

**2017 Allocation Plan**

## II. GRANTEE INFORMATION

---

State:

FY 2017 HTF Allocation Amount:

## III. CONSOLIDATED PLAN REQUIREMENTS

---

### Citizen Participation Plan

The consolidated plan regulation at § 91.115 requires the State to include HTF in its citizen participation plan. Essentially, before adopting a consolidated plan, the State is required to adopt a citizen participation plan that describes the process for providing and encouraging citizens to participate in the development of the consolidated plan, the amendments to the consolidated plan and the performance report (CAPERS). For the purposes of HTF, the State is required to make the following information available to the public:

- the amount of HTF assistance the State expects to receive,
- the range of activities the State may undertake, including the estimated amount that will benefit extremely low-income households, and
- the State’s plans to minimize displacement of persons and to assist any persons displaced.

If the State already conducted its citizen participation and included HTF in any citizen participation it performed for the other HUD formula grant programs, then the State does not need to conduct additional citizen participation for HTF. If the State has not yet conducted citizen participation or did not include HTF in the citizen participation it performed for other HUD formula grant programs, then it must conduct citizen participation to include HTF as part of its consolidated plan.

### Consolidated Plan Screen(s) To Revise

The following screen in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- ES-05 / AP-05 Executive Summary:** § 91.320(b)- The Executive Summary includes seven narratives: (1) Introduction; (2) Summary of Objectives and Outcomes; (3) Evaluation of Past Performance; (4) Summary of the Citizen Participation and Consultation Process; (5) Summary of Public Comments; (6) Summary of Comments Not Accepted; (7) Summary.

- PR-15 Citizen Participation:** § 91.115 and § 91.300(c)- revise this screen to provide a summary of the citizen participation efforts made for HTF, including efforts to broaden public participation, a summary of citizen comments or views on the plan, and a written explanation of comments not accepted and the reasons why these comments were not accepted.

#### **IV. STRATEGIC PLAN REQUIREMENTS**

---

The State must amend the affordable housing section of the strategic plan to include specific objectives that describe proposed accomplishments the State hopes to achieve and must specify the number of extremely low-income families to which the State will provide affordable housing to (homeownership- § 93.302; rental- § 93.304) over a specific period of time. The State can complete this requirement by including HTF on the **SP-45 Goals screen**.

**Note: Directions on how to amend a plan are included at the end of this document.**

**Reminder:** 100 percent of FY 2017 HTF funds must benefit extremely low-income households; a minimum of 80 percent must be used for rental housing; up to 10 percent may be used for homeownership housing; up to 10 percent may be used for administrative costs.

#### **Strategic Plan Screen(s) To Revise**

In addition to updating the affordable housing section of the strategic plan, the following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- SP-10 Geographic Priorities:** § 91.315(a)(1)- revise this screen to discuss how investments are allocated geographically.
- SP-25 Priority Needs:** § 91.315(a)(2)- revise this screen to indicate the general priorities for allocating investment of available resources among different needs.
- SP-30 Influence of Market Conditions:** § 93.315(b)- revise this screen to describe how the characteristics of the housing market influenced the State's decisions regarding allocation priorities among the types of housing assistance.
- SP-35 Anticipated Resources:** § 91.315(a)(4); § 91.320(c)(1) and (2)- revise this screen to identify the federal, state, local, and private resources expected to be available to the State to address priority needs and specific objectives identified in the strategic plan. Specifically, the State should add a program to this screen by selecting "Add" in the *Action* column. This will open the **SP-36 Add Anticipated Resource** screen. The State should select "Other" in the *Anticipated Resource* field and enter "Housing Trust

Fund” in the *Other Funding Source* field. The State should also select the “public - federal” radio button in the “Source” field and complete the rest of the fields on this screen for its HTF program.

- SP-45 Goals:** § 91.315(a)(4) and § 91.315 (b)(2)- revise this screen to summarize the State’s priorities and the specific goals it intends to initiate and/or complete within the term of the strategic plan. The State must also ensure its five year goals include any accomplishments due to HTF funds and must also enter the number of extremely low-income families to which the State will provide assistance with its HTF funds.

## V. ANNUAL ACTION PLAN REQUIREMENTS

---

The State must include HTF in its annual action plan or amend the plan to include HTF information as required in § 93.320(k)(5). The action plan must include an HTF allocation plan that describes the distribution of HTF funds, and establishes the application requirements and selection criteria of applications submitted by eligible recipients that meet the State’s priority housing needs.

### Annual Action Plan Screen(s) To Revise

The following screens in the eCon Planning Suite consolidated plan template in IDIS must be revised to include HTF.

- AP-15 Expected Resources:** § 91.320(c)(1) and (2)- revise this screen to provide a concise summary of the federal resources expected to be available. The HTF resources added to the **SP-35 Anticipated Resources** screen will carry over to this screen.
- AP-20 Annual Goals and Objectives:** § 91.320(c)(3) and (e)- revise this screen to summarize the specific goals the State intends to initiate and/or complete within the term of the program year. Any HTF related goals and objectives entered on the **SP-45 Goals** screen will carry over to this screen.
- AP-25 Allocation Priorities:** § 91.320(d)- revise this screen to describe the reasons for the State’s allocation priorities and how the proposed distribution of funds will address the priority needs and goals of the strategic plan.
- AP-30 Method of Distribution:** § 91.320(d) and (k5)- revise this screen to include a description of its method(s) for distribution for the “Other – Housing Trust Fund” selection based on the entry made on the **SP-35 Anticipated Resources** screen.
- AP-35 Projects:** § 91.220(d)- revise this screen to include consolidated plan/annual action plan projects that reflect the planned use of HTF funds each year.

- AP-50 Geographic Distribution:** § 91.320(f)- revise this screen to describe the geographic areas of the state in which it will direct assistance during the ensuing program year and provide rationale for its priorities in allocating investment geographically.
- AP-55 Affordable Housing:** § 91.320(g)- revise this screen to specify goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing within the program year.
- AP-65 Homeless and Other Special Needs Activities:** § 91.320(h)- revise this screen to describe how HTF will help to address the State’s one-year goals and actions for reducing and ending homelessness, if applicable.
- AP-75 Barriers to Affordable Housing:** § 91.320(i)- revise this screen to describe how HTF will help with any actions the State’s will take during the next year to reduce barriers to affordable housing, if applicable.
- AP-85 Other Actions:** § 91.320(j)- revise this screen to describe how HTF will help with any actions the State will take during the next year to carry out the following strategies outlined in the consolidated plan:
  - Foster and maintain affordable housing;
  - Evaluate and reduce lead-based paint hazards;
  - Reduce the number of poverty-level families;
  - Develop institutional structure; and
  - Enhance coordination.

In addition, the State must identify obstacles to meeting underserved needs and propose actions to overcome those obstacles using HTF funds, if applicable.

## VI. ALLOCATION PLAN REQUIREMENTS

---

The State is responsible for distributing HTF funds throughout the State according to its housing priority needs. In addition to revising the **AP- 30 Method of Distribution** screen in IDIS, the State must respond to the following questions.

### **Distribution of HTF funds**

1. How will the State distribute its HTF funds (§ 91.320(k)(5))? Select all that apply:
  - Applications submitted by eligible recipients
  - Subgrantees that are State Agencies
  - Subgrantees that are HUD-CPD entitlement grantees
  
2. If distributing HTF funds through grants to subgrantees, describe the method for distributing HTF funds through grants to subgrantees and how those funds will be made available to state agencies and/or units of general local government. If not distributing funds through grants to subgrantees, enter "N/A".



3. If distributing HTF funds by selecting applications submitted by eligible recipients,
  - a. Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

**Section VI. Allocation Plan Requirements**

**Question 3a:** *Describe the eligibility requirements for recipients of HTF funds (as defined in 24 CFR § 93.2).*

The State of Texas will distribute FY 2017 Housing Trust Fund (“HTF”) Program funds by selecting applications submitted by eligible recipients as defined in §93.2 (definition of recipient) through the Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications provisions found in Chapter 10 of the Texas Administrative Code (“TAC”), Subchapter C (10 TAC §§10.201 through 10.207). The State of Texas will not limit recipients to a specific category such as nonprofits. Please see the table below for the requirements in §93.2 and the corresponding requirements found in state rules at 10 TAC Chapter 10.

Recipient requirements in §93.2	State Rules
<p>(1) Make acceptable assurances to the grantee that it will comply with the requirements of the HTF program during the entire period that begins upon selection of the recipient to receive HTF funds, and ending upon the conclusion of all HTF-funded activities</p> <p>(3) Demonstrate its familiarity with the requirements of other Federal, State, or local housing programs that may be used in conjunction with HTF funds to ensure compliance with all applicable requirements and regulations of such programs;</p>	<p><b>10 TAC §10.204. Required Documentation for Application Submission.</b> The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.</p> <p><b>(1) Certification, Acknowledgement and Consent of Development Owner.</b> A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.</p> <p>(A) The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.</p> <p>(B) This Application and all materials submitted to the Department constitute records of the Department subject to</p>

	<p>Tex. Gov't Code, Chapter 552, and the Texas Public Information Act.</p> <p>(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.</p> <p>(D) The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.</p> <p>(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.</p> <p>(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.</p> <p>(G) The Development Owner will affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.</p> <p>(H) The Development Owner will comply with any and all notices required by the Department.</p> <p>(I) If the Development has an existing LURA with the</p>
--	--

	<p>Department, the Development Owner will comply with the existing restrictions.</p> <p><b>(2) Applicant Eligibility Certification.</b> A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).</p> <p>(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; (B) for non-profit corporations or governmental instrumentalities (such as housing authorities), any officer authorized by the board, regardless of title, to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, the Audit committee chair, the Board chair, and anyone identified as the Executive Director or equivalent;</p> <p>(C) for trusts, all beneficiaries that have the legal ability to Control the trust who are not just financial beneficiaries; and (D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.</p> <p><b>(3) Architect Certification Form.</b> The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)</p> <p><b>10 TAC §13.1</b>  <b>13.1 Purpose</b>  (a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental</p>
--	--

Housing Trust Fund: State of Texas – 2017 Allocation Plan

	<p>housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93 as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.</p> <p>(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. Any conflict with rule of other programs or with federal regulations will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.</p> <p>(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications). In no instance will the Department consider waiver request that would violate federal program requirements or state or federal statute.</p>
<p>(2) Demonstrate the ability and financial capacity to undertake, comply, and manage the eligible activity;</p> <p>(4) Have demonstrated experience and capacity to conduct an eligible HTF activity as evidenced by its ability to:</p> <p>(i) Own, construct, or rehabilitate, and manage and operate an affordable multifamily rental housing development; or</p>	<p><b>10 TAC §13.5(d)(1)</b>          Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.</p> <p><b>10 TAC §10.204. Required Documentation for Application Submission.</b></p> <p><b>(6) Experience Requirement.</b> Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience</p>

Housing Trust Fund: State of Texas – 2017 Allocation Plan

<p>(ii) Design, construct, or rehabilitate, and market affordable housing for homeownership.</p> <p>(iii) Provide forms of assistance, such as down payments, closing costs, or interest rate buydowns for purchasers.</p>	<p>certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.</p> <p>(A) A natural Person, with control of the Development through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience in the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:</p> <p>(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;</p> <p>(ii) AIA Document G704--Certificate of Substantial Completion;</p> <p>(iii) AIA Document G702--Application and Certificate for Payment;</p> <p>(iv) Certificate of Occupancy;</p> <p>(v) IRS Form 8609 (only one per development is required);</p> <p>(vi) HUD Form 9822;</p> <p>(vii) Development agreements;</p> <p>(viii) Partnership agreements; or</p> <p>(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.</p> <p>(B) The names on the forms and agreements in subparagraph (A)(i) - (ix) of this paragraph must reflect that the individual seeking to provide experience is a Principal of the Development Owner, General Partner, or Developer as listed in the Application. For purposes of this requirement any individual attempting to use the experience of another individual or entity must demonstrate they had the authority to act on their behalf that substantiates the minimum 150 unit requirement.</p> <p>(C) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing noncompliance that has not been or is not being corrected with reasonable due diligence.</p> <p>(D) If a Principal is determined by the Department to not have the required experience, an acceptable replacement for that Principal must be identified prior to the date the award is made by the Board.</p> <p>(E) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an</p>
--	--



	<p>Applicant themselves.</p> <p><b>(7) Financing Requirements.</b></p> <p>(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.</p> <p>(i) Financing is in place as evidenced by:</p> <p>(I) a valid and binding loan agreement; and</p> <p>(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;</p> <p>(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:</p> <p>(I) have been signed by the lender;</p> <p>(II) be addressed to the Development Owner or Affiliate;</p> <p>(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;</p> <p>(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;</p> <p>(V) include all required Guarantors, if known;</p> <p>(VI) include the principal amount of the loan;</p> <p>(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and</p> <p>(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be</p>
--	--

	<p>conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or</p> <p>(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.</p> <p>(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.</p> <p>(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.</p>
--	---

	<p>(D) Equity Financing. (§2306.6705(2) and (3)) If applicable to the program, the Application must include a term sheet from a syndicator that, at a minimum, includes:</p> <ul style="list-style-type: none"> <li>(i) an estimate of the amount of equity dollars expected to be raised for the Development;</li> <li>(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;</li> <li>(iii) pay-in schedules;</li> <li>(iv) anticipated developer fees paid during construction; (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and</li> <li>(vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.</li> </ul> <p>(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.</p> <p><b>(8) Operating and Development Cost Documentation.</b></p> <p>(A) 15-year Pro forma. All Applications must include a 15-year pro forma estimate of operating expenses, in the form provided by the Department. Any "other" debt service included in the pro forma must include a description.</p> <p>(B) Utility Allowances. This exhibit, as provided in the Application, must be submitted along with documentation from the source of the utility allowance estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate and must comply with the requirements of §10.614 of this chapter (relating to Utility Allowances), including deadlines for submission. Where the Applicant uses any method that requires Department review, documentation indicating that the requested method has been granted by the Department must be included in the Application.</p> <p>(C) Operating Expenses. This exhibit, as provided in the Application, must be submitted indicating the anticipated</p>
--	--

	<p>operating expenses associated with the Development. Any expenses noted as "other" in any of the categories must be identified. "Miscellaneous" or other nondescript designations are not acceptable.</p> <p>(D) Rent Schedule. This exhibit, as provided in the Application, must indicate the type of Unit designation based on the Unit's rent and income restrictions. The rent and utility limits available at the time the Application is submitted should be used to complete this exhibit. Gross rents cannot exceed the maximum rent limits unless documentation of project-based rental assistance is provided and rents are consistent with such assistance and applicable legal requirements. The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings. For Units restricted in connection with Direct Loans, the restricted Units will generally be designated "floating" unless specifically disallowed under the program specific rules. For Applications that propose utilizing Direct Loan funds, at least 90 percent of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60 percent of the Area Median Income.</p> <p>(E) Development Costs. This exhibit, as provided in the Application, must include the contact information for the person providing the cost estimate and must meet the requirements of clauses (i) and (ii) of this subparagraph.</p> <p>(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.</p> <p>(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact</p>
--	---

	<p>pattern of the Development matches the fact pattern in PLR 200916007.</p> <p>(F) Rental Assistance/Subsidy. (§2306.6705(4)) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of application for such funds must be provided. Such documentation shall, at a minimum, identify the source and annual amount of the funds, the number of units receiving the funds, and the term and expiration date of the contract or other agreement.</p> <p>(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:</p> <p>(i) at least one of the items identified in subclauses (I) - (IV) of this clause:</p> <p>(I) historical monthly operating statements of the Existing Residential Development for twelve (12) consecutive months ending not more than three (3) months from the first day of the Application Acceptance Period;</p> <p>(II) the two (2) most recent consecutive annual operating statement summaries;</p> <p>(III) the most recent consecutive six (6) months of operating statements and the most recent available annual operating summary; or</p> <p>(IV) all monthly or annual operating summaries available; and</p> <p>(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;</p> <p>(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application;</p> <p>(§2306.6705(6))</p> <p>(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))</p> <p>(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure</p>
--	--

Housing Trust Fund: State of Texas – 2017 Allocation Plan

	compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))
--	---

- b. Describe the State's application requirements for eligible recipients to apply for HTF funds. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

## **Subchapter C**

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

**§10.201.Procedural Requirements for Application Submission.** This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

#### **(1) General Requirements.**

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

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



are any glaring problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

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

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

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

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

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a

Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

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

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

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

**(3) Certification of Tax Exempt Bond Applications with New Docket Numbers.** Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged, which means that at a minimum, the following cannot have changed: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms

remain unchanged. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

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

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

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

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

**(4) Withdrawal of Application.** An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal.

**(5) Evaluation Process.** Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each

Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §10.307 of this chapter (relating to Direct Loan Requirements). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

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

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

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

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any

statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. In general, those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation.

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

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or correct matters or obtain non-material missing information (that should already be in existence), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be a point deduction or termination.

(B) Administrative Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted, if an Administrative Deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then (5 points) shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not resolved by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

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

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

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through

Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

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

**(9) Challenges to Opposition.** Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, 2017 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

**§10.202. Ineligible Applicants and Applications.** The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or

a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

**(1) Applicants.** An Applicant shall be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

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

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

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

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

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

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

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

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;



(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided falsified documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application or Commitment for a Development.;

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

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

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

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

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

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

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

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

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

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

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

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

**§10.203. Public Notifications** (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other

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

**(1) Neighborhood Organization Notifications.**

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the proposed Development Site. As used in this section, “on record with the state” means on record with the Secretary of State.

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

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

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

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

- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

### **(3) Contents of Notification.**

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

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

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws.

**§10.204. Required Documentation for Application Submission.** The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated

otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

**(1) Certification, Acknowledgement and Consent of Development Owner.** A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and address the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification, that they have given it with all required authority and with actual knowledge of the matters certified.

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

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552, and the Texas Public Information Act.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all shall be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

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

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan

as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

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

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

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

**(2) Applicant Eligibility Certification.** A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

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

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

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

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling

such members, or any officer authorized to act on behalf of the limited liability company.

**(3) Architect Certification Form.** The certification, addressing all of the accessibility requirements, must be executed by the Development engineer, an accredited architect or Third Party accessibility specialist. (§2306.6722; §2306.6730)

**(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments.** In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

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

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

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

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

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

- (i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a) and subparagraph (A) of this paragraph;
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b) and subparagraph (B) of this paragraph; and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

#### **(5) Designation as Rural or Urban.**

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

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the 2017 Application Round, such requests must be made no later than December 16, 2016. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the



information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

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

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

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

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

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

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

**(6) Experience Requirement.** Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in 2014, 2015 or 2016 which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

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

(i) American Institute of Architects (AIA) Document (A102) or (A103) 2007 - Standard Form of Agreement between Owner and Contractor;

(ii) AIA Document G704--Certificate of Substantial Completion;

- (iii) AIA Document G702--Application and Certificate for Payment;
- (iv) Certificate of Occupancy;
- (v) IRS Form 8609 (only one per development is required);
- (vi) HUD Form 9822;
- (vii) Development agreements;
- (viii) Partnership agreements; or
- (ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

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

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

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

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

## **(7) Financing Requirements.**

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required pursuant to this chapter or elected in accordance with Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation

Plan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with §42(g) of the Code. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

(IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and

(VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans

must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

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

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

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- (iv) anticipated developer fees paid during construction;
- (v) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and
- (vi) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting HOME funds, Match in the amount of at least 5 percent of the HOME funds requested must be documented

with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of HOME funds. The information provided must be consistent with all other documentation in the Application.

**(8) Operating and Development Cost Documentation.**

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

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

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

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

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

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed \$15,000 per Unit and

are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

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

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

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

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

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

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

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

- (ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
- (iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))
- (iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))
- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

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

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) - (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) - (ix) of this subparagraph:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s);
- (v) indicates the location and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type. Building floor plans must include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct typical Unit type such as one-bedroom, two-bedroom and for all Unit types that vary in Net Rentable Area by 10 percent from the typical Unit; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

**(10) Site Control.**

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control 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. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or



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

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

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

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

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

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

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

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

- (i) a detailed narrative of the nature of non-conformance;
- (ii) the applicable destruction threshold;
- (iii) that it will allow the non-conformance;
- (iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

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

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

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

**(13) Ownership Structure and Previous Participation.**

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

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

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

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

- (i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;
- (ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;
- (iii) A Third Party legal opinion stating:
  - (I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;
  - (II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;
  - (III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;
  - (IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
  - (V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;
  - (VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;
- (iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and
- (v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:
  - (I) in this state, if the Development is located in a Rural Area; or

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

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

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

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

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

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces

(include handicap spaces and ramps) and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

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

**(16) Section 811 Project Rental Assistance Program.** All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.

(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the minimum number of Units as stated above are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.

(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self-certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the

threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).

(i) The Development must not be an ineligible Elderly Development;

(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;

(iii) The Development must have Units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low-income households, and the Units do not have an existing restriction for Persons with Disabilities;

(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and

(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:

(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.

(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.

(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.

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

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

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

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the

Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

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

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

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

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

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



local building code and the International Existing Building Code of the International Code Council.

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

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

#### **§10.207. Waiver of Rules for Applications.**

**(a) General Waiver Process.** This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or

alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. Waiver requests that are limited to Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other waiver requests must meet the requirements of paragraph (2) of this subsection.

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

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

**(b) Waivers Granted by the Board.** The Board, in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board, in its discretion, may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

## **Multifamily Direct Loan Rule**

### **13.1 Purpose**

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("Department"). Notwithstanding anything in this Chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306, and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act and the implementing regulations 24 CFR Part 91, Part 92, and Part 93, as they may be applicable to a specific fund source. The Department is authorized to administer HOME funds pursuant to Tex Gov't Code, §2306.111. Tex Gov't Code Chapter 2306, Subchapter I, Housing Finance Division: This Chapter is not applicable to the State Housing Trust Fund or Section 811.

(b) General. This Chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this Chapter, Chapter 1 (relating to Administration), Chapter 2 (relating to Enforcement), and Chapter 10 of this Title (relating to Uniform Multifamily Rules). Chapter 11 of this Title (relating to Housing Tax Credit Program Qualified Allocation Plan ("QAP")) and Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. Any conflict with rule of other programs or with federal regulations will be resolved on a case by case basis, that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with §10.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

### **13.2 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 Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93 and 2 CFR Part 200, and Chapter 10 of this Title (relating to Uniform Multifamily Rules).

(a) *Choice limiting activity*: any transfer of title that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and NHTF) has been submitted. Choice limiting activities may also include closing on loans including loans for interim financing, signing of a contract, and commencing construction. All applicants for MFDL funds, regardless of whether or not the Development Site is in a Participating Jurisdiction, must include the following language in the purchase contract or site control agreement:

“Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (1) it has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. The Department shall use its best efforts to conclude the environmental review of the property expeditiously.”

(b) *Community Housing Development Organization (CHDO)*: a private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO set-aside. In addition, a member of a CHDO’s board cannot be a Principal of the development beyond his/her role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (*e.g.* a voting board member cannot also be the paid executive director of the CHDO).

(c) *Encumbered Funds or Revenue*: funding or revenue that has a state or federal program designation and must be allocated in accordance with such statute or regulation. (*e.g.* HOME Program income must be re-allocated as HOME funding and therefore would be encumbered as such.)

(d) *Matching contribution (Match)*: a contribution to a proposed Development from nonfederal sources that may be in the form of one or more of the following:

- (1) Cash contribution (grant), except for cash contributions made by investor limited partner in a tax credit transaction or owner equity (including deferred developer fee)
- (2) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner
- (3) Net present value of yield foregone from a below market interest rate loan

(4) Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed development

(5) Donated land or land sold below market value, as evidenced by a third party appraisal, from an unrelated party

(e) *Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits")*: the per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. Currently, the high cost percentage adjustment applicable to the 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program.

### **13.3 General Loan Requirements**

(a) Direct Loan funds may be made available through a Notice of Funding Availability ("NOFA") or other similar governing document that includes the basic Application and funding requirements. MFDL funds may be used to directly assist distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

(b) Direct Loan funds are composed of annual HOME and National Housing Trust Fund allocations from HUD, repayment of TCAP loans, HOME Program Income and any other similarly encumbered funding that may become available, except as otherwise noted in this Chapter. Similar funds include any funds that are required to be loaned or granted for the development of multifamily property and are not governed by another Chapter in this Title.

(c) Direct Loan funds may be used for the acquisition, new construction, reconstruction, or rehabilitation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included.

(d) While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, as federally required or identified in the NOFA include but are not limited to:

(1) Offsite costs

(2) Stored Materials

- (3) Site Amenities
- (4) Detached Community Buildings
- (5) Carports and/or garages
- (6) Parking garages
- (7) Commercial Space costs
- (8) Reserve accounts not related to NHTF
- (9) TDHCA fees
- (10) Delinquent fees, taxes, or charges
- (11) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract unless the Application is awarded TCAP Loan Repayment funds.
- (12) Other costs limited by Award or NOFA, or as established by the Board

### **13.4 Set-asides, Regional Allocation, and Priorities**

(a) *Set-asides*: Specific types of Applications or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in set-asides. The Supportive Housing/Soft Repayment set-aside, CHDO set-aside, and General set-aside, as described below, are fixed set-asides that will be included in the annual NOFA. The remaining set-asides described below are flexible set-asides and are applicable only when identified in the NOFA. The amount of a single award may be credited to multiple set-asides, in which case the depleted portion of funds may be repositioned into an oversubscribed set-aside prior to a defined collapse deadline. Applications under any and all set-asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

#### (1) Fixed Set-Asides:

- (A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") Set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. The SH/SR set-aside is reserved for developments that are not able to support amortizing debt due to higher

costs for supportive services or extremely low income and rent restrictions. Soft repayment loans may be provided with deferred payable, deferred forgivable or cash flow terms. Applicants seeking to qualify under this set-aside must propose Developments that meet either:

(i) the Supportive Housing requirements in 10 TAC §10.3(a) in the Uniform Multifamily Rules including the other underwriting consideration for Supportive Housing Developments , 10 TAC §10.302(g)(3) of the Underwriting and Loan Policy; or

(ii) the requirements in subclauses (I) through (III), funding exclusively units targeting 30% Area Median Income (AMI) households;

(I) All units assisted with MFDL funds must be available for and have rents no higher than households earning 30% AMI or less.

(II) Any units assisted with MFDL funds may not also be receiving project-based rental assistance, other than MFDL funds.

(III) Any units assisted with MFDL funds may not also be receiving tenant-based voucher or rental assistance to the extent that there are other available units within the Development that the voucher-holder may occupy.

(B) CHDO Set-aside. A portion of the Department's annual HOME allocation, equal to at least 15%, will be set aside for eligible Community Housing Development Organizations ("CHDO") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and above. Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-aside. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.4 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside.

(C) General. The General set-aside is for all other applications that do not meet the requirements of the SH/SR or CHDO set-asides or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

- (A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.
- (B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).
- (C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.
- (D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(b) *Regional Allocation.* All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the NOFA is published in the *Texas Register*.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as identified in the NOFA but for an additional period not less than 15 days. All Applications received prior to these first two collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

(2) Funds remaining after expiration of set-asides, which have not been requested in the form of a complete application, will be available statewide on a first-come first-served basis to Applications submitted after the collapse dates.



(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board.

(c) *Priorities for the Annual NOFA.* Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, to the extent that funds are available both in the region and in the set-aside under which the application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or set-aside collapse and in accordance with the additional priority levels below. If insufficient funds are available with a region or set-aside, the Applicant may request to be considered under another set-aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board to the extent funds are available in accordance with the order of prioritization described in (1) - (3) below of this subsection.

(1) Priority 1: Applications not layered with 2017 9% HTC that are received prior to the 2017 9% HTC Application deadline as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 applications will be prioritized on a first come first served basis within their respective set-aside and subregion or region. If the RAF has collapsed, applications will be reviewed on a first-come first served basis within their set-aside.

(2) Priority 2: Applications layered with 2017 9% HTC will be prioritized based on their recommendation status for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with 2017 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the 2017 9% HTC allocations. Applications that will be recommended for 2017 9% HTC and are tied for MFDL under the scoring criteria will be further prioritized for funding based upon the scoring, tiebreaker and award criteria in 10 TAC Chapter 11 (the "QAP").

(3) Priority 3: Applications that are received after the 2017 9% HTC Application deadline on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

(d) Other Priorities. The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

### **13.5 Award Process**

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed through a NOFA that provides the specific collapse dates and deadlines as well as set-

aside and RAF amounts applicable to the MFDL program, along with Application information. Other funds may be distributed by NOFA or through other method approved by the Board. Set-aside, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-asides, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score, as described in §13.6 for MFDL or §11.9 for Applications layered with 9% HTC, will be used as the determining factor affecting the ranking of the application.

(c) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 10, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of Administrative Deficiency will result in a reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another application received prior to the new application submission date.

(d) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to MFDL loan closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under §10.204(6) of this Chapter or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously awarded Department funds under any program, or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and rehabilitation, except distressed Developments under §13.3(a), must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing. An application that requires a finding of

eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.

(B) Criteria for the Board to consider would include (i) - (iii) of this subparagraph:

(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or

(ii) Force Majeure events; and

(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases

### **13.6 Scoring Criteria.**

The criteria identified in subsections (a) - (e) of this section will be used in the evaluation and ranking of applications to the extent that other applications were received on the same date *and* within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. All scoring items derived from the QAP will have the same value for MFDL scoring:

(a) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points)

(b) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point)

(c) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points)

(d) Subsidy per Unit. An application that caps the per unit subsidy limit (inclusive of match) for all Direct Loan units regardless of unit size at:

(1) \$100,000 per MFDL unit (4 points).

- (2) \$80,000 per MFDL unit (8 points).
- (3) \$60,000 per MFDL unit (10 points).

(e) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.

- (1) At least 20 percent of all low-income Units at 30 percent or less of AMGI (13 points);
- (2) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (12 points); or
- (3) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(f) Tiebreaker. In the event that one or more applications receives the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMGI MFDL units within the Development that would convert to households at 15% AMGI in the event of a tie in the Tiebreaker Certification.

### **13.7 Maximum Funding Requests**

(a) The maximum funding request for all applications will be identified in the NOFA, and may vary by development type and/or set-aside.

(b) Maximum Per-Unit Subsidy Limits. The 234 Condo limits with the applicable high cost percentage adjustment in effect at the time of application are the maximum per-unit subsidy limits (inclusive of Match) that an applicant may use to determine the amount of MFDL funds or other federal funds that may subsidize a unit. Stricter per-unit subsidy limits are allowable and incentivized as point scoring items in §13.6 Scoring Criteria. Per-unit subsidy limits as well as subsidy layering analysis – ensuring that the amount of MFDL units as a percentage of total units is greater than the percentage of MFDL funds requested as a percentage of total development costs – will determine the amount of MFDL units required.

### **13.8 Loan Structure and Underwriting Requirements**

(a) Except for awards made under the SR/SH set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at not less than the Discount window primary credit rate published by the Federal Reserve (<https://www.federalreserve.gov/releases/h15/#fn2>) on the date of publication of the NOFA,

plus 200 basis points and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §10.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award.

(b) Any material changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff and may cause changes to principal amount and/or repayment structure for the Multifamily Direct Loan such that the Department is able to mitigate any increased risk. Where such risk is not adequately mitigated, the award may be terminated or reconsidered as amended by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (6) of this subsection:

(1) The term for permanent loans shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

(2) Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage or if a surplus cash flow structure is required for a loan from the SH/SR set-aside, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(3) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

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

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

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

(5) If the Direct Loan is the only source of Department funding for the Development, the Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs and must provide an "as completed" appraisal pursuant to 10 TAC §10.304 which results in total repayable loan to value of not greater than 80%.

(6) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a *proforma* and lender approval letter evidencing review of the Development and the Principals in accordance with 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

### **13.9 Construction Standards**

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in clauses (a) – (e) of this subparagraph.

(a) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

(b) for properties originally constructed prior to 1978, the Physical Conditions Assessment and rehabilitation scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the rehabilitation must implement the mitigation recommendations of the testing report

(c) all accessibility requirements pursuant to 10 TAC Subchapter B must be met;

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

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

### 13.10 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested, inclusive of Match, as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested inclusive of Match cannot exceed the per-unit subsidy limit. For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the Direct Loan funds requested is \$1,000,000, the Match being provided is \$100,000, and the total Direct Loan-eligible project costs are \$4,400,000, 25 percent of each unit type must be a Direct Loan Unit (\$1,100,000 Direct divided by \$4,400,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units.

Bedrooms	Total Units	Direct Loan Percentage	Minimum # of Direct Loan Units	Number of Direct Loan Units After Rounding Up
1br	6	25%	1.5	2
2br	10	25%	2.5	3
3br	4	25%	1	1
<b>TOTAL</b>	<b>20</b>			<b>7</b>

In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.

(b) All Direct Loan Units must float throughout the Development unless the Development also contains public housing units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100. Floating Direct Loan units may only float among the Units as described in the Direct Loan Contract and Direct Loan Land Use Restriction Agreement (“LURA”), or as specifically approved in writing by the Department.

(c) The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan or 30 years unless a lesser period is approved by the Board and when assisting distressed developments.

(d) If the Department is the only source of funding for the Development, all Units must be restricted.

### **13.11 Post-Award Requirements**

(a) Direct Loan awardees must execute an Award Letter and Loan Term Sheet provided by the Department within thirty (30) days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions currently being contemplated for the Development.

(b) If a Direct Loan award is returned after Board approval, or if the Applicant or Affiliates fail to meet federal commitment or expenditure requirements, penalties may apply under 10 TAC § 11.9(f) or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of 2 years if they have returned their funds or have failed to take necessary action specified in one or more agreement with the Department where the failure resulted in the Department's failure to meet federal commitment and expenditure requirements.

(c) Direct Loan awardees must obtain environmental clearance (if applicable) and meet all requirements for commitment of funds within 180 days after award. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within nine (9) months of the Board approval date.

(e) Loan closing must occur and construction must begin no later than six (6) months from the effective date of a Contract.

(f) In addition to any other requirements as the result of any other Department funding sources, the Development Owner must submit a mid-construction development inspection request once the development has met or exceeded 25% construction completion as indicated on the G703 Continuation Sheet. Inspection staff will issue a mid-construction development inspection letter that confirms that work is being done in accordance with the applicable codes, the construction contract, and construction documents. Up to 50 percent of the Direct Loan award will be released prior to issuance of the mid-construction development inspection letter.

(g) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection



request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements

(h) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (“UPCS”) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter requirement.

(i) Extensions to any of the above benchmarks may only be made for good cause and approved by the Department if construction is timely started;

(j) Initial occupancy of all MFDL assisted Units by eligible tenants shall occur within six (6) months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan. The marketing plan may be submitted to HUD for final approval, if required for the MFDL fund source;

(k) Repayment will be required on a per Unit basis for Units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; and

(l) Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four (4) years of the effective date of a Direct Loan Contract.

(m) Closing Deadline:

Awards will be made subject to hard closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended by additional Board action on the basis of delays caused by circumstances outside the control of the applicant. An extension will not be available if an Applicant has:

(1) failed to timely begin or complete processes required to close; including

(A) finalizing all equity and debt financing or

(B) the environmental review process; or

(2) made changes to the Development that require additional underwriting by the Department without sufficient time to complete the review.

(n) Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:

(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.

(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals and documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(4) 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 or equivalent guarantee in the sole determination of the Department is required. Such assurance of completion will run to the Department as obligee. Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(5) Documentation required for closing includes, but is not limited to:

(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(C) plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that will assist in preparation for the development's final inspection;

(D) 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);

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating *proforma*, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments

or term sheets and any additional financing exhibits that have changed since the time of application.

(F) If the changes to the budget or sources of funds reflect material changes to the transaction approved by the Board, documentation to ensure that the Development continues to meet the requirements of this chapter must be provided and material changes to the application must be approved by the Board. Material changes include but are not limited to any increase in debt payment for superior lien loans and a greater than a 10 percent change in any of the following:

(i) Total Housing Development Costs

(ii) deferred developer fee amount

(iii) superior loan amount(s);

(6) if required by the fund source, prior to Contract Execution, the Development Owner must provide verification of:

(A) environmental clearance;

(B) Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(7) The Direct Loan Contract as executed, which will be drafted by counsel for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division.

(o) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Department's Legal Division

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other

collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(2) Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any development that is not completed within four (4) years of the date of Direct Loan Contract execution.

(3) Loan terms and conditions may vary based on the type of Development, and the set-aside under which the award was made.

(p) Disbursement of Funds . The Borrower must comply with the requirements in paragraphs (1) - (9) of this subsection in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements may be required with a request for disbursement:

(1) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require.

(2) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703; (3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs, or requests for soft costs only, are exempt from this requirement;

(3) At least 50 percent of the funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements

(4) The initial draw request for the development must be entered into the Department's Housing Contract System no later than ten business days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(5) Up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25 percent of funds.

(6) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed. 75 percent of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation 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 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 if it is determined that the Development is not progressing as necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If Disbursement is withheld for any reason, disbursement of any remaining developer fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met;

(7) expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(8) table funding requests will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been completed and submitted to the Department at least ten (10) days prior to anticipated closing;

(9) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704) with \$0 as the cost estimate of work that is incomplete;

(B) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(C) For developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) Receipt of Certificates of Occupancy;

(F) Development completion reports which includes but is not limited to documentation of full compliance with the Uniform Relocation Act/104(d), Davis-Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

### **13.12 Amendments to Direct Loan Terms.**

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (7) of this section. Board approval is necessary for any other changes prior to closing.

- (1) extensions of up to 6 months to the loan closing date specified in §13.8(a)(4) of this Chapter. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;
- (2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;
- (3) extensions of up to 12 months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
- (4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;
- (5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and
- (6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.
- (7) An Applicant may request a change to the terms of a loan. Except for an award of funds to a Development that has had a *Force Majeure* event (and such an event necessitates an immediate change to the loan), such changes for federal awards will only be processed after the Development is reported to the federal oversight entity as completed. Requests for changes to the loan post closing will be processed as loan modifications and may require additional approval by the Department's Asset Management Division. Post closing loan modifications requiring changes in the Department's loan terms, lien priority, or amounts (other than in the event of a payoff) will generally only be considered as part of a Department or Asset Management Division work out arrangement or other condition intended to mitigate financial risk to the Department, and will not require additional Executive Director or Board approval except where the amendment request was not allowed under the NOFA, or where the post closing change could have been anticipated prior to closing as determined by staff.

- c. Describe the selection criteria that the State will use to select applications submitted by eligible recipients. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".



- d. Describe the State's required priority for funding based on geographic diversity (as defined by the State in the consolidated plan). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

Housing Trust Fund  
State of Texas  
2017 Allocation Plan  
Regional Allocation Formula

Region	ELI Households	ELI Renter Households	Sum of Need Variables	Allocation percentage	Regional Allocation
1	38,848	25,764	64,612	3%	\$ 266,540
2	23,829	13,655	37,484	2%	\$ 154,630
3	305,610	208,540	514,150	27%	\$ 2,120,990
4	48,485	26,410	74,895	4%	\$ 308,960
5	37,360	21,465	58,825	3%	\$ 242,667
6	287,090	189,995	477,085	25%	\$ 1,968,088
7	88,980	63,820	152,800	8%	\$ 630,336
8	53,125	36,695	89,820	5%	\$ 370,529
9	101,525	65,730	167,255	9%	\$ 689,966
10	33,495	20,730	54,225	3%	\$ 223,691
11	94,135	52,155	146,290	8%	\$ 603,481
12	21,502	11,854	33,356	2%	\$ 137,601
13	38,064	23,844	61,908	3%	\$ 255,385
<b>Total</b>	<b>1,172,048</b>	<b>760,657</b>	<b>1,932,705</b>	<b>100%</b>	<b>\$ 7,972,864</b>

- e. Describe the State's required priority for funding based on the applicant's ability to obligate HTF funds and undertake eligible activities in a timely manner. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- f. Describe the State's required priority for funding based on the extent to which the rental project has Federal, State, or local project-based rental assistance so that rents are affordable to extremely low-income families. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

## Subchapter D – Underwriting and Loan Policy

### §10.301. General Provisions.

(a) **Purpose.** This Subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This Subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this Subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development, the interpretation of the rules and guidelines described in this Subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

### §10.302. Underwriting Rules and Guidelines.

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code of 1986 (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. For the purpose of this Subchapter the term Application includes additional documentation submitted after the initial award of funds that is relevant to any subsequent reevaluation. The Report contents will be based upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan ("QAP") (10 TAC Chapter 11) or a Notice of Funds Availability ("NOFA"), as applicable, and the Uniform Multifamily Rules (10 TAC Chapter 10, Subchapters A – E and G).

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount and states any feasibility or other conditions to be placed on the award. The award amount is based on the lesser of the following:

- (1) **Program Limit Method.** For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §10.3 of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.
- (2) **Gap Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards

described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant. For Housing Tax Credit Developments (exclusive of Tax-Exempt Bond Developments) this amount is limited to the amount requested in the original Application documentation.

(d) **Operating Feasibility.** The operating feasibility of a Development funded by the Department is tested by analyzing its Net Operating Income ("NOI") to determine the Development's ability to pay debt service and meet other financial obligations throughout the Affordability Period. NOI is determined by subtracting operating expenses, including replacement reserves and taxes, from rental and other income sources.

- (1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income pro forma by determining the appropriate rental rate per unit based on subsidy contracts, program limitations including but not limited to utility allowances, actual rents supported by rent rolls and Market Rents and other market conditions. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are used unless well-documented support is provided and independently verified by the Underwriter.

(A) **Rental Income.** The Underwriter will review the Applicant's proposed rent schedule and determine if it is consistent with the representations made throughout the Application. The Underwriter will independently calculate a Pro Forma Rent for comparison to the Applicant's estimate in the Application.

- (i) **Market Rents.** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.
- (ii) **Gross Program Rent.** The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.
- (iii) **Contract Rents.** The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.
- (iv) **Utility Allowances.** The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of Subchapter F of this Chapter relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.
- (v) **Net Program Rents.** Gross Program Rent less Utility Allowance.
- (vi) **Actual Rents for existing Developments** will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

- (vii) **Collected Rent.** Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.
- (B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.
- (i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
  - (ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
  - (iii) Collection rates of exceptional fee items will generally be heavily discounted.
  - (iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.
- (C) **Vacancy and Collection Loss.** The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) **Effective Gross Income ("EGI").** EGI is the total of Collected Rent for all units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.
- (2) **Expenses.** In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
- (A) **General and Administrative Expense ("G&A")**--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
  - (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
  - (C) **Payroll Expense.** Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

- (D) **Repairs and Maintenance Expense.** Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.
  - (E) **Utilities Expense.** Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.
  - (F) **Water, Sewer, and Trash Expense (“WST”).** Includes all water, sewer and trash expenses paid by the Development.
  - (G) **Insurance Expense.** Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.
  - (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
    - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
    - (ii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d). At the underwriter’s discretion, such documentation may be required prior to Commitment if deemed necessary.
  - (I) **Replacement Reserves.** Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs).The Underwriter will use a minimum reserve of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment (“PCA”). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.
  - (J) **Other Operating Expenses.** The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA’s compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.
  - (K) **Tenant Services.** Tenant services are not included as an operating expense or included in the DCR calculation unless:
    - (i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender’s 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,
    - (ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;
    - (iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.
  - (L) **Total Operating Expenses.** The total of expense items described above. If the Applicant’s total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant’s figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.
- (3) **Net Operating Income (“NOI”).** The difference between the EGI and total operating expenses. If the Applicant’s first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter’s calculation of NOI will be used unless the Applicant's first year



stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

- (4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.
- (A) **Interest Rate.** The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.
- (B) **Amortization Period.** For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.
- (C) **Repayment Period.** For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).
- (i) If the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) a reduction to the principal amount of a Direct Loan, or in the case where no repayable Developer Fee remains available for deferral and the Direct Loan is necessary to balance the sources and uses, a reduction to the interest rate or an increase in the amortization period for Direct Loans;
  - (II) a reclassification of Direct Loans to reflect grants,
  - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:
- (I) reclassification of Department funded grants to reflect loans;
  - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
  - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

- (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.
  - (iv) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma using the following:
- (A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.
  - (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.
  - (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) **Total Housing Development Costs.** The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

- (1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.
- (A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).
  - (B) **Identity of Interest Acquisitions.**
    - (i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
      - (I) is the current owner in whole or in part of the Property; or
      - (II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
    - (ii) In all identity of interest transactions the Applicant is required to provide:
      - (I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and
      - (II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
        - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
        - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.
- (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property

taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms with supporting documentation.

(4) **Building Costs.**

(A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available

to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

- (B) **Rehabilitation and Adaptive Reuse.**
- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
  - (ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.
- (5) **Contingency.** Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost.
- (6) **General Contractor Fee.** General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.
- (7) **Developer Fee.**
- (A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.
  - (B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.
  - (C) In the case of a transaction requesting acquisition Housing Tax Credits:
    - (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
    - (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.
  - (D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.
  - (E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.
- (8) **Financing Costs.** All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible

construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

- (9) **Reserves.** Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.
- (10) **Soft Costs.** Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.
- (11) **Additional Tenant Amenities.** For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.
- (12) **Special Reserve Account.** For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to \$2,500 per Unit into a Special Reserve Account [pursuant to §10.404(d)] as a Development Cost.

**(f) Development Team Capacity and Development Plan.**

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
  - (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;
  - (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
  - (C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
  - (D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.
- (2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being referred to the Committee by the Director of Real Estate Analysis. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) **Other Underwriting Considerations.** The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

- (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:
  - (A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or
  - (B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
  - (C) the Development must be proposed to be designed to comply with the QAP, NOFA and applicable Federal requirements.
- (2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.
- (3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:
  - (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;
  - (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;
  - (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
  - (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be

characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

- (1) **Gross Capture Rate and Individual Unit Capture Rate.** The method for determining capture rates for a Development is defined in §10.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:
  - (A) is characterized as an Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
  - (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
  - (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
  - (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent; or,
  - (E) has an Individual Unit Capture Rate for any Unit Type greater than 75 percent.
  - (F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
    - (i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
    - (ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.**
  - (A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
  - (B) The first year DCR is below 1.15 (1.00 for USDA Developments).
- (5) **Long Term Feasibility.** The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:
  - (A) a Debt Coverage Ratio below 1.15; or,
  - (B) negative cash flow (throughout the term of a Direct Loan).
- (6) **Exceptions.** The infeasibility conclusions may be excepted when:
  - (A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
  - (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).
    - (i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
    - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
    - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

- (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
- (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

### **§10.303. Market Analysis Rules and Guidelines.**

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1<sup>st</sup>. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
  - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
  - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis.
  - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
  - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
  - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
  - (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1<sup>st</sup>. Otherwise, the Market Analyst will automatically be removed from the list.

- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
  - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.



- (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1<sup>st</sup>.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Market Analysis Summary.** Include the Department's Market Analysis Summary exhibit.
- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A geographic area from which the Development may draw limited demand in addition to the PMA. A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
  - (A) The SMA will be defined by the Market Analyst with:
    - (i) geographic size based on a base year population of no more than 250,000 people inclusive of the PMA; and
    - (ii) boundaries based on U.S. census tracts.
  - (B) The Market Analyst's definition of the SMA must include:
    - (i) a detailed narrative specific to the SMA explaining;
      - (I) how the boundaries of the SMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
      - (II) whether a more logical market area within the SMA exists but is not definable by census tracts and how this subsection of the SMA supports the rationale for the defined SMA, and also explains how the SMA relates to the PMA in terms of its qualitative and quantitative aspects;
      - (III) what are the specific attributes of the Development's location within the SMA that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development;
      - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the SMA to relocate to the Development; and
      - (V) other housing issues in general, if pertinent.
    - (ii) a complete demographic report for the defined SMA; and

- (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
- (A) The PMA will be defined by the Market Analyst as:
    - (i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;
    - (ii) boundaries based on U.S. census tracts; and
    - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.
  - (B) The Market Analyst's definition of the PMA must include:
    - (i) a detailed narrative specific to the PMA explaining:
      - (I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;
      - (II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA ;
      - (III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;
      - (IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development; and
      - (V) other housing issues in general, if pertinent.
    - (ii) a complete demographic report for the defined PMA;
    - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,
    - (iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.
  - (C) **Comparable Units.** Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:
    - (i) development name;
    - (ii) address;
    - (iii) year of construction and year of Rehabilitation, if applicable;
    - (iv) property condition;
    - (v) Target Population;
    - (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
      - (I) monthly rent and Utility Allowance; or
      - (II) sales price with terms, marketing period and date of sale;
    - (vii) description of concessions;
    - (viii) list of unit amenities;
    - (ix) utility structure;
    - (x) list of common amenities;
    - (xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,
    - (xii) for rental developments only, the occupancy and turnover.

(10) **Market Information.**

- (A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:
- (i) total housing;
  - (ii) all multi-family rental developments, including unrestricted developments, whether existing or proposed;
  - (iii) Affordable housing;
  - (iv) Comparable Units;
  - (v) Unstabilized Comparable Units; and
  - (vi) proposed Comparable Units.
- (B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:
- (i) number of Bedrooms;
  - (ii) quality of construction (class);
  - (iii) Target Population; and
  - (iv) Comparable Units.
- (C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) **Demographic Reports.**
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
  - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
  - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
  - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.
- (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 criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
    - (I) **Population.** Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
    - (II) **Target.** If applicable, adjust the household projections for the elderly 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 percent for the general population and 50 percent for elderly households; and
    - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
  - (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
- (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
  - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
  - (II) For Developments targeting the general population:
    - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
    - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
    - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
  - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
    - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
    - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
    - (-c-) Gross Demand includes both renter and owner households.
  - (IV) Elderly Developments or Supportive Housing:
    - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
    - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
  - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
  - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
  - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
  - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
  - (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
  - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
  - (IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
    - (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
    - (-b-) a complete demographic report for the area in which the vouchers are distributed.

- (F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.
- (11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
- (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.
- (B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
- (i) The Department recommends use of HUD Form 92273.
  - (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
  - (iii) Adjustments for concessions must be included, if applicable.
  - (iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description must be included.
  - (v) Total adjustments in excess of 15 percent must be supported with additional narrative.
  - (vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.
- (C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
- (D) **Demand:**
- (i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (*e.g.* one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
  - (ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.
- (E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:
- (i) the proposed subject Units;
  - (ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.
  - (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
  - (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.
- (F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §10.302(i) of this chapter for feasibility criteria.
- (G) **Individual Unit Capture Rate.** For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. [Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, the Underwriter will make assumptions such that each household is included in the capture rate for only one Unit Type.]
- (H) **Absorption.** Project an absorption period for the subject Development to achieve 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)
- (12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.
- (13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

#### **§10.304. Appraisal Rules and Guidelines.**

(a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
- (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
  - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
  - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
  - (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
  - (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
  - (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
- (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
    - (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.
    - (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
    - (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
      - (I) Property rights conveyed.
      - (II) Financing terms.
      - (III) Conditions of sale.
      - (IV) Location.
      - (V) Highest and best use.
      - (VI) Physical characteristics (e.g., topography, size, shape, etc.).

- (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).
- (B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.
- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
  - (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
    - (I) **Sale Price/Unit of Comparison.** The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.
    - (II) **Net Operating Income/Unit of Comparison.** The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.
- (C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.
- (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.
  - (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
  - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
  - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
  - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
    - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
    - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period,



income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.
- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
  - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.
  - (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.
  - (D) For all other existing Developments, the appraisal must include the "as-is" value.
  - (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
  - (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

#### **§10.305. Environmental Site Assessment Rules and Guidelines.**

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
- (4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (5) 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. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;
- (6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
- (7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
- (8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

### **§10.306. Property Condition Assessment Guidelines.**

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Accessibility Requirements.** The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).
- (5) **Reconciliation of Scope of Work and Costs.** The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and
- (6) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.
  - (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.
  - (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.
  - (C) **Reconciliation of Costs.** The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard Costs presented on the Applicant's development cost schedule.
  - (D) **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 lesser of thirty (30) years or 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 thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

- g. Describe the State's required priority for funding based on the financial feasibility of the project beyond the required 30-year period. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- h. Describe the State's required priority for funding based on the merits of the application in meeting the priority housing needs of the State (such as housing that is accessible to transit or employment centers, housing that includes green building and sustainable development features, or housing that serves special needs populations). If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

- i. Describe the State's required priority for funding based on the extent to which the application makes use of non-federal funding sources. If not distributing funds by selecting applications submitted by eligible recipients, enter "N/A".

4. Does the State’s application require the applicant to include a description of the eligible activities to be conducted with HTF funds? If not distributing funds by selecting applications submitted by eligible recipients, select “N/A”.

Yes       No       N/A

5. Does the State’s application require that each eligible recipient certify that housing units assisted with HTF funds will comply with HTF requirements? If not distributing funds by selecting applications submitted by eligible recipients, select “N/A”.

Yes       No       N/A

6. **Performance Goals and Benchmarks- § 91.320(k)(5)(iii)**

The State has met the requirement to provide for performance goals and benchmarks against which the State will measure its progress, consistent with the State's goals established under 24 CFR 91.315(b)(2), by including HTF in its housing goals in the housing table on the SP-45 Goals and AP-20 Annual Goals and Objectives screens.

Yes       No



7. **Maximum Per-unit Development Subsidy Amount-** § 91.320(k)(5) and § 93.300(a)

Enter or attach the State's maximum per-unit development subsidy limits for housing assisted with HTF funds.

The limits must be adjusted for the number of bedrooms and the geographic location of the project. The limits must also be reasonable and based on actual costs of developing non-luxury housing in the area.

If the State will use existing limits developed for other federal programs such as the Low Income Housing Tax Credit (LIHTC) per unit cost limits, HOME's maximum per-unit subsidy amounts, and/or Public Housing Development Cost Limits (TDCs), it must include a description of how the HTF maximum per-unit development subsidy limits were established or a description of how existing limits developed for another program and being adopted for HTF meet the HTF requirements specified above.

**Section VI. Allocation Plan Requirements**

**Question 7: Maximum Per-Unit Development Subsidy Limits:**

The State of Texas adopted the Basic Statutory Mortgage Limits for Calendar Year 2015 and the Annual Base City High Cost Percentage and High Cost Area Revisions for 2015 memo dated November 15, 2015, as the limits that will be used for HTF. The attached limits do not vary based on geographic location in Texas since the limits were approved by HUD for use throughout the state. They will be used statewide for ease of use both for applicants and TDHCA staff.

After reviewing the costs per unit on 39 projects that have received HOME funds – as both the only source of Department funding and as a gap financing source on 9% and 4% Housing Tax Credit-layered projects – over the past several years, the Department has found the following:

	Total Cost Per Unit (total development costs divided by total number of units)	HOME Cost Per HOME Unit (HOME funds invested divided by number of HOME units)
Urban New Construction Average	\$155,381	\$83,680
Rural New Construction Average	\$148,907	\$94,195

These projects were subject to Section 234 Condominium Housing Limits (formerly 221d3 Maximum Per Unit Subsidy Limits) with the applicable base city high cost percentages applied.

Given this fact, Texas will **not** establish its own maximum limitations on the total amount of NHTF funds that can be invested on a per-unit basis for the development of nonluxury housing. Texas will use the Section 234 Condominium Housing Limits with the applicable base high cost percentage applied for NHTF – as illustrated in the tables below – in the same way that these limits are used for HOME funds. Utilizing the same per-unit subsidy limits across all of the Department’s Multifamily Direct Loan funding sources (HOME, NHTF, and TCAP Repayment Funds) will allow for an easier application and review process that will preserve the Department’s ability to award funds based on what is available rather than prescribe a funding source at the time of application. Additionally, these per-unit subsidy limits accurately reflect what the Department has observed in the market regarding construction costs; no area of the state seems immune from the increasing construction costs.

<b>Bdrm Size</b>	<b>Section 234 (elevator) limits</b>	<b>HCP (FTW HUB)</b>	<b>HOME Max Per-Unit Subsidy Limit</b>
<b>0</b>	\$ 58,787	215%	<b>\$ 126,392</b>
<b>1</b>	\$ 67,391	215%	<b>\$ 144,891</b>
<b>2</b>	\$ 81,947	215%	<b>\$ 176,186</b>
<b>3</b>	\$ 106,013	215%	<b>\$ 227,928</b>
<b>4+</b>	\$ 116,369	215%	<b>\$ 250,193</b>

accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification and you do not believe the response is correct, you may make an InfoPass appointment for an in-person interview at a local USCIS office. Detailed information on how to make corrections, make an appointment, or submit a written request to correct records under the Freedom of Information Act can be found on the SAVE Web site at <http://www.uscis.gov/save>, then by choosing "For Benefits Applicants" from the menu on the left, selecting "Save Resources," followed by "SAVE Fact Sheet for Benefit Applicants."

[FR Doc. 2017-10749 Filed 5-23-17; 8:45 am]

BILLING CODE 9111-97-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6011-N-01]

**Annual Indexing of Basic Statutory Mortgage; Limits for Multifamily Housing Programs**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 206A of the National Housing Act, HUD has adjusted the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2016.

**DATES:** Effective January 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Sullivan, Acting Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 402-6130 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The FHA Down Payment Simplification Act of 2002 (Pub. L. 107-326, approved December 4, 2002) amended the National Housing Act by adding a new Section 206A (12 U.S.C. 1712a). Under Section 206A, the following are affected:

- I. Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));
- II. Section 213(b)(2)(A) (12 U.S.C. 1715e(b)(2)(A));
- III. Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k(d)(3)(B)(iii)(I));
- IV. Section 221(d)(4)(ii)(I) (12 U.S.C.

- 17151(d)(4)(ii)(I));
- V. Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and
- VI. Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The Dollar Amounts in these sections are the base per unit statutory limits for FHA's multifamily mortgage programs collectively referred to as the 'Dollar Amounts,' they are adjusted annually (commencing in 2004) on the effective date of the Consumer Financial Protection Bureau's adjustment of the \$400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103-325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) as applied by the Bureau of Consumer Financial Protection for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI-U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI-U is 0.7% and the effective date of the HOEPA adjustment is January 1, 2016. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2016.

The adjusted Dollar Amounts for Calendar Year 2016 are shown below:

**Basic Statutory Mortgage Limits for Calendar Year 2016**

*Multifamily Loan Programs*

Section 207—Multifamily Housing

Section 207 Pursuant to Section 223(f)—Purchase or Refinance Housing

Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0 .....	\$50,515	\$58,921
1 .....	55,958	65,286
2 .....	66,841	80,053
3 .....	82,386	100,263
4+ .....	93,270	113,369

Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0 .....	\$54,745	\$58,291
1 .....	63,122	66,042
2 .....	76,127	80,307
3 .....	97,443	103,892
4+ .....	108,558	114,044

**Section 234—Condominium Housing**

Bedrooms	Non-elevator	Elevator
0 .....	\$55,862	\$58,787

Bedrooms	Non-elevator	Elevator
1 .....	64,410	67,391
2 .....	77,680	81,947
3 .....	99,433	106,013
4+ .....	110,772	116,369

Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0 .....	\$50,273	\$54,305
1 .....	57,068	62,255
2 .....	68,981	75,702
3 .....	86,582	97,932
4+ .....	97,836	107,501

Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0 .....	\$47,797	\$54,305
1 .....	53,433	62,255
2 .....	63,808	75,702
3 .....	76,789	97,932
4+ .....	90,278	107,501

Section 207—Manufactured Home Parks Per Space—\$23,191

Dated: May 17, 2017.

**Genger Charles,**  
General Deputy, Assistant Secretary for Housing.

[FR Doc. 2017-10558 Filed 5-23-17; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms and Explosives**

[OMB Number 1140-0013]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Tax-Exempt Transfer of Firearm and Registration to Special Occupational Taxpayer, ATF Form 3 (5320.3)**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on March 14, 2017, allowing for a 60-day comment period.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

Date: January 11, 2017

MORTGAGEE LETTER 2017-02

TO: ALL FHA APPROVED MULTIFAMILY MORTGAGEES

SUBJECT: Annual Base City High Cost Percentage and High Cost Area Revisions  
for 2016

Maximum mortgage amounts were revised by the Consolidated Appropriations Act, 2008 (Public Law 110-161, approved December 26, 2007) (FY 2008 Appropriations Act). Section 221 of the General Provisions of Title II of Division K of the FY 2008 Appropriations Act revises the statutory exceptions to maximum mortgage amounts for the FHA Multifamily Housing Programs, listed in Section 221 of the FY 2008 Appropriations Act, by (1) substituting 170 percent for the 140 percent exception of any geographical area, and (2) substituting 215 percent for 170 percent as the maximum exception allowed for a specific project. Accordingly, the statutory revision allows the Secretary to grant exceptions to maximum mortgage limits for certain Multifamily Housing Programs by (1) up to 170 percent, (equivalent to a 270 percent multiplier) in geographical areas where cost levels so require or (2) up to 170 percent, or 215 percent in High Cost Areas, (equivalent to a 315 percent multiplier) where necessary on a project-by-project basis.

The law does not determine which areas are to be considered “High Cost Areas.” Accordingly, the Office of Multifamily Production has developed a list of High Cost Areas for 2016. The threshold for a High Cost Area has been set for all areas (Special Limit Areas excepted) with a “calculated” High Cost Percentage (HCP) of 281.70 or greater, but because of the statutory cap of 170 percent or 270 percent multiplier, some localities have a higher HCP but still have the 270 percent multiplier.

The attached designated Annual Base City High Cost Percentages and High Cost Areas are effective January 1, 2016 and for transactions with firm commitments issued prior to the publication of the High Cost Percentages and Area Revisions for calendar year 2017.

## **SPECIAL LIMIT AREAS**

Guam, the U.S. Virgin Islands, and the states of Alaska and Hawaii are Special Limit areas. Care should be taken to ensure that the appropriate limits are used for corresponding programs. The HCP for Special Limit Areas is 405 percent.

## **Paperwork Reduction Act**

There are no information collection requirements in this Mortgagee Letter, and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Attachment

---

Edward L. Golding  
Principal Deputy Assistant Secretary for Housing

**FHA Multifamily Statutory Mortgage Programs  
Base Percentages for High Cost Areas – Effective January 2016**

<b>Atlanta GA – Southeast Regional Office</b> 252% Birmingham AL 221% Little Rock AR 212% Jacksonville FL* 243% Key West FL 270% Miami FL 253% Tampa FL 265% Louisville KY 239% Jackson MS 212% Greensboro NC 244% San Juan PR 270% Columbia SC 237% Knoxville TN 226% Memphis TN 220% Nashville TN 223% US Virgin Islands** 405%	<b>Ft. Worth TX – Southwest Regional Office</b> 215% Dallas TX 209% Houston TX 209% Lubbock TX 192% San Antonio TX 212% Little Rock AR 242% Des Moines IA 233% Topeka KS 218% New Orleans, LA 221% Shreveport LA 270% Kansas City MO* 270% St. Louis MO 224% Omaha NB 233% Oklahoma City OK 226% Tulsa OK	<b>San Francisco CA – Western Regional Office</b> 270% Los Angeles CA 270% Sacramento CA 270% San Diego CA 270% Santa Ana CA 270% Anchorage AK** 405% Phoenix AZ 248% Denver CO* 270% Boise ID 270% Honolulu HI** 405% Helena MT 250% Fargo ND 249% Las Vegas NV 270% Portland OR 270% Salt Lake City UT 261% Seattle WA 270% Spokane WA 270% Casper WY 262%
<b>Chicago IL – Midwest Regional Office</b> 270% Springfield IL 270% Indianapolis IN 248% Detroit MI* 270% Grand Rapids MI 243% Minneapolis MN* 270% Cincinnati OH 248% Cleveland OH 270% Columbus OH 248% Milwaukee WI 270%	<b>New York NY – Northeast Regional Office</b> 270% Albany NY 270% Buffalo NY 270% Hartford CT 270% Washington DC 270% Wilmington DE 270% Boston MA* 270% Bangor ME 270% Baltimore MD* 270% Manchester NH 270% Camden NJ 270% Newark NJ 270% Philadelphia PA 270% Pittsburg PA 270% Providence RI 270% Richmond VA 270% Burlington VT 270% Charleston WV 270%	<p align="center"><b>Satellite Office - *</b></p> <p align="center"><b>Special Limit- **</b></p> <p><b>Note:</b> Offices with a “calculated” HCP of 281.70 (before the statutory cap of 270) or higher are designated “High Cost Areas” and are shaded. The Multifamily for Tomorrow (MFT) Transformation has been completed, so this Housing Notice reflects the MFT changes with respect to the new organizational structure.</p>

Internal HUD Distribution:						
Chron : 6134		H : Golding				
HTEA T. Bernaciak						
HT : Jayachdran						
H : Golrick						
Identification Lines: J:\HMIP\HTDT TECHNICAL SUPPORT DIVISION\Stats and HCPs\HCF 2016						
2016-HTDP-HQ-						
Correspondence Code HTEA	Originator T. Bernaciak	Concurrence D. Sullivan	Concurrence M. Kudlowitz	Concurrence Jayachandran	Concurrence G. Charles	Concurrence J. Golrick
Name						
Date						

Official Record Copy

U.S. Department of Housing and Urban Development  
Previous edition is obsolete.

form HUD-713.1 (02/03)

## Andrew Sinnott

---

**From:** Melendez, Ellen M [Ellen.M.Melendez@hud.gov]  
**Sent:** Thursday, July 20, 2017 3:28 PM  
**To:** Andrew Sinnott  
**Cc:** Marni Holloway; Megan Sylvester; Jensen, Gerald R  
**Subject:** FW: HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

---

**From:** Henley, Shirley J  
**Sent:** Wednesday, July 05, 2017 10:59 AM

**Subject:** FW: HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

Good Morning

To follow-up with the 2016 Limits for HOME Maximum Per-Unit Subsidies, the Field Office has the option of using the higher of either the Hub's High Cost Percentages (HCP) for the entire field office jurisdiction, or individual PJ's HCP, when they are included in the base HCP list. The Fort Worth HUB's HCP is 215% for all PJ's in the Fort Worth Field Office jurisdiction.

The following are the new HOME max per-unit subsidy limit calculations, effective May 24, 2017.

This information needs to be provided to all HOME PJ's.

Please distribute to your HOME points-of-contact and ask them to forward the information to their PJ's.

<b>Bdrm Size</b>	<b>Section 234 (elevator) limits</b>	<b>HCP (FTW HUB)</b>	<b>HOME Max Per-Unit Subsidy Limit</b>
<b>0</b>	\$ 58,787	215%	<b>\$ 126,392</b>
<b>1</b>	\$ 67,391	215%	<b>\$ 144,891</b>
<b>2</b>	\$ 81,947	215%	<b>\$ 176,186</b>
<b>3</b>	\$ 106,013	215%	<b>\$ 227,928</b>
<b>4+</b>	\$ 116,369	215%	<b>\$ 250,193</b>

Effective May 24, 2017

Is this email not displaying correctly? [View it in your browser.](#)



## HUD Publishes New 2016 Limits for HOME Maximum Per-Unit Subsidies

In accordance with Section 206A of the National Housing Act, HUD has adjusted the basic statutory mortgage limits for Multifamily Housing Programs for calendar year 2016. These limits are effective for the HOME Investment Partnerships Program (HOME) on May 24, 2017, until such date that the basic statutory mortgage limits for Multifamily Housing Programs for calendar year 2017 are published in the Federal Register.

[View the 2016 Section 234 limits and guidance on the HOME maximum per-unit subsidy limits.](#)

Due to the discontinuation of the Section 221(d)(3) mortgage insurance program, alternate maximum per-unit subsidy limits must be used for the HOME program. HUD is required to undertake rulemaking to establish new maximum per-unit subsidy limits for the HOME Program because it is no longer updating and publishing limits for the Section 221(d)(3) mortgage insurance program.

Until a new rule can be published, HUD published [CPD Notice 15-003: Interim Policy on Maximum Per-Unit Subsidy Limits for the HOME Program](#) establishing an interim policy that Field Office staff and participating jurisdictions (PJs) must follow directing PJs to use the Section 234-Condominium Housing basic mortgage limits, for elevator-type projects, as an alternative to the Section 221(d)(3) limits in order to determine the maximum amount of HOME funds a PJ may invest on a per-unit basis in HOME-assisted housing projects. This interim policy remains in effect until the effective date of the new final rule provisions, amending the existing provisions of 24 CFR 92.250(a).

HUD has also issued [HOMEfires - Vol. 12 No. 1, May 2015: Guidance on Using the Base City High Cost Percentages to Determine the Maximum Per-Unit Subsidy Limits for HOME](#). The HOMEfires provides guidance on if a PJ that is not listed on the published list of "Base City High Cost Percentages" to use the high-cost percentage of its HUD Multifamily Hub to determine the maximum per-unit subsidy limits for HOME.

## Andrew Sinnott

---

**From:** Melendez, Ellen M [Ellen.M.Melendez@hud.gov]  
**Sent:** Thursday, July 20, 2017 3:27 PM  
**To:** Andrew Sinnott  
**Cc:** Marni Holloway; Megan Sylvester; Jensen, Gerald R  
**Subject:** RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Hi Andrew,

You should have been notified about the revised max per-unit subsidy limits earlier this month - I will forward it to you. We went with 215% for the entire field office jurisdiction

Ellen

---

**From:** Andrew Sinnott [<mailto:andrew.sinnott@tdhca.state.tx.us>]  
**Sent:** Thursday, July 20, 2017 2:49 PM  
**To:** Melendez, Ellen M <[Ellen.M.Melendez@hud.gov](mailto:Ellen.M.Melendez@hud.gov)>  
**Cc:** Marni Holloway <[marni.holloway@tdhca.state.tx.us](mailto:marni.holloway@tdhca.state.tx.us)>; Megan Sylvester <[megan.sylvester@tdhca.state.tx.us](mailto:megan.sylvester@tdhca.state.tx.us)>; Jensen, Gerald R <[Gerald.R.Jensen@hud.gov](mailto:Gerald.R.Jensen@hud.gov)>  
**Subject:** RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Hi Ellen,

We received a link to [HOMEfires Vol. 12 No. 1 \(Revised July 2016\)](#) last week. Is this HOMEfire the approval that we need to move forward with using the High Cost Percentage for the Fort Worth HUB (215%) for the newly effective 234 condo limits on statewide basis?

Thanks,

### Andrew Sinnott

Multifamily Loan Programs Administrator  
512.475.0538

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).*

---

**From:** Andrew Sinnott  
**Sent:** Tuesday, June 27, 2017 2:13 PM  
**To:** 'Melendez, Ellen M'  
**Cc:** Marni Holloway; Megan Sylvester; Jensen, Gerald R  
**Subject:** RE: Maximum Per Unit Subsidy Limits for the State of Texas (PJ)

Okay – thanks for the update.

### Andrew Sinnott

Multifamily Loan Programs Administrator  
512.475.0538

*Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b), there are important limitations and caveats (Also see 10 TAC §10.2(b)).*

---

**From:** Melendez, Ellen M [<mailto:Ellen.M.Melendez@hud.gov>]  
**Sent:** Tuesday, June 27, 2017 1:16 PM  
**To:** Andrew Sinnott

**8. Rehabilitation Standards - § 91.320(k)(5)(iv) and § 93.301(b)**

The State must establish rehabilitation standards for all HTF-assisted housing rehabilitation activities that set forth the requirements that the housing must meet upon project completion. The State's description of its standards must be in sufficient detail to determine the required rehabilitation work including methods and materials. The standards may refer to applicable codes or they may establish requirements that exceed the minimum requirements of the codes. At a minimum, the rehabilitation standards must address:

- Health and safety;
- Major systems;
- Lead-Based Paint;
- Accessibility;
- Disaster Mitigation;
- State and local Codes, Ordinances, and Zoning Requirements;
- Inspectable Areas and Observable Deficiencies from HUD's Uniform Physical Condition Standards identified by HUD as applicable to HTF-assisted housing; and
- Capital Needs Assessments (if applicable).

Enter or attach the State's rehabilitation standards. If the State will not use HTF funds for rehabilitation of housing, enter "N/A".

**9. Resale or Recapture Guidelines- § 91.320(k)(5)(v) and § 93.304(f)**

If the State intends to use HTF funds to assist first-time homebuyers, it must set forth the guidelines for resale or recapture and obtain HUD specific, written approval, as required in § 93.304(f). Approval of the consolidated plan or annual action plan under § 91.500 or the failure to disapprove the consolidated plan or annual action plan does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.

Enter or attach a description of the guidelines that will be used for resale or recapture of HTF funds when used to assist first-time homebuyers. If the State will not use HTF funds to assist first-time homebuyers, enter "N/A".

**10. HTF Affordable Homeownership Limits- § 91.320(k)(5)(vi) and § 93.305**

If the State intends to use HTF funds for homebuyer assistance and does not use the HTF affordable homeownership limits for the area provided by HUD, it must determine 95 percent of the median area purchase price and set forth the information in accordance with §93.305. If the State will not use HTF funds to assist first-time homebuyers, enter “N/A”.

- The State will use the HUD issued affordable homeownership limits.
- The State has determined its own affordable homeownership limits using the methodology described in § 93.305(a)(2) and the limits are attached.
- N/A

**11. State Limited Beneficiaries or Preferences- § 91.320(k)(5)(vii)**

Describe how the State will limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population to serve unmet needs identified in its consolidated plan or annual action plan. If the State will not limit the beneficiaries or give preferences to a particular segment of the extremely low- or very low-income population, enter “N/A”.

Any limitation or preference must not violate nondiscrimination requirements in § 93.350, and the State must not limit or give preferences to students. The State may permit rental housing owners to limit tenants or give a preference in accordance with § 93.303(d)(3) only if such limitation or preference is described in the action plan.

**12. Refinancing of Existing Debt- § 91.320(k)(5)(viii) and § 93.201(b)**

Enter or attach the State's refinancing guidelines below. The guidelines describe the conditions under which the State will refinance existing debt. The State's refinancing guidelines must, at minimum, demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing. If the State will not refinance existing debt, enter "N/A".

## VII. GRANTEE CERTIFICATIONS

---

In addition to submitting an HTF allocation plan, the State must submit all the required certifications identified at § 91.225 (for new action plans). If the State is amending the action plan to include HTF, it must resubmit the following certification to include HTF:

- Consistency with plan- The jurisdiction must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is the most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided. HTF must be included in this certification.

## VIII. REQUIRED FORMS

---

In addition to submitting an HTF allocation plan, the State must submit and/or complete the following standard form for its HTF program.

- Standard form- 424: [Application for Federal Assistance](#) (§ 91.320(a))

## IX. RESOURCES

---

The following resources should be referenced before developing and submitting the HTF allocation plan.

### HTF Resources

- HTF website- [www.hudexchange.info/htf](http://www.hudexchange.info/htf)
- HTF [Interim Rule](#)
- Notice CPD-17-05 [Guidance for HTF Grantees on Fiscal Year 2017 Housing Trust Fund \(HTF\) Allocation Plans](#)
- HTF [FAQs](#)
  - o HTF Maximum Per-Unit Development Subsidy Amounts
  - o HTF Rehabilitation Standards
- HTF Webcast on [Overview of the HTF program](#)
- HTF Webinar on [Developing HTF Allocation Plans](#)
- HTF [Formula Allocation](#)



7a

**BOARD ACTION ITEM**  
**REAL ESTATE ANALYSIS DIVISION**

**September 7, 2017**

Presentation, Discussion, and Possible Action on Timely Filed Underwriting Appeal under the Department's Multifamily Program Rules regarding Baxter Lofts (#17010) in Harlingen

**RECOMMENDED ACTION**

**WHEREAS**, an Application for competitive 9% housing tax credits was timely filed for Baxter Lofts (#17010) and a property condition assessment report dated February 20, 2017, (the "Original PCA") was provided at the time of Application;

**WHEREAS**, the Application received the highest score in its sub-region and the Department completed the Underwriting Report for the Baxter Lofts (#17010), which was published on July 24, 2017;

**WHEREAS**, the transaction was underwritten based on the original Application and the additional deficiency documentation filed with the original Application, as requested by staff during the application program review and underwriting process and prior to publication of the Underwriting Report;

**WHEREAS**, staff determined that the Original PCA filed with the Application materially failed to meet the requirements of 10 TAC §10.306(a) relating to the Property Condition Assessment ("PCA") Guidelines and, as a result, issued an Administrative Deficiency on July 12, 2017, to the Applicant to provide a compliant PCA;

**WHEREAS**, responding to the Administrative Deficiency, the Applicant submitted a revision to the Original PCA on July 19, 2017, (the "Revised PCA"), which, although dated July 7, 2017, was filed and incorporated into the original Application materials and available for use by the Underwriter in evaluating the Application;

**WHEREAS**, staff also determined that the Revised PCA materially failed to meet the requirements of the Property Condition Assessment Guidelines, missing major necessary elements and providing information which now appears to have contained substantive inaccurate information;

**WHEREAS**, without a detailed understanding of the scope of work and associated development costs staff is not able to determine financial feasibility pursuant to 10 TAC §10.302, and makes it impossible to fulfill the Department's obligation under IRC §42(m) to determine eligible basis and an amount of tax credit that does not exceed the amount necessary for financial feasibility;

**WHEREAS**, the published Underwriting Report did not recommend the Application for funding due to the non-compliant PCA;

**WHEREAS**, the Applicant timely filed an appeal of the Underwriting Report on July 31, 2017, including further supplemental information contending that the Application and deficiency responses met the requirement of the Rules and the Qualified Allocation Plan; and

**WHEREAS**, the Executive Director denied the appeal, and the Applicant requested that its appeal be presented to the Board;

**NOW, therefore, it is hereby**

**RESOLVED**, that the underwriting appeal for Baxter Lofts #17010 is denied.

### **BACKGROUND**

Baxter Lofts is an application for the proposed adaptive reuse of a 9-story office building constructed in 1926 in downtown Harlingen. The Developer intends to convert the building into 24 apartment units with ground floor community and office space.

The Application was not recommended for an award because the PCA materially failed to conform to the rules. It was materially deficient in providing the information required by the Real Estate Analysis ("REA") Division necessary to performing the required underwriting.

The Application was submitted with the Original PCA report dated February 20, 2017, prepared by Wallace Architects, LLC ("Wallace"). Wallace is also the architect for the Development. This report was authored as an update to a report submitted with a 2016 application submitted by the Applicant.

The Original PCA did not meet the requirements of 10 TAC §10.306(a) relating to the Property Condition Assessment Guidelines under the REA rules. As a result, an Administrative Deficiency was issued on July 12, 2017, providing the Applicant an opportunity to submit a compliant PCA report.

In response to the Administrative Deficiency, the Revised PCA was submitted by the Applicant on July 19, 2017. It was prepared by Wallace and GIBCO Environmental, LLC (GIBCO is also the Environmental Site Assessment provider).

Like the Original Report, the Revised PCA did not meet the requirements of 10 TAC §10.306 and resultantly does not fulfill the essential requirements of 10 TAC §10.302(e)(4)(ii) related to the cost used by the Underwriter in the analysis.

A PCA is required for all rehabilitation and adaptive reuse applications. The PCA is a vital component of the application for the analysis and underwriting these types of developments. Unlike new construction developments, the Underwriter has no in-house basis or tools for estimating the costs of rehabilitation or adaptive reuse of a property. Each application involves a unique property with unique needs, conditions, circumstances, and plans. Therefore, the Underwriter must rely on a

third-party to determine, quantify, and describe the scope of work and the related costs. The PCA needs to be self-contained with sufficient detail for the Underwriter, or any reader, to understand the existing conditions and the scope of work and to evaluate the overall rehabilitation plan. The Underwriter uses the scope and cost information in the PCA to make sure that the overall development budget is reasonable.

In addition to not meeting the specific requirements of rule, there are areas of significant concern with the PCA as further described below.

### **AREAS OF SIGNIFICANT CONCERN**

The following areas of concern and the rule violations outlined below led REA staff to having no confidence in the report, and to recommend denying the Application.

#### **Asbestos/Lead-Based Paint:**

The Original PCA prepared by Wallace stated that asbestos (as well as lead-based paint) was probable due to the age of the building but there was neither discussion of where the potential asbestos might be located nor any indication as to the amount of asbestos that might be in the building. While a Phase II environmental study was recommended, there was no information as to whether asbestos might be spread throughout the building such as in the floor mastic or sheetrock joint compound, or whether any such probable asbestos was localized such as in the boiler or other mechanical equipment. There was no narrative or pictorial information provided for the Underwriter to use to evaluate the magnitude of any potential asbestos or understand the potential cost of abatement if they exist. There was no information at all other than a statement that there might be asbestos and lead-based paint (see page 16 of the Revised PCA).

Abatement of these materials can be very costly, and the development budget did not contain any money for abatement. Without any information about the materials and without a budget contingency for abatement, the Underwriter had no confidence that the development budget was sufficient to rehabilitate the building. The presence of these materials could result in the financial failure of the development if there was not enough money in the total budget to cover the cost of abatement. It is not acceptable to staff that a statement was made in the report that asbestos was “probable” but then no further discussion, detail, budgetary quantification, or analysis was provided. The entire section covering environmental issues for a building built in 1929 was two sentences, and one of those simply stated that asbestos and lead-based paint were “probable.”

The Phase I Environmental Site Assessment (“ESA”) report prepared by GIBCO Environmental dated February 22, 2017, also stated that testing for asbestos containing materials was recommended due to the age of the structure. And although not required, the ESA also did not provide any additional information regarding the presence, extent, or condition of observed asbestos.

Staff’s concern about the asbestos and lead-based paint was only two of the many concerns raised with the Applicant regarding the Original PCA and its non-compliance with rule. These concerns led to the issuance of an Administrative Deficiency to allow the Applicant to provide a PCA that met the rules.

The Revised PCA (co-authored by Wallace and GIBCO) also stated that the asbestos and lead-based paint were probable. The discussion in the narrative provided no more useful information than that in the Original PCA. A line-item of \$88,000 was added to the development budget to cover the “costs for abatement of these materials.” Again, the narrative contained absolutely no indication as to the extent or location of the possible asbestos or lead-based paint. There was no information as to how the abatement estimate was determined and nothing that would inform the Underwriter on whether the estimate was reasonable (see page 36 of the Revised PCA).

Post publication of the underwriting report and prior to the appeal submission, staff learned from the City of Harlingen that the asbestos in the building had already been abated in 2015, and that the abatement had been paid for by the City. In addition to not providing sufficient information for the Underwriter to assess scope and costs regarding the asbestos issue, the statement that the building “probably” contains asbestos in reports dated after 2015 and then applying a cost to remove such “probable” asbestos could be viewed as a negligent misrepresentation of the actual facts at the Development.

#### **Budget Reconciliation and Explanation:**

One of the sections of the PCA report required by rule is the PCA Supplement worksheet. This worksheet is to be completed by the PCA report provider and represents the total estimated Direct Construction cost of the rehabilitation or adaptive reuse (see page 40 of the Revised PCA).

In comparing costs between the 2016 PCA, the Original PCA and the Revised PCA reports, Direct Construction costs did not materially change and totaled \$1.45M (see Exhibit A). Many line-items in the budget for specific items or categories, however, changed significantly with no explanation or rationale. The total estimate for Sitework, for example, did not change. However, the items within the Sitework category changed dramatically. On-site utilities decreased \$80,000. This decrease was reallocated to on-site paving and landscaping. There is no discussion regarding this reallocation or why the on-site paving or landscaping was not part of the original budget. Similar unexplained reallocations and cost adjustments are shown between the three reports such as costs for Doors (\$50K to \$100K to \$35K), Windows (\$175K to \$125K to \$95K), Cabinetry (\$24K to \$0 to \$54K) and Drywall (\$104K to \$211K to \$111K). Without any explanation provided, these numbers are not reliable for use by staff in the analysis and staff notes that while all these changes occurred, the bottom line total across the three reports did not change. There are no specifications or unit counts provided in the Original PCA. The Revised PCA contained a schedule (see page 39 of the Revised PCA) showing unit counts. This schedule, however, raised other serious concerns that were not addressed in the report such as budget estimates of \$1,000 for each toilets, sinks, and lavatories.

#### **Lack of Descriptive Information or Explanation:**

The Underwriter has reviewed hundreds of PCA reports. Most reports are hundreds of pages containing numerous detailed photos of existing conditions, interviews, review of plans and specifications, documents and research, reviews of other reports, details on the scope of work, and recommendations for any needed additional study. The detail is required to ensure that all areas of the renovation have been considered and that that review is detailed in the report. The length of a PCA report (in this case, both the Original PCA and the Revised PCA, is +/- 20 pages each including résumé information and photographs) is not the critical factor for determining the merits of a PCA. However, it is the Underwriter's opinion that the level of due diligence needed to meet

applicable ASTM criteria and Department rules on a scope for this renovation does not exist in the subject's report, and cannot be adequately described in 20 pages (the first 8 pages of which contain the table of contents and résumé information).

As an example, a requirement of the PCA is to identify all building, zoning and fire safety code violations. There is no discussion about compliance with such codes in the Original PCA report, except a recommendation to install smoke detectors. The Revised PCA simply states that there are “numerous violations of building, zoning or fire safety codes” and that all violations will be corrected during the renovation (see page 31 of the Revised PCA). There is no identification of these violations, how the scope of work will correct the violations, and how much it will cost to correct. No detail or photographic information was provided. There is no information as to whether fire sprinkler systems exist or whether one will be required by code. Staff's experience suggests that a sprinkler system will be required, especially on a 9-story building. A sprinkler system is not itemized on cost schedule.

There is insufficient photograph information in the report. The Original PCA contains 12 pictures of the general exterior of the building (see pages 18 through 24 of the Revised PCA). There are no interior pictures of the building.

Excluding pages for the resume information and the exterior building pictures, the Original PCA contained only 7 pages of information. This lack of detail is characteristic of the Original PCA and the Revised PCA. While there is some additional information, the Revised PCA is largely a reorganization of the Original PCA report. As previously stated, it does contain the one-page scope of work (see page 39 of the Revised PCA).

As a result of the lack of information and detail, the Underwriter was unable to rely with confidence on the report for purposes of determining costs to be used in the analysis under 10 TAC §10.302(e)(2),(3) and (4)(B) relating to Off-Site Costs, Site Work Costs, and Building Costs for Adaptive Reuse developments as well as the Department's obligations under IRC §42(m).

### **RULE VIOLATIONS**

In addition to the lack of essential information and detail for staff to evaluate the development plan, the Original PCA and Revised PCA did not satisfy the following rules which led to the denial of the Application.

- 1) Pursuant to 10 TAC §10.302(e)(4)(B)(i), the Application does not contain a detailed narrative description of the scope of work (to be provided by the Applicant). Because of this and pursuant to 10 TAC §10.306(a), a PCA provider cannot fully complete the Department's PCA Cost Schedule Supplement. This schedule is intended to reconcile the Applicant's scope and costs with the PCA provider's identified scope and costs pursuant to 10 TAC §10.306(a)(5). The PCA supplement does not show any costs for the Applicant's scope of work. If the Applicant did not provide a scope of work to Wallace, this should have been stated in the report.
- 2) Pursuant to 10 TAC §10.306(a), the PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials (“ASTM”) Standard Guide for Property Condition Assessments, Baseline Property Condition Assessment

Process ("ASTM Standard Designation: E 2018"). These standards outline a methodology for producing PCA reports. For one example, ASTM requires a Walk-Through Survey. This survey is part of the descriptive section of the PCA that documents current conditions. Current conditions of a property are also generally documented with many photographs in the report.

The subject report states a walk-through survey was done. No significant descriptive information was reported. For one example, the report does not discuss the current interior conditions including whether there are existing interior walls. It does not address whether walls will be removed, constructed, or both in the renovations. A walk-through survey should contain photographs and a description of existing conditions. There are no interior photographs of the building in the report. There are a couple of interior photos in the 2016 report, but they do not appear to be reflective of all the current conditions.

As another example, the details regarding the common areas, entrances, and corridors is simply that they "be treated with the same replacement guidelines that have been suggested for the overall renovation." Additionally, the elevator discussion is simply that an "elevator will be added." Since the building has two elevator shafts, the Underwriter is unclear about this statement.

The report states that there is documentation of interviews and research to augment the walk-through survey in the report as specified by ASTM. The report does not have such documentation.

The PCA states that the foundations could not be observed. Limited observations were made regarding the rest of the structure. A report from a structural engineer was not reviewed or mentioned. While the PCA states "no serious structural deficiencies were observed," there is no evidence that due diligence was made to determine a more informed assessment of the condition of the building (or at least discussed in the report).

While ASTM does not require an engineering review or structural investigation, in this case there is potential that serious latent conditions could exist on a building built in 1926 (the year built according to tax records). There is no discussion of this contingency, and no funds budgeted for potential unknown costs associated with a 91 year old structure (above and beyond a standard contingency outside the PCA budget). It is reasonable that more information could be provided for a reader to assess the risk of potentially higher costs associated with the structure. It is reasonable to assume that additional structural information should be documented to be able to determine costs.

The report states that upon observation that the roof needs no repairs or replacement. This is consistent with the scope of work. The cost schedule, however, shows \$31K for the roof repairs. The City of Harlingen informed staff the roof had already been replaced.

Under "Other Structures," the report says there are none. However the site plan shows two, single-story structures where the amenities will be located.

There is no description about the HVAC systems other than a recommendation for new forced air furnaces and heat-pumps. There is no information about where any of that equipment would reside and the probable impact that it would have on costs.

- 3) 10 TAC §10.306(a) also requires that the PCA report on the expected capital replacement and repairs over term of the Affordability Period and not less than thirty (30) years. The narrative of the Original PCA did not mention expected capital replacement.

The text of the Revised PCA mentions needs for a 20 year period (see page 30 of the Revised PCA) with no narrative detail. The PCA Supplement template provided by the Department shows a period of 30 years. The 2017 PCA rules require a 30 year period (a change from the 20 year requirement in the 2016 rule). A schedule of the expected life for many of the main components was not provided. For examples, there are no projections for replacement of the HVAC systems or water heaters over the period and only \$40K projected for the elevators. This would suggest that the HVAC systems and water heaters will last for 30 years.

- 4) 10 TAC §10.306(a)(1) requires a Useful Life Estimate for each system or component of the property citing a basis or the source from which the estimate is derived. While there was a remaining useful life of 50 years indicated in the Revised PCA (40 years in the original report) reported for the building itself, there was no discussion of how its life was determined. There was nothing provided about the components or systems of the property (whether being replaced or not). The property was built in 1926, and it would be expected that there would be some detailed discussion of the systems and components such that the report would be self-contained. The Underwriter understands that this is a gut, adaptive reuse. But no information is known about the specific systems contemplated, their expected useful life, and the financial impact on future operations (HVAC for example).
- 5) 10 TAC §10.306(a)(2) requires a review and documentation of any violations of any applicable federal, state, or local codes. In developing the cost estimates, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work to be performed at the subject Property. The PCA only refers to building, zoning and fire code violations without identifying them or how the scope of work will fix the violations. The report simply states that all violations will be fixed.
- 6) 10 TAC §10.306(a)(3) requires that the PCA 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, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant is claiming points. This section is not addressed or discussed in the report at all. The Underwriter notes that the budget does not indicate funds for ceiling fans which are a requirement of the program.
- 7) 10 TAC §10.306(a)(4) requires that the PCA report include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section §10.101(B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon completion. A specific scope and related cost was not provided (left blank on the cost schedule). Statements or certification that the Development will be completed in compliance of any requirements does not satisfy this rule.



- a) The PCA identifies the sidewalks and on-street parking (which appear to be on the required accessible route) be fixed to be in compliance with applicable accessibility standards. No mention is made if the owner has control of the sidewalks or if they have an agreement with the City to fix the sidewalks or parking so that they may serve as the accessible route. No off-site costs were included in the PCA budget.
  - b) The PCA consistently references Uniform Federal Accessibility Standards (“UFAS”). However, 10 TAC §1.26(b)(2) requires all Multifamily Developments that have a full application for funding after January 1, 2014, to comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register* 79 FR 29671, not UFAS.
  - c) The PCA does not describe how the common areas are not fully compliant and does not appear to have a clearly defined budget item tied into the requirements that were identified. Furthermore, while the architect’s certification and plans contain references to the 2% of auditory/visual units (while still referencing a UFAS standard), the PCA does not itemize costs associated with these units.
- 8) 10 TAC §10.306(a)(6) is the operative section of the rule that instructs the Underwriter in analyzing the Application and determines the costs underwritten. The narrative of the report does not provide enough detail of the existing conditions, scope of work nor tie costs to specific items. The revision to the PCA does contain the PCA Supplement but the costs stated in that document are not referenced or discussed in the PCA and inconsistent with prior information. Overall, the report is materially deficient for underwriting purposes.

### **CONCLUSION**

The Applicant states that the PCA author followed the same scope and format accepted by REA in 2016 and that the subject’s Application and PCA are consistent with those reports and with 10 TAC §10.302 and §10.306.

Staff agrees that the scope, format and level of information submitted for the prior 2016 Applications is generally the same as the subject’s Original PCA. Unfortunately, the review of those PCA reports did not identify their non-compliance with the rules in 2016 and some of the requirements of the rules changed between 2016 and 2017.

Acceptance of the prior PCA reports does not absolve the Applicant of meeting the rules. Additionally and in this case, the Applicant was made aware of the non-compliance and through an Administrative Deficiency given an opportunity to submit a compliant PCA prior to publication of the underwriting report. The Revised PCA was also not compliant with the rule.

Staff recommends denial of the appeal.

**EXHIBIT A - PROPERTY CONDITION ASSESSMENT COMPARISON**

***Baxter Lofts, Harlingen, 9% HTC #17010***

Cost Item	2016 Application (2/21/16)	2017 Application (2/20/2017)	July 7, 2017 Supplement to 2/20/17 Report
-----------	-------------------------------	---------------------------------	---

**SITE WORK**

Rough/Fine grading	25,000	25,000	25,000
On-site paving	0	0	50,000
On-site utilities	175,000	175,000	95,000
Landscaping	0	0	25,000
Pool and decking	0	0	0
Recreational facilities/playgrounds	0	0	0
Fencing	0	0	0
Trash collection facilities	0	0	3,000
<b>Subtotal Site Work Cost</b>	<b>200,000</b>	<b>200,000</b>	<b>198,000</b>

**DIRECT CONSTRUCTION**

Concrete	10,500	10,500	10,500
Masonry	121,600	121,600	121,600
Metals	38,399	38,399	38,399
Carpentry	64,099	62,500	62,500
Waterproofing	0	19,974	9,974
Insulation	19,974		20,000
Roofing	30,785	30,785	30,785
Electrical	181,847	181,847	217,000
Mechanical			
Plumbing			
Water, gas pipe fittings, installation, etc.	0	0	95,000
Bathtubs/Shower Enclosures	0	0	30,000
Toilets	0	0	24,000
Sinks	0	0	24,000
Lavatories	0	0	24,000
Fixtures	0	0	32,000
Water Heater	0	0	28,000
Other (lump sum)	125,115	301,315	0
	<b>125,115</b>	<b>301,315</b>	<b>257,000</b>

**HVAC**

Air Conditioners	0	0	56,000
Ductwork, electrical, lines, etc.	0	0	10,200
Ceiling Fans	0	0	0
Other (describe)	176,200	0	56,000
	<b>176,200</b>	<b>0</b>	<b>122,200</b>

**EXHIBIT A - PROPERTY CONDITION ASSESSMENT COMPARISON**

***Baxter Lofts, Harlingen, 9% HTC #17010***

<b>Cost Item</b>	<b>2016 Application (2/21/16)</b>	<b>2017 Application (2/20/2017)</b>	<b>July 7, 2017 Supplement to 2/20/17 Report</b>
Doors	50,000	100,000	35,000
Windows	175,000	125,000	95,000
Drywall	104,755	211,546	111,546
Tile work	0	0	0
Resilient or other flooring	36,352	0	36,000
Carpeting	12,001	0	38,000
Painting & decorating	50,450	0	65,000
Specialties	22,001	8,921	8,921
Cabinets	24,168	0	54,000
Equipment for accessibility modifications	0	0	0
Appliances	40,210	60,768	60,768
Special Equipment (describe)	10,104	0	0
Elevator	156,440	156,440	156,440
Lead-Based Paint Abatement	0	0	25,000
Asbestos Abatement	0	0	88,000
Other: (furnishings)	0	20,405	22,405
Miscellaneous (not to exceed \$1000)	0	0	222
<b>Subtotal Direct Construction</b>	<b>1,450,000</b>	<b>1,450,000</b>	<b>1,686,260</b>
<b>Less Commercial Space shown on Development Cost Schedule not itemized in Revised PCA</b>	<b>0</b>	<b>0</b>	<b>(234,260)</b>
<b>Adjusted Direct Construction</b>	<b>1,450,000</b>	<b>1,450,000</b>	<b>1,452,000</b>
<b>Total Construction Cost</b>	<b>1,650,000</b>	<b>1,650,000</b>	<b>1,884,260</b>

(\*) Ceiling fans are a Mandatory Development Amenity

# Exhibit B



July 19, 2017

Ms. Sharon Gamble  
Competitive Housing Tax Credit Program Administrator  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Via: [sharon.gamble@tdhca.state.tx.us](mailto:sharon.gamble@tdhca.state.tx.us)

Re: Baxter Lofts, Harlingen, 17010

Dear Ms. Gamble:

In response to your request from July 12, regarding the Property Condition Assessment, we have attached the PCA dated February 20, 2017, included with the original tax credit application, as supplemented to show compliance with §10.306 and, in particular, ASTM standards. The supplement is arranged and formatted to more easily show compliance with §10.306 Property Condition Assessment Guidelines. We hope this provides adequate clarification of the PCA report.

Please let us know if you have any further questions or require further documentation by contacting Sallie Burchett, at (512) 473-2527 or at [sallie@structuretexas.com](mailto:sallie@structuretexas.com). Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sallie Burchett".

Sallie Burchett  
Consultant to the Project

# Property Condition Assessment Report

## Baxter Lofts Renovation

(Formerly Rio Grande National Life Insurance  
Building)

106 S. A Street, Harlingen, Texas

Prepared for:

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701

## CONTENTS

### **2017 Property Condition Assessment Report**

#### (I) Introduction

##### Company Certification

a1. Executive Summary

a2. Purpose

a3. Scope & Methodology

a4. Sources of Information

a5. Existing Building Systems and Conditions Summary

a6. Accessibility Compliance and Description

a7. Environmental

Appendix A: Site Vicinity - aerial view

Appendix B: Photo Log

Appendix C: Reserve Replacement Schedule with Scope of Work



February, 20, 2017

Baxter Housing Partners, LP  
16359 Chaney Lane  
Stillwell, Kansas 66085

Ms. Marni Holloway – Director of Multifamily Finance  
Texas Department of Housing & Community Affairs  
Agency #: 332221  
East 11th Street, P.O. Box 13941  
Austin 78711-3941

Wallace Architects LLC has over 30 years’ experience in design and construction administration of over 700 senior housing and multi-family developments. Most of these projects have received financing through the federal low income housing tax credit program, bond financing, THDCA, THDA, MHDC, DCA, MHC AHFA, IFA, Rural Development and HUD funding (202, 221.d.4,811, HAP.), or combinations of each. Wallace Architects is presently the project architect on apartment complexes in Texas, Tennessee, Missouri, Kansas, Mississippi, Oklahoma, Alabama, and Georgia. Our offices are located in Columbia, Missouri and Sedalia, Missouri.

We appreciate the opportunity to work with you and would ask that you review our website at [www.wallacearchitects.com](http://www.wallacearchitects.com) for additional information regarding our Company.

Wallace Architects, LLC  
302 Campusview Dr., Ste 208  
Columbia, MO 65201  
573-256-7200

Wallace Architects, LLC  
302 Campusview Dr., Ste 208  
Columbia, MO 65201  
573-256-7200

Mike Kleffner – Architect/Project Mgr.

Martin Randall Porter  
Architect of Record - Texas



## **Randy Porter, Architect / Member**

- Project Manager at Wallace Architects since 2013.
- Graduate of Drury University with a Bachelor's in Architecture, 2000.
- Member of the Mid-Missouri Chapter of The American Institute of Architects (AIA) - Number 38409931.
- Member National Council of Architectural Registration Boards, (NCARB) - Record Number 109980.
- Has worked in construction, architecture and management of projects since 2000.
- Licensed Architect in the States of Missouri, Arkansas, Kansas, Kentucky, New Jersey, Tennessee, Texas and Oklahoma.
- Field Representative – on-site inspections for compliance with plans and specifications.
- LEED Accredited Professional.
- Currently working on 30 affordable housing and market rate apartment complex projects in Missouri, Mississippi, Oklahoma, Kansas, Arkansas, Alabama and Virginia.

## **Mike Kleffner, Architect / Member**

- Project Manager at Wallace Architects since 2010. Has been with Wallace Architects since 2009.
- Graduate of Drury University with a Bachelor's in Architecture, 2000.
- Member of the National Council of Architectural Registration Boards, (NCARB) - Record Number 105773.
- Member of the Mid-Missouri Chapter of The American Institute of Architects - No. 30176341.
- Has worked in construction, architecture and management of projects since 2000.
- Licensed Architect in 17 states.
- Field Representative – on-site inspections for compliance with plans and specifications.
- LEED Accredited Professional in Building Design and Construction.
- Currently working on affordable housing and market rate apartment complex projects in Missouri, Kansas, Iowa, Oklahoma, Texas, Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Georgia, Florida and Connecticut.



## **Zac Wallace, Project Manager / Member**

- Project Coordinator and Field Inspector at Wallace Architects since 2010.
- Graduate of Missouri State University with a Bachelor's of Science in Construction Management, 2003.
- LEED Accredited Professional since 2007.
- Project Superintendent for McCarthy Building Companies from 2006 to 2010.
- Project Coordinator for Fairway Construction from 2003 to 2006.
- Completion of Multifamily Property Inspection Workshop September 2012 as presented by the Mortgage Banks Association.
- Currently working on numerous affordable housing apartment complex projects in Louisiana, Mississippi, Texas, Kansas and Tennessee. Working on multi-property rehabilitation portfolios in Tennessee, Kentucky and Florida.

## **Kris Ainsworth, Architect**

- Field Inspector at Wallace Architects since 2014.
- Graduate of Mississippi State University with a Bachelor's in Architecture, 2005.
- Has worked in architecture, construction, development and management of affordable housing for more than 12 years.
- Licensed Architect in Mississippi, Texas, Oklahoma, Arkansas and Florida.
- Licensed General Contractor in Mississippi, Arkansas, Tennessee, Oklahoma, Kentucky and Louisiana.
- Member of the National Council of Architectural Registration Boards, (NCARB) - File Number 67098.
- As a Project Architect, has completed numerous residential and commercial projects.
- Field Representative – on-site inspections for compliance with plans and specifications.
- USGBC LEED Accredited Professional.
- Member of the Mississippi Chapter American Institute of Architects – No. 30336985.
- Currently working on projects in Texas, Florida, Mississippi, Georgia, Alabama, Kentucky, Ohio, Louisiana and Tennessee.

## **Paul Anderson, Chief Production Officer**

- Chief Production Officer of Wallace Architects, LLC since 2004. Has been with Wallace Architects L.L.C. since its inception in January 1998.
- Graduate of Central Missouri State University with an Associate's Degree in Architectural Drafting, 1975.
- Has worked in the field of Architecture, and specifically affordable housing, for more than 41 years.

## **Barry Mitchel, Assistant Project Manager**

- Project Coordinator and Field Inspector at Wallace Architects since 2011.
- Graduate of Drury University with Bachelor's in Architecture, 2003.
- Has worked in construction, architecture and management of projects since 2000.
- Project types included Tract Home Developments, Mixed Use Multifamily, (New and Renovations), Industrial, Commercial, Hospitality, Religious Facilities, and Historical Preservation.
- Has been involved in several community based urban renewal projects, and actively promotes downtown revitalization, historic preservation and community involvement.
- Currently working on 10+ affordable housing complexes in Tennessee, Mississippi, and Louisiana. Working on multi-property rehabilitation portfolios in Tennessee, Kentucky and Florida.

## **Vincin Foster, Project Coordinator**

- Graduate of Drury University with a Master's of Architecture, 2016.
- Project Coordinator and Field Inspector at Wallace Architects since 2013.
- Has worked in construction architectural schematic design, coordination, and administration of projects since 2012.
- Project types include new construction, historic renovation, light renovation, and gut renovations of both LIHTC and market rate multifamily and senior apartment complexes and single family developments.
- Currently working on construction documents or construction administration for multiple projects in Missouri, Alabama, Oklahoma, Louisiana, Texas, Georgia and Connecticut.

## **Chris Peck, Project Coordinator**

- Project Coordinator at Wallace Architects since 2015.
- Graduate of Moberly Area Community College with Associate of Applied Science: Drafting & Design Technology, 2007.
- Project types include historic preservation, new and renovated LIHTC multi-family and senior apartment complexes and single family homes.
- Currently working on 12 affordable housing residential projects in Missouri, Oklahoma and Kansas.

## **Joe Cook, Project Coordinator**

- Project Coordinator and Field Inspector at Wallace Architects.
- Contractor / Consultant – Licensed / Registered in Colorado, Georgia, New York, New Jersey, Kansas, Missouri and Illinois.
- VP Construction and Development and Construction Project Manager for Homeland Self Storage / Storage Mart for more than 20 years.
- Developed properties in 16 states.
- PMP / Consultant since 2007.

## **Richard Perkins, Project Coordinator**

- Project Coordinator at Wallace Architects since January 2017.
- Graduate of University of Missouri with a Masters of Environmental Design – 2003.
- Graduate of University of Missouri with a Bachelor in Fine Arts – 1999.
- Project Manager, Stephens College from 2012 to 2017.
- Engineering Aide IV- Assistant Park Planner, City of Columbia from 2008 to 2012.
- Design Associate – Simon Associates, Architecture Inc. from 2002 to 2008.
- Currently working a number of affordable housing projects in Alabama, Missouri, Kansas and Texas.

## **Daniel Keel, Quality Control / Production Team Member**

- Graduate of Kansas State University with Bachelor's in Architecture, 2005.
- Project Coordinator and Field Representative at Wallace Architects since 2013. Quality Control / Production Team Member as of 2016.
- Project types include new and renovations of LIHTC multifamily and senior apartment complexes, market rate apartment complexes, and single family homes.
- Currently working on developments in Missouri.

## **Chris Ross, Senior Plan Review / QC Compliance**

- Senior Plan Reviewer / QC Compliance at Wallace Architects since June 2016.
- Graduate of University of Central Missouri with a Bachelor's of Science in Construction Technology, 1989.
- Residential and Commercial Real Estate Consultant – A-1 Property Inspections LLC – five years.
- Project Manager / Superintendent – Multiple Residential Apartment Communities in Platte and Clay Counties in Missouri – five years.
- Telecommunications Project Engineer-Specialist: Sprint Site Acquisition and AT&T Capital Improvements – over five years.
- Senior Building Inspector, Kansas City, Missouri Department of Planning and Development Services. ICC Certifications in 15 Disciplines – 1989-1999.

## **Brian Pijanowski, Controller**

- Controller at Wallace Architects since 2016.
- Graduate of Park University with a Bachelor's in Accounting and Management, 2012.
- Assistant Controller for Bank of Lee's Summit from 2013 - 2016.
- Has been involved in Business Accounting, Operations and Financial Services since 2011.
- Currently oversees all Accounting, HR, IT and Administrative aspects of the business.

## **Ernie Hegger, Architect**

- Field Inspector at Wallace Architects beginning in 2016.
- Graduate of University of Kansas with Master's of Architecture.
- Registered Architect in the State of Missouri since 1991.
- LEED Accredited Professional BD&C, 2016.
- OSHA 30 Certified.
- Certified as a Quality Control Manager with over three years of experience.
- Former Construction Officer for the Department of Defense – Health Facility Planning Agency, Fort Leonard Wood, two years.

## **Ron Entwistle, P.E., Construction Analyst**

- Field Inspector at Wallace Architects since 2013.
- Graduate of University of Missouri, Rolla, with a Bachelor's in Civil Engineering.
- Licensed Professional Engineer in State of Missouri.
- Over 38 years of experience as an engineer, consultant and inspector.
- Has completed over 3,200 building inspections, (both residential and commercial), structural consultations and Property Condition Assessments.

### **a1. Executive Summary**

Mike Kleffner of Wallace Architects, LLC performed a Property Condition Assessment (PCA) of the currently abandoned Baxter Building at 106 S. A Street, Harlingen, Texas, on Wednesday, February 10, 2016. Although there were no material changes discovered at the building between the original site visit made on 2/10/16 and our follow up site visit on January 12, 2017, the following is our updated report. The report that follows is based on the most recent investigation in 2017 and has been prepared following industry standard guidelines, THDCA PCA guidelines, as well as guidance from the "Fannie Mae Physical Needs Assessment Guidance to the Property Evaluator" document. The report needs to be read in its entirety to fully understand its recommendations.

It should be noted that the preparer of this report, Michael J. Kleffner, Architect and Member of Wallace Architects, LLC, has read and understands the requirements of THDCA, Section "10.306. Property Condition Assessment Guidelines" as well as TDHCA Housing Quality Standards and scoring criteria. These guidelines have been followed within this report and in helping to develop the scope of work for this project. Furthermore, it should be noted that Wallace Architects, LLC will not materially benefit from the Development in any other way than receiving a fee for performing professional services related to this PCA. TDHCA may rely on the finding of this Property Condition Assessment. The fee is not contingent on the outcome of the PCA.

Mr. Kleffner arrived on-site at approximately 12:00pm CST on January 12, 2017 to conduct the PCA follow up site visit. Weather conditions during the site visit were sunny and hot. The surrounding properties are light commercial in all directions with green space to the east. The building is sited in the downtown commercial district within Harlingen, Texas. Adjacent on-street parking was open and available during this site visit.

Through discussions with knowledgeable parties and internal historic research, we learned that the Baxter Building was originally constructed circa 1932 and is eligible for historic listing. The property, consisting of 9 stories has had several different commercial and

residential uses through the years. The elevator equipment for the building was contained at the penthouse level. Adjacent and attached to the 9 story building is a single story, tall ceiling masonry, bearing wall construction. It appears that the building has been abandoned for more than 11 years.

## a2. Purpose

The purpose of this Property Condition Assessment is to evaluate the overall condition of the building systems and components. It is intended to be used by the building Owner to help determine a scope of work to rehabilitate the building.

## a3. Scope and Methodology

This PCA was performed by Wallace Architects, LLC in general accordance with accepted industry standards and based upon THDCA guidelines. The assessment is based on interviews with people onsite and familiar with the condition of the buildings, and a visible site visit of critical building elements and systems. We were able to enter and inspect all of the existing premises.

This assessment is based on opinions offered by Wallace Architects, LLC that are based on visual site visit of the property. We base these opinions on a diligent site visit of the property and the visual evidence we witnessed during the site visit. No destructive testing was performed. No surface materials were removed during this site visit. Our opinions are based only on the evidence we were given access to.

## a4. Sources of Information

While onsite, we were given full access to the existing site and facility through the City of Harlingen staff, as the building is currently owned by Baxter Housing Partners, LLC.

## a5. Existing Building Systems and Conditions Summary

This property, formerly known as the *Rio Grande National Life Insurance Building*, was originally purposed as an office building. According to historic data, the hotel was completed in 1932+/- . While the building is some 84 +/- years old, the major components of the concrete post and beam structure appear to be in good condition. All components other

than the structure and super structure are to be replaced under the scope of the renovation. Based upon visual inspection, the remaining useful life of the structure and superstructure is 50+ years. For performing professional services related to this PCA and the fee is not contingent on the outcome of the PCA.

The property is a 9 story structure with a partial basement on a 26' x 150' deep lot. During our site visit we noted that many of the framed walls have been removed.

There is currently no off-street parking for this building. We did however notice during our site visit that the adjacent on-street parking appeared ample and under-utilized. New striping and new signage designating handicap accessible parking spots will need to be added.

Most sidewalks adjacent to the site and in the City Right of Way are in poor condition. Many have cracks caused by heaving or other weathering. We recommend replacement of sidewalks as part of the rehabilitation. Currently, there are no on-street parking spots designated as being for handicap persons. Handicap accessible designated spots should be provided at the closest possible spaces to the main building entrance on an accessible route. New accessible parking should be provided to meet UFAS slope and/or ramp requirements. When off-street parking is provided in the renovation, these spots should be modified to meet these requirements.

Site lighting is currently non-existent. In addition, there was no evidence of general building lighting. In our opinion, site lighting and general building lighting should be added during the rehabilitation. We recommend installation of new building lights as part of the rehabilitation scope.

There is no on-site green space as the building appears to be situated directly on the property line on all sides. As part of the rehabilitation, updated landscaping should be considered, complete with new weed barrier, mulch, native plantings and edging to help update the property and increase marketability. We recommend this be placed in an open atrium style setting within the single story structure adjacent to the 9-story building.

Trash collection at this site is not apparent at this time. As part of the rehabilitation, dumpster locations should be located at the first floor. They should be constructed so that they are on an accessible path as defined by UFAS. New dumpster enclosures should also be constructed at these locations as part of the rehabilitation. An addition of a trash chute should be explored for this building based upon the height of this building.

Mailboxes should be provided for the new apartments. We recommend mailboxes be installed within the lobby area of the first floor as part of the planned rehabilitation. We also recommend that the mailbox rehabilitation consist of providing an accessible path as defined by UFAS.

There is one set of concrete stairs in the central core of the building behind the elevator shaft.

As part of the rehabilitation, a rated enclosure should be built at the first floor to connect the

rated stair tower directly to the exterior. Residents must have direct access to the exterior within a rated enclosure. The stairs are currently equipped with handrails but they do not meet current code standards. Handrails/guardrails should be revised to bring them into compliance with current building codes during the planned rehabilitation. Tread depths and riser heights are not consistent throughout and would not be acceptable for new construction based upon recent building codes. Being that this is the grand staircase for the building, it is our belief that the existing non-code compliant condition will be able to remain as is because of the historic nature of the building. In addition to the grand stairwell, there is an exterior mount, steel framed fire escape that is accessed from the end of the corridor at each floor. As part of the rehabilitation, we recommend relocating the 2<sup>nd</sup> means of egress to a more remote location.

There were no indications that the site drainage is a significant issue at the property. Although there are several missing windows within the building, there was next to no storm water evident throughout the upper floors of the building.

## Architecture

The building exterior is constructed of a multi-wythe brick wall. The brick appeared to be in good condition at most areas surveyed. These areas will require minor tuck pointing as part of the rehabilitation. There are poured-in-place reinforced concrete columns & beams acting as structural components. The basement appears to be slab-on-grade construction in all areas other than at the rear of the building where the boiler was located in a partial basement. Above the basement, floor slabs for the nine floors and the roof deck are of poured-in-place reinforced concrete. A majority of the wood framed, double hung, single panes windows are missing and all remaining windows should be replaced as part of the scope of work. A few areas did display some cracking at mortar joints. The roof of the building is a newly installed membrane material roof (appears less than 2 years old). The roof substrate is concrete and appears to be in very good condition. No repairs/replacement are expected as part of the scope of work for this development.

Exterior windows and doors are original to the building. Existing windows are wood frame, double hung, single pane windows and were either broken, missing or in non-working order in most cases. They should be replaced with energy efficient replacement windows. Exterior doors were also in poor condition. We recommend that they be replaced as part of the rehabilitation project.

The substructure of the building appears to be concrete spread footings and concrete slab floors. The exterior walls are masonry and the roof system consists of poured-in-place concrete. No serious structural deficiencies were observed.



## Dwelling Units

The original offices don't appear to have been supplied with HVAC cooling equipment. Heating appears to have been supplied from a central boiler system located in the basement. Individual room heating equipment at the rental units were absent during this site visit. We assume that cast iron radiator(s) were used at each hotel room for heat. During the rehabilitation conversion of the hotel units into apartment units, we are recommending that new forced air furnaces and heat pumps be installed in each unit with separate individualized thermostatic controls to provide heating and cooling for the units.

Originally, domestic hot water was supplied to the rental units through a central water heating system. During the rehabilitation, all of the units should be provided with domestic hot water supplied by individual hot water heaters located in the utility closets of these units. Domestic water lines and waste lines appear to be copper and cast iron respectively. As part of the rehabilitation, all existing water and waste lines should be removed and replaced with PEX water piping and PVC sanitary sewer piping with sizes meeting current codes. New site connections should be extended out to the City main infrastructure on Hwy 6. We recommend that the water service to each unit be separately metered.

The building appeared to originally receive electrical service from a pole mounted exterior transformer. Main service feeds fed a panel at each floor with branch wiring extending from that panel to each unit. Electric service, metering and branch wiring is in a state extending beyond its useful life and should be replaced completely. During the rehabilitation, each unit should have an individual meter and a 125 amp service panel. GFCI outlets should be located in the kitchen and bath areas of each unit during the rehabilitation.

We recommend that a representative sample of the main sewer lateral be visually investigated with video camera prior to the rehabilitation and any issues addressed during the rehabilitation of this building.

The new apartment interiors will consist of a living area, dining area, kitchen, bath and either one or two bedrooms with closets. Kitchen appliances will be all electric. Kitchen appliances include a stove, refrigerator and microwave/range hood. New cabinets, countertops and appliances will be installed as part of the rehabilitation.

Flooring planned for the renovation should consist of resilient flooring in all common areas and common living areas; vinyl plank flooring in the living room, kitchen and hallways and sheet vinyl in the bathrooms and mechanical rooms. Carpet with pad should be installed in the bedroom(s) and closet(s).

We recommend that bathrooms include low flow water closets, vanity cabinet with a cultured marble top with integral vanity bowl sink, medicine cabinet and a tub/shower. The new accessible units should have accessible tub/shower with grab bars and seats.

Interior doors should consist of paneled Masonite hollow core doors as part of the rehabilitation. We also observed that the base trim in the units, where present, was most likely original and in most cases in poor condition. The trim should be replaced with a replication base trim as part of the rehabilitation.

All new light fixtures, bath exhaust fans and outlets should be installed during the rehabilitation and we would recommend Energy Star compliant fixtures throughout.

To comply with current building codes, smoke detectors must be provided in each of the bedrooms as well as the hallway of each new apartment unit. These units must be hardwired with a battery backup, and be interconnected. This should take place as part of the rehabilitation.

We recommend that new home runs be run for each unit for both data and TV as part of the rehabilitation.

## Amenities Description

Within the first and second floor areas of the building, the following common amenities are scheduled to be provided:

1. Furnished community room
2. Accessible Mailboxes
3. Gurney sized elevator
4. Furnished fitness room
5. Equipped computer learning center
6. On-site leasing office
7. Outdoor covered seating

### a6. Accessibility Compliance and Description

During our site visit, we performed an overall assessment of how well this property meets current requirements for handicap individuals. During the rehabilitation, a number of items need to be considered in the new design. The kitchen should include a 30" workspace at the countertop. Kitchen and bath countertops should be installed so the top is no more than 34" AFF. The wall cabinets should also be lowered so that the top of the bottom shelf does not exceed 48". The showers should be installed so that the curb does not exceed 1/2"; in addition, the controls should be offset and lever handles should be installed for the controls. Grab bars should be installed in the shower units. The access ramp at the entry door must not exceed UFAS requirements. Current standards require that a minimum of 5% of the units be

designated as accessible. We recommend that these units be located on an accessible route from the accessible parking spaces at the new covered parking garage.

There is a need for handicap accessible designated parking spaces onsite. We recommend that these modifications take place during the rehabilitation. Parking stops should be provided in parking stalls next to sidewalks so that use of accessible path is unobstructed. Dumpster location(s) should be constructed on an accessible path as required by UFAS 4.1.1.

#### a7. Environmental

##### Lead based paint/Asbestos

Since construction of the project was completed in 1928 +/-, the probability of lead based paint and asbestos materials being present are probable but uncertain. A full environmental Phase II study should be commissioned prior to any construction work commencing.

Appendix A: Site Vicinity - aerial view

Baxter Lofts Renovation, Harlingen, Texas





## Appendix B: Photo Log

### Baxter Lofts Renovation, Harlingen, Texas



Building façade – looking west across S. A St.



Building façade w/ exterior fire escape – south elevation.



Building façade – south west elevation.





Building façade – west elevation.



Building façade from South Commerce St. – west elevation.



Building façade from W. Jackson Ave.

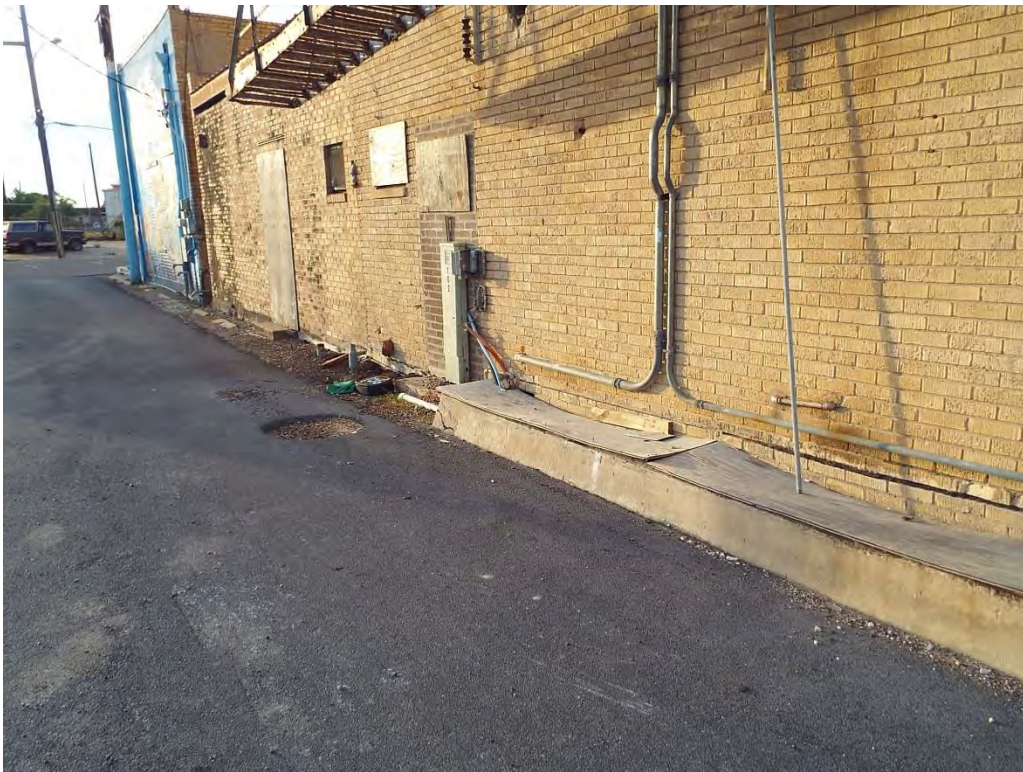


Building façade – 2<sup>nd</sup> – 9<sup>th</sup> floors – west elevation.





Corner detail of building & sidewalk condition – north east corner.



Building condition at alley way – south elevation (looking west).





Single storey building to west of main building – south elevation.



Existing storefront between pilaster 2 and 3 of east façade.



Existing storefront between pilaster 3 and 4 of east façade.

**Addendum**

**SUPPLEMENT TO  
PROPERTY CONDITION ASSESSMENT**

**July 7, 2017**

*Original Report Date February 20, 2017*

**Baxter Lofts  
106 ½ South A Street  
Harlingen, TX 78850  
*For***

**Baxter Housing Partners, LP  
8901 State Line Road, Suite 250  
Kansas City, MO 64114**

**and**

**Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, TX 78701**

**Prepared By:**

**Wallace Architects, LLC (WALLACE)  
302 Campusview Dr., Ste 208  
Columbia, MO 65201  
573-256-7200**

**and**

**GIBCO Environmental, LLC (GIBCO)  
1651 E. 70<sup>th</sup> Street  
PMB 403  
Shreveport, Louisiana 71105-5115**

**TABLE OF CONTENTS**

**1.0 CERTIFICATION: .....1**

**2.0 EXECUTIVE SUMMARY .....2**

2.1 SUMMARY OF FINDINGS .....2

2.2 PURPOSE.....2

    2.2.1 Walk-Through Survey: .....3

    2.2.2 Documents and Reviews: .....3

    2.2.3 Property Condition Report: .....3

2.3 COST ESTIMATE COMPONENTS AND PROPERTY LIFE ESTIMATES .....3

2.4 PERSONNEL INTERVIEW .....3

2.5 OWNER PROVIDED DOCUMENTATION .....4

**3.0 CODE COMPLIANCE AND ACCESSIBILITY .....4**

3.1. BUILDING, ZONING AND FIRE COMPLIANCE .....4

3.2 ADA ACCESSIBILITY.....4

**4.0 EXISTING BUILDINGS EVALUATIONS .....4**

4.1 APARTMENT UNITS TYPES AND UNIT MIX .....4

4.2 OBSERVATIONS .....5

**5.0 SITE IMPROVEMENTS.....5**

5.1 UTILITIES.....5

    5.1.1 ON-SITE WATER SYSTEM .....5

    5.1.2 ON-SITE SANITARY SEWER SYSTEM .....5

    5.1.3 PROPERTY ELECTRICAL, TELEPHONE AND CABLE DISTRIBUTION SYSTEM .....5

    5.1.4 NATURAL GAS DISTRIBUTION SYSTEM .....6

5.2 PARKING, PAVING, AND SIDEWALKS .....6

5.3 DRAINAGE SYSTEMS AND EROSION CONTROL .....6

5.4 TOPOGRAPHY AND LANDSCAPING .....6

5.5 GENERAL SITE IMPROVEMENT .....6

**6.0 BUILDING ARCHITECTURAL AND STRUCTURAL SYSTEMS .....7**

6.1 FOUNDATION .....7

6.2 SUPERSTRUCTURE AND FLOORS .....7

6.3 ROOFING .....7

6.4 EXTERIOR WALLS .....7

6.5 EXTERIOR AND INTERIOR STAIRS .....7

6.6 EXTERIOR WINDOWS AND DOORS .....7

6.7 COMMON AREAS, ENTRANCES, AND CORRIDORS .....8

6.8 ELEVATOR.....8

**7.0 BUILDING MECHANICAL AND ELECTRICAL SYSTEMS.....8**

7.1 BUILDING HEATING, VENTILATING AND AIR CONDITIONING (HVAC) .....8

7.2 BUILDING PLUMBING AND DOMESTIC HOT WATER .....8

7.3 BUILDING GAS DISTRIBUTION .....8

7.4 BUILDINGS ELECTRICAL.....8

7.5 FIRE PROTECTION AND SECURITY SYSTEMS .....8

**8.0 DWELLING UNITS.....9**

8.1 INTERIOR FINISHES .....9

8.2 DWELLING APPLIANCES .....9

8.3 HVAC.....9

8.4 PLUMBING .....9  
8.5 ELECTRICAL .....9  
**9.0 OTHER STRUCTURES .....9**  
**10.0 ENVIRONMENTAL RESTRICTIONS .....9**  
**11.0 OPINIONS OF PROBABLE COST .....10**  
11.1 METHODOLOGY .....10  
11.2 CRITICAL REPAIRS/ REPLACEMENTS AND SHORT TERM COST .....10  
11.3 CAPITAL NEEDS OVER THE TERM .....10  
**APPENDIX A.....12**  
SCOPE OF WORK.....12  
PHOTOS (INCLUDED IN PCA REPORT).....  
TDHCA SUPPLEMENT TO PROPERTY CONDITION ASSESSMENT (COST ESTIMATE AND 20 YEAR RESERVE  
ANALYSIS) .....13  
QUALIFICATIONS TO PREPARE PCA (INCLUDED IN PCA REPORT).....14



**1.0 Certification:**

The Capital Needs Assessment (PCA)/(CNA) was performed in accordance with the findings in our site inspection.

The opinions WALLACE/GIBCO expresses in this report were formed by utilizing the degree of skill and care excised by prudent architects or engineers in the same community under similar circumstances. WALLACE/GIBCO assumes no responsibility or liability for the accuracy of information contained in this report, which has been obtained from the Client or the Client’s representatives, from other interested parties, or from the public domain. The conclusions presented represent WALLACE/GIBCO’s professional judgment based on information obtained during the course of this assignment. WALLACE/GIBCO’s evaluations, analyses and opinions are not representations regarding the design integrity, structural soundness, or actual value of the property. Factual information regarding operations conditions and data provided by the Client or their representative, have been assumed to be correct and complete. The conclusions presented are based on the data provided, observations made, and conditions that existed specifically on the date of the assessment.

We have no identity of interest with the client, as defined in 7CFR Part 3560. We are trained in evaluating site and building systems, health and safety conditions, physical and structural conditions, environmental and accessibility conditions, and estimating costs for repairing, replacing, and improving site and building components. We are professionally experienced in preparing and providing CNAs for multifamily housing properties similar in scope and operation to those typically financed in USDA/Rural Development’s Section 515 Program, HOME and LIHTC Programs and HUD’s Housing Programs. We are knowledgeable of applicable site and building standards and codes, including federal, state, and local requirements on environmental and accessibility issues.


This report meets the Capital Needs Assessment (CNA) requirements of the Texas Department of Housing & Community Affairs (TDHCA) Qualified Allocation Plan for 2017. GIBCO Environmental, LLC and Wallace Architects, LLC will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. We have read and understand the requirements of §10.306 Property Condition Assessment Guidelines of the TDHCA’s Real Estate Analysis Division 2017 Real Estate Analysis Rules.

Wallace Architects, LLC  
302 Campusview Dr., Ste 208  
Columbia, MO 65201  
573-256-7200

  
Mike Kleffner – Architect/Project Mgr.

  
Martin Randall Porter

**GIBCO Environmental, LLC**

  
BY: \_\_\_\_\_  
Jim Howell, Senior Analyst



## **2.0 Executive Summary**

Wallace Architects LLC and GIBCO Environmental, LLC (WALLACE/GIBCO) has completed a Capital Needs Assessment for the proposed Baxter Lofts, 106 ½ South A Street, Harlingen, TX. This is a supplement to clarify the results of the findings of the original report.

### ***2.1 Summary of Findings***

The Client contracted with WALLACE/GIBCO to conduct a Capital Needs Assessment (CNA)/ Property Condition Report (PCR) consisting of field observation, document review and related due diligence tasks of the apartment property. The CNA inspection was performed on January 24, 2017 (WALLACE) and February 15, 2017 (GIBCO).

The adjacent north property is commercial; the adjacent south property is commercial; the western adjacent property is commercial; the eastern adjacent property is commercial. Adjacent on-street parking was open and available during this site visit.

Through discussions with knowledgeable parties and internal historic research, we learned that the Baxter Building was originally constructed circa 1932 and is eligible for historic listing. The property, consisting of 9 stories has had several different commercial and residential uses through the years. The elevator equipment for the building was contained at the penthouse level. Adjacent and attached to the 9-story building is a single story, tall ceiling masonry, bearing wall construction. It appears that the building has been abandoned for more than 11 years.

WALLACE/GIBCO has reviewed the building and reviewed previous improvements to come up with the present evaluation of the property. It has been determined that the following items are the necessities for marketability purposes, safety and habitability of the project. We prepared a scope of work that lists repairs and replacements that are needed to provide a safe and habitable environment throughout the life of the mortgage.

It is beyond the scope of this report to prepare a unit by unit work write up. All costs in this report are based upon our observations. All replacement and repair cost have been included in this report. All of the cost listed is considered as a cost that must be performed in order to keep the total project at a high level of marketability. During the onsite inspections, WALLACE/GIBCO inspected a representative sample of all areas of the structure and grounds.

A Preventive Maintenance Program must be established as the rehabilitated units are placed on the market. The reserve requirements required by industry practices are adequate to maintain the property after the repairs are made.

The scope of work and cost spreadsheet attached as an exhibit specifically identifies the scope of work and estimated costs necessary to rehabilitate all components examined and analyzed in the development to a new or “like new” condition. Our cost estimate DOES NOT include contingency costs.

### ***2.2 Purpose***

The purpose of the Property Condition Assessments: Baseline Property Condition Assessment Process is to define good commercial and customary practice in the United States of America for conducting a baseline property condition assessment (PCA) of the improvements located on a parcel of commercial real estate by performing a walk-through survey and conducting research.

Further goals are to relate to the Social, Economic and Administrative.

1. Social: Preserving the affordable Housing Stock by maintaining the long term physical integrity of privately owned, HUD subsidized rental housing insured by FHA.



2. Economic: Reducing the long-term Project based Section 8 rental assistance cost and reducing the costs of insurance claims paid by FHA.
3. Administrative: Promote greater operating cost efficiencies and establishes systems to administer the program and terminate relationships owners/properties that violate agreements or program requirements.

Additionally, the following specific areas are outlined and discussed in the Goal and Scope of this Capital Needs Assessment.

**2.2.1 Walk-Through Survey:**

A “Walk through Survey” was conducted to identify the property’s material physical deficiencies, and recommendations of various systems, components, and equipment that should be observed by the observer and reported.

**2.2.2 Documents and Reviews:**

Documentation of interviews and research to augment the walk-through survey is included in the report.

**2.2.3 Property Condition Report:**

The work resulting from completing a Property Condition Assessment incorporates the information obtained during the Walk-Through Survey, the Document Review and Interviews section of the probable costs for suggested remedies of the physical deficiencies identified.

**2.3 Cost Estimate Components and Property Life Estimates**

Based on observations of readily apparent conditions, a scope of work and cost estimate was prepared and attached. It includes needs over a 20-year term, including those necessary immediately.

These opinions of probable cost are based on estimates and documents provided to WALLACE/GIBCO, as well as our inspection. We used the R.S. Means Repair and Remodeling Cost Data and WALLACE/GIBCO’s experience with past cost for similar properties, and assumptions regarding future economic conditions.

Subject to the qualifications stated above, the remaining useful life (RUL) of the property is estimated to be not less than 40 years. This estimate is based on a professional opinion and is not a guarantee or warranty. This estimate is based upon the observed physical condition of the property at the time of WALLACE/GIBCO’s visit and is subject to the possible effect of concealed conditions or the occurrence of extraordinary events, such as natural disaster or other “act of God”.

The remaining useful life for the property is further based on the assumption that:

1. That the repairs are completed in a timely and workmanlike manner.
2. That a Preventive and Remedial Property Maintenance Program is implemented using acceptable standards of care.

**2.4 Personnel Interview**

In the process of conducting the CNA/ PCA and follow-up telephone calls, WALLACE/GIBCO met and spoke with representatives of the Management Agent of the property who were cooperative and provided information that appeared to be accurate based upon our site inspection. Management representatives accompanied us on our inspection and provided information about the condition of the units.

## 2.5 *Owner Provided Documentation*

WALLACE/GIBCO was presented relevant documentation that could aid in the knowledge of the subject property's physical improvement, extent and type of use, and /or assist in identifying material discrepancies between reported information and observed conditions. WALLACE/GIBCO'S review of documents submitted does not include commenting on the accuracy of such documents or their preparation, methodology, or protocol. It is beyond the scope of this report to prepare a unit by unit work write up. All costs in this report are based upon our observations.

## **3.0 Code Compliance and Accessibility**

### **3.1. *Building, Zoning and Fire Compliance***

We found numerous violations of building, zoning, or fire safety codes. This building has been vacant for over ten years. All violations will be corrected during renovation and conversion to dwelling units.

### **3.2 *ADA Accessibility***

Title III of the American with Disabilities Act (ADA) prohibits discrimination by entities to access and use of "areas of public accommodations" and "commercial facilities" on the basis of disability. Regardless of their age, these areas and facilities must be maintained and operated to comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Buildings completed and occupied after January 26, 1992 are required to comply fully with ADAAG. Existing facilities constructed prior to this date are held to the lesser standard of complying with the extent allowed by structural feasibility and the financial resources available.

During the Property Condition Assessment, it was observed that the facilities do not appear to be fully accessible with Title III of the ADA. The common areas are not fully compliant and the handicapped designated units need to be brought into compliance. During the rehabilitation, a number of items need to be considered in the new design for accessible units. The kitchen should include a 30" workspace at the countertop. Kitchen and bath countertops should be installed so the top is no more than 34" AFF. The wall cabinets should be installed so that the top of the bottom shelf does not exceed 48" AFF. The showers should be installed so that the curb does not exceed 1/2"; in addition, the controls should be offset and lever handles should be installed for the controls. Grab bars should be installed in the shower units. The access ramp at the entry door must not exceed UFAS requirements. Current standards require that a minimum of 5% of the units be designated as accessible. We recommend that these units be located on an accessible route from the accessible parking spaces.

There is a need for handicap accessible designated parking spaces. We recommend that these modifications take place during the rehabilitation. The dumpster location should be constructed on an accessible path as required by UFAS 4.1.1.

## **4.0 Existing Buildings Evaluations**

### **4.1 *Apartment Units Types and Unit Mix***

Baxter Lofts is a proposed 24-unit LIHTC rental complex. The building is a rehabilitation/conversion project in downtown Harlingen. The site is located within a National Register of Historic Places district. The rehabilitation of the building is a top priority for redevelopment within the Harlingen for two reasons: to restore the historic landmark and stimulate economic activity in downtown. The applicant plans to redevelop the structure into 24 apartments:

**Project Description:**

- 13 one bedroom units – 810-853 square feet
- 11 two bedroom - 2 bath units – 853-904 square feet

**Units will feature:**

- Energy saving features including:  
14 SEER AC with programmable thermostats  
Energy Star rated lights, plumbing and appliances  
Energy Star rated windows
- Full kitchens with pantry
- Ceiling Fans in living and bedrooms
- Water saving landscaping and fixtures

**4.2 Observations**

This property, formerly known as the Rio Grande National Life Insurance Building, was originally purposed as an office building. According to historic data, the hotel was completed in 1932+/- . While the building is some 84 +/- years old, the major components of the concrete post and beam structure appear to be in good condition. All components other than the structure and super structure are to be replaced under the scope of the renovation. Based upon visual inspection, the remaining useful life of the structure and superstructure is 50+ years. For performing professional services related to this PCA and the fee is not contingent on the outcome of the PCA. The property is a 9-story structure with a partial basement on a 26' x 150' deep lot. During our site visit we noted that many of the framed walls have been removed.

**5.0 Site Improvements****5.1 Utilities**

The building was previously in operation and is adequately served by all utilities.

**5.1.1 On-Site Water System**

The water mains are located in the city street utility easements and are supplied by the city. The water distribution system is the responsibility of the property to maintain.

The fire hydrants are located along the major streets.

The water pressure and water quantity was reported to be adequate for domestic needs.

**5.1.2 On-Site Sanitary Sewer System**

The sanitary sewer system discharges into the municipal sewer main. The property sewer lines are located along the interior of the site. The on-site system is the responsibility of the property to maintain. According to the owner, sanitary sewer connections to the municipal sewer main were in good condition with no history of clogging or readily apparent problems.

**5.1.3 Property Electrical, Telephone and Cable Distribution System**

The electrical services are connected to the transformers, which feed the building exterior mounted electrical meters at each building electrical service.

The on-site cable TV, electrical and telephone systems are owned and maintained by respective utility companies. This includes transformers, meters and all of the elements of the on-site systems. The apartment complexes have exterior switching boxes. Electrical Contractor will need to inspect and bring the electrical services up to the Life and Safety Electrical Codes.

#### **5.1.4 *Natural Gas Distribution System***

N/A

#### **5.2 *Parking, Paving, and Sidewalks***

There is currently no off-street parking for this building. We did however notice during our site visit that the adjacent on-street parking appeared ample and under-utilized. New striping and new signage designating handicap accessible parking spots will need to be added. Most sidewalks adjacent to the site and in the City Right of Way are in poor condition. Many have cracks caused by heaving or other weathering. We recommend replacement of sidewalks as part of the rehabilitation. Currently, there are no on-street parking spots designated as being for handicap persons. On street handicap accessible designated spots should be provided at the closest possible spaces to the main building entrance on an accessible route. New accessible parking should be provided to meet UFAS slope and/or ramp requirements.

#### **5.3 *Drainage Systems and Erosion Control***

Site storm water from the roof lawns and paved areas flow into the municipal storm drain system.

Evidence of storm water runoff from adjacent properties was not observed. Minor storm drainage repair is needed.

#### **5.4 *Topography and Landscaping***

The property's slope is generally flat. There is no on-site green space as the building appears to be situated directly on the property line on all sides. As part of the rehabilitation, updated landscaping should be considered, complete with new weed barrier, mulch, native plantings and edging to help update the property and increase marketability. We recommend this be placed in an open atrium style setting within the single-story structure adjacent to the 9-story building.

#### **5.5 *General Site Improvement***

Site lighting is currently non-existent. In addition, there was no evidence of general building lighting. In our opinion, site lighting and general building lighting should be added during the rehabilitation. We recommend installation of new building lights as part of the rehabilitation scope.

All of the property identification signage and building identification signs are in fair condition. New signage should be constructed.

Trash collection at this site is not apparent at this time. As part of the rehabilitation, dumpster locations should be located at the first floor. They should be constructed so that they are on an accessible path as defined by UFAS. New dumpster enclosures should also be constructed at these locations as part of the rehabilitation. An addition of a trash chute should be explored for this building based upon the height of this building.

Mailboxes should be provided for the new apartments. We recommend mailboxes be installed within the lobby area of the first floor as part of the planned rehabilitation. We also recommend that the mailbox rehabilitation consist of providing an accessible path as defined by UFAS.

---

## **6.0 Building Architectural and Structural Systems**

### **6.1 Foundation**

Based on experience with structures of similar size, configuration, and geographic location, it is assumed that the floor slabs for the nine-story building and the roof deck are of poured-in-place reinforced concrete.

The foundations could not be directly observed while on-site. Management should implement a regular inspection program. The program should consist of removing and replacing damaged, spalled, and missing sections of concrete as they occur over the evaluation period. This type of repair should become part of routine maintenance. No other action is required.

### **6.2 Superstructure and Floors**

The superstructure of the building appears to be concrete spread footings and concrete slab floors. The exterior walls are masonry and the roof system consists of poured-in-place concrete. No serious structural deficiencies were observed.

### **6.3 Roofing**

The roof of the building is a newly installed membrane material roof (appears less than 2 years old). The roof substrate is concrete and appears to be in very good condition. No repairs/replacement are expected as part of the scope of work for this development.

### **6.4 Exterior Walls**

The building exterior is constructed of a multi-wythe brick wall. The brick appeared to be in good condition at most areas surveyed. These areas will require minor tuck pointing as part of the rehabilitation. There are poured-in-place reinforced concrete columns & beams acting as structural components. The basement appears to be slab-on-grade construction in all areas other than at the rear of the building where the boiler was located in a partial basement. Above the basement, floor slabs for the nine floors and the roof deck are of poured-in-place reinforced concrete.

### **6.5 Exterior and Interior Stairs**

There is one set of concrete stairs in the central core of the building behind the elevator shaft. As part of the rehabilitation, a rated enclosure should be built at the first floor to connect the rated stair tower directly to the exterior. Residents must have direct access to the exterior within a rated enclosure. The stairs are currently equipped with handrails but they do not meet current code standards. Handrails/guardrails should be revised to bring them into compliance with current building codes during the planned rehabilitation. Tread depths and riser heights are not consistent throughout and would not be acceptable for new construction based upon recent building codes. Being that this is the grand staircase for the building, it is our belief that the existing non-code compliant condition will be able to remain as is because of the historic nature of the building. In addition to the grand stairwell, there is an exterior mount, steel framed fire escape that is accessed from the end of the corridor at each floor. As part of the rehabilitation, we recommend relocating the 2nd means of egress to a more remote location.

### **6.6 Exterior Windows and Doors**

A majority of the wood framed, double hung, single panes windows are missing and all remaining windows should be replaced as part of the scope of work. A few areas did display some cracking at mortar joints. Exterior windows

and doors are original to the building. Existing windows are wood frame, double hung, single pane windows and were either broken, missing or in non-working order in most cases. They should be replaced with energy efficient replacement windows. Exterior doors were also in poor condition. We recommend that they be replaced as part of the rehabilitation project.

#### **6.7 Common Areas, Entrances, and Corridors**

These areas must be treated with the same replacement guidelines that have been suggested for the overall renovation.

#### **6.8 Elevator**

The existing elevator equipment was located on the penthouse level. Elevator will be added.

### **7.0. Building Mechanical and Electrical Systems**

#### **7.1 Building Heating, Ventilating and Air Conditioning (HVAC)**

The original offices don't appear to have been supplied with HVAC cooling equipment. Heating appears to have been supplied from a central boiler system located in the basement. Individual room heating equipment at the rental units were absent during this site visit. We assume that cast iron radiator(s) were used at each hotel room for heat. During the rehabilitation conversion of the hotel units into apartment units, we are recommending that new forced air furnaces and heat pumps be installed in each unit with separate individualized thermostatic controls to provide heating and cooling for the units.

#### **7.2 Building Plumbing and Domestic Hot Water**

Originally, domestic hot water was supplied to the rental units through a central water heating system. During the rehabilitation, all of the units should be provided with domestic hot water supplied by individual hot water heaters located in the utility closets of these units. Domestic water lines and waste lines appear to be copper and cast iron respectively. As part of the rehabilitation, all existing water and waste lines should be removed and replaced with PEX water piping and PVC sanitary sewer piping with sizes meeting current codes. New site connections should be extended out to the City main infrastructure on Hwy 6. We recommend that the water service to each unit be separately metered.

#### **7.3 Building Gas Distribution**

N/A

#### **7.4 Buildings Electrical**

The building appeared to originally receive electrical service from a pole mounted exterior transformer. Main service feeds fed a panel at each floor with branch wiring extending from that panel to each unit. Electric service, metering and branch wiring is in a state extending beyond its useful life and should be replaced completely. During the rehabilitation, each unit should have an individual meter and a 125 amp service panel. GFCI outlets should be located in the kitchen and bath areas of each unit during the rehabilitation

#### **7.5 Fire Protection and Security Systems**

The fire protection system consists of service coverage by the local Fire Department. Portable fire extinguishers and smoke detectors should be checked and replaced if necessary. There was no active security system found to assure the future tenants safety. State fire codes will likely require the building to have a sprinkler type fire

compression system. To comply with current building codes, smoke detectors must be provided in each bedroom as well as the hallway of each new apartment unit. These units must be hardwired with a battery backup, and be interconnected. This should take place as part of the rehabilitation.

## **8.0 Dwelling Units**

### ***8.1 Interior Finishes***

The new apartment interiors will consist of a living area, dining area, kitchen, bath and either one or two bedrooms with closets. Flooring planned for the renovation should consist of resilient flooring in all common areas and common living areas; vinyl plank flooring in the living room, kitchen and hallways and sheet vinyl in the bathrooms and mechanical rooms. Carpet with pad should be installed in the bedroom(s) and closet(s). New cabinets, countertops and appliances will be installed as part of the rehabilitation. Interior doors should consist of paneled Masonite hollow core doors as part of the rehabilitation. We also observed that the base trim in the units, where present, was most likely original and in most cases in poor condition. The trim should be replaced with a replication base trim as part of the rehabilitation.

### ***8.2 Dwelling Appliances***

Kitchen appliances will be all electric. Kitchen appliances include a stove, refrigerator, dishwasher and microwave/range hood.

### ***8.3 HVAC***

We are recommending that new forced air furnaces and heat pumps be installed in each unit with separate individualized thermostatic controls to provide heating and cooling for the units.

### ***8.4 Plumbing***

As part of the rehabilitation, all existing water and waste lines should be removed and replaced with PEX water piping and PVC sanitary sewer piping with sizes meeting current codes. We recommend that bathrooms include low flow water closets, vanity cabinet with a cultured marble top with integral vanity bowl sink, medicine cabinet and a tub/shower. The new accessible units should have accessible tub/shower with grab bars and seats.

### ***8.5 Electrical***

The entire electrical system will need to be replaced. During the rehabilitation, each unit should have an individual meter and a 125-amp service panel. GFCI outlets should be located in the kitchen and bath areas of each unit during the rehabilitation. All new light fixtures, bath exhaust fans and outlets should be installed during the rehabilitation and we would recommend Energy Star compliant fixtures throughout. We recommend that new home runs be run for each unit for both data and TV as part of the rehabilitation.

## **9.0 Other Structures**

There are no other structures.

## **10.0 Environmental Restrictions**

Since construction of the project was completed in 1928 +/-, the probability of lead based paint and asbestos materials being present are probable but uncertain. Testing for lead based paint and asbestos containing materials should be done prior to



rehabilitation. We have included costs for abatement of these materials. If such materials are found during rehabilitation, state, federal and local regulations should be followed.

## **11.0 Opinions of Probable Cost**

This section provides estimates for critical, short term and physical needs over the term as noted within this Capital Needs Assessment. The rehab costs have been updated to more accurately show the detailed cost breakdown.

These estimates are based on that information provided by the present owner and construction cost developed by construction resources and WALLACE/GIBCO'S experience with past costs for similar properties, city cost indexes and assumptions regarding future economic conditions.

### ***11.1 Methodology***

Based upon site observations, research and judgment, along with referencing Expected Useful Life (EUL) tables from various industry sources, WALLACE/GIBCO indicates to when a system or component will most probably require replacement. Accurate historical replacement records, if provided are typically the best sources of information. Exposure to the elements, initial quality and installation, extent of use, the quality and amount of preventive maintenance exercised, and other similar items are all factors that impact the effective remaining useful life of a system or component. The Remaining Useful Life (RUL) or effective remaining life of a component or system equals the EUL less it's age.

Where quantities could not be derived from actual takeoffs, lump sum or allowances are used. Estimated costs to correct are based on professional judgment and probable or actual extent of the observed defect, inclusive of the cost to design, procure, construct and manage the corrections.

### ***11.2 Critical Repairs/ Replacements and Short Term Cost***

Critical repairs are opinions of probable cost that require immediate action as a result of one or more of the following:

1. material existing or potential unsafe conditions
2. material building or fire code violations
3. conditions that if left not replaced have the potential to result in a critical element of system failure within one year

Short-term costs are opinions of probable costs to remedy physical deficiencies, such as deferred maintenance, that may not warrant immediate attention but require repairs or replacements that should be undertaken on a priority bases to routine preventive maintenance. Such opinions of probable cost may include costs for testing, exploratory probing, and further analysis should this be deemed warranted by the consultant. The performance of such additional services is beyond the critical needs scope of this assessment.

### ***11.3 Capital Needs Over the Term***

Capital Needs Over the Term are for recurring probable expenditures, which are not classified as operation or maintenance expenses, which should be annually budgeted for in advance. Capital reserves are reasonably predictable both in terms of frequency and cost.

This methodology excludes systems or components that are estimated to expire after the reserve term of 20 years and that are not considered material to the structural and mechanical integrity of the subject property. Furthermore, systems and components that are not deemed to have a material effect on the use were also excluded.



Replacement costs were solicited from property management, service companies, and previous experience in preparing such schedules for similar facilities. Costs for work performed by the management's maintenance staff were considered.

WALLACE/GIBCO'S reserve methodology involves identifying and quantifying of the systems requiring capital reserve funds within the evaluation period, which is defined as the age plus the reserve term. Additional information concerning systems replacement costs, in today's dollars, typical expected useful life, and remaining useful life were estimated so that a funding schedule could be prepared. The Capital Needs Over the Term presupposes that all required remedial work has been performed for items defined in the year one columns.

SCOPE OF WORK					
Project		<b>Baxter Lofts</b>			
Units		<b>24</b>			
			Action	Qty	Unit Comments
Site Improvements					
	Site Furniture	Add		1	LS replace office furn & equip
	Fencing	no action		0	LF
	Landscaping	repair/replace		1	LS
	Earthwork	repair		1	LS Minor repairs
	Parking Striping	repair		1	LS restripe for HC
	Mail Facilities	Construct		1	EA
	Parking/Streets/Walks	repair		2000	S.F.
	Site Sewer/Water	connection		1	EA make new connection
	Dumpsters	construct		2	EA enclosures
	Site Improvements/Sign	construct		1	EA
	ADA compliance	Construct		1	LS Including accessibility routes
	Common Area Entrance doors	Construct		1	LS replace all
Architectural					
	Exterior Lighting	Construct		10	EA Building mounted
	Stairs	replace		1	LS Replace and relocate
	Railings	replace		1	LS
	Roofing	no Action			SQ
	Porches	not applicable			SF
	Windows	replace		1	LS replace windows
	Exterior Walls -	repair		1	LS Repair exterior walls as needed
Mechanical & Electrical					
	Emergency Call	Install		3	EA
	Water Heating	Construct		24	EA
	HVAC	Construct		24	EA Heat pumps and furnces, wth ducts and thermostats
	Interior Electrical	Construct		1	LS Intsall new electrical system including light fixtures
	Elevator	Construct		1	LS
Dwelling Units					
	Range	construct		24	EA
	Dishwasher	construct		24	EA
	Refrigerator	construct		24	EA
	Kitchen Cabinets	construct		240	LF
	Vanities	construct		24	EA
	Countertop and Sink	construct		24	EA
	Bath Fixtures - sink	construct		24	EA
	Bath Fixtures - tub	construct		24	EA
	Bath Fixtures - toilet	construct		24	EA
	Interior Doors	Construct		72	EA
	Exterior Doors	construct		24	EA
	Living Area Walls - Paint	construct		33600	S.F. Frame and finish
	Living Area Ceiling - Paint	Construct		24000	S.F. Frame and finish
	Living Area Floors - Tile	construct		24	EA
	Living Area Floors - Carpet	construct		24	EA
	Smoke Detectors	construct		48	EA
	LBP Mitigation	construct		1	EA
	Asbestos mitigation	construct		1	EA
	Demo Disposal	construct		1	EA



***Qualifications To Prepare PCA (Included in PCA Report)***

GIBCO Environmental, LLC is currently active and regularly engaged in performing Capital Needs Assessments (CNA) studies for USDA-RD and non- USDA projects. Since 2005 we have prepared over 200+ Capital Needs Assessments.

Gibson Consulting, LLC was founded by Thomas Ford Gibson in December of 1999. Then in 2011, GIBCO Environmental, LLC was created out of Gibson Consulting, LLC to handle all environmental projects. His Master's Degree in Business Administration was weighted in the areas of marketing of properties and the capital to support those investments. As a Past President of the Louisiana Home Builder's Association and as an appointed Commissioner to the Louisiana Housing Finance Agency under two governors, he has experience in the long term bond financing requirements for multi-family projects. Additionally, Jim Howell, the firm's General Manager and senior analyst has supervised the construction and renovation of over 5,000 apartment units.

The company's experience in performing Capital Needs Assessments for multi-family properties spans from the "to be developed projects" to the "completed projects" and to the "distressed projects". The firm was one of the first to attend the USDA training on the current USDA CNA Excel template and has completed numerous USDA-RD CNAs in Arkansas, Louisiana, Puerto Rico, Tennessee, Texas, Alabama and Mississippi. All have been approved by USDA and our firm is regularly recommended by USDA offices.

The firm has prepared all types of CNAs including studies for demolition and rehabilitation of HUD Public Housing Authority properties in Kansas, Louisiana, Mississippi and Texas. Additionally, we have prepared hundreds of CNAs for LIHTC and conventionally financed projects in Louisiana, Mississippi, Texas, Missouri, Alabama, Tennessee, Nebraska and Arkansas.

CNA clients include private developers, Public Housing Authorities, USDA applicants, private banks, private equity investors and property management firms.

Our assessments will be conducted following the Rural Development and Fannie Mae Standard Practices for Capital Needs Assessments.

Please see the following resumes of key personnel.

**Jim Howell**

***General Manager and Senior Analyst Memphis, TN***

Mr. Howell serves as the Senior Analyst, Environmental Professional, Trainer & Administrative Consultant for Gibson Consulting, LLC and GIBCO Environmental, LLC. Since 1995, Mr. Howell has performed numerous cost and operating audits for multi-family units as well as provided consultation to clients in the field of construction and property management. This evolved into providing market studies and Property Condition Assessments for LIHTC, USDA and HUD financing applications. The result was the successful development and rental of over 4,000 apartment units. In 2004, Mr. Howell began preparing market studies, Property Condition Assessments and Phase I ESAs for Gibson Consulting, LLC. This work was in numerous states, including Arkansas, Louisiana, Mississippi, Tennessee, Oklahoma, Kentucky, Alabama, South Carolina, Kansas, Missouri, Nebraska, North Dakota, Colorado, Alaska, Georgia, Ohio, Indiana and Texas. To date he has authored over 700 market studies and over 200 PCAs and all have been approved by the recipients who include state agencies, city and county governments, private lenders, FNMA, HUD, USDA, non-profit developers, for-profit developers and public and private equity investors.

**Debbie J. Amox**

***Senior Market & Field Inspector Logansport, LA***

Mrs. Amox has consulted with Gibson Consulting since July of 2006. She has performed the site and market inspections for 160 Phase I ESAs, 400 market studies, 125 capital needs assessments and several other third-party reports throughout the United States and Puerto Rico for clients that have included a wide variety of for-profit firms, nonprofit organizations, as well as local,

state, and federal government agencies. Her expertise in evaluating sites and markets provides the crucial information needed to allow the firm to produce quality reports. She is responsible for scheduling and timely responses with all field work. Mrs. Amox previously worked in senior management positions with a large multi-family property management firm for over 16 years. A graduate of Bossier Parish Community College, she holds an Associate's Degree in Business Administration. She is also the co-owner of two retail businesses.

**Cynthia G. Bullard Administration-Operations**  
**Consultant Douglasville, GA**

Cynthia Gibson Bullard joined Gibson Consulting, LLC in January 2011 as Operations Consultant. She oversees the daily operations of the company, and assists in the timely production and delivery of reports. She also handles client relations and marketing. Cynthia performed administrative work for 17 years as Operations and Project Management for WellStar Cobb Hospital and The Coca-Cola Company. She oversaw the Administration of a non-profit program by WellStar Cobb Hospital and Prevent Child Abuse GA. In addition, she served as the Customer Service Manager & Liaison for The Coca-Cola Company (Atlanta Beverage Base Plant), and the U.S. Peace Corps. She is a graduate of Austin College, Sherman, TX, with a Bachelor of Arts degree with a concentration in Business Administration.

**Rebecca (Becky) H. Gibson**  
**President and Business Manager, Douglasville, GA**

Becky Gibson began working with Gibson Consulting in 2004. She handled all accounting and fulfilled administrative duties required for client contact and report delivery. As President, she gives oversight to all areas of company operations, staffing, work production, and client support and acquisition. Her primary duties are company finances. She is a graduate of Centenary College in Shreveport, LA with a Bachelor of Science in Biology. Becky became a Manager of Gibson Consulting, LLC & GIBCO Environmental, LLC in 2011.

# Exhibit C



July 31, 2017

Mr. Tim Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Re: Appeal for Baxter Lofts, Harlingen, TDHCA Application #17010

Dear Mr. Irvine:

Please accept this appeal to the REA Underwriting recommendation dated July 24, 2017 for Baxter Lofts. After discussing the recommendation in depth with Mr. Stewart, Tom Cavanaugh, and David Burrell on July 25, 2017, we understand that the Department considers the information provided in the application insufficient to properly assess the development costs. We sincerely apologize for any unnecessary burden placed on REA in evaluating the application. That was not our intent. We know your time is in short supply and we are sorry.

While we understand REA is seeking to better understand the scope and associated costs, we contend that the application and deficiency responses meet the requirements of the Rules and QAP. This appeal will present the following seven (7) points to demonstrate the responses fall within TDHCA's requirements and further establish the project's merits to alleviate any risk concerns for the Department.

1. The PCA issuer's team is experienced nationally and in Texas with a 100% acceptance rate.
2. The PCA issuer followed the same scope and format accepted by TDHCA REA in 2016.
3. The Application and PCA are consistent with 10.302 and 10.306.
4. Gut rehabs act as new construction in a historic shell and a detailed assessment of the items to be demolished is not relevant or required.
5. The developer and design team are intimate with the building and the scope and costs associated with the proposed Baxter Lofts.
6. Traditional historic rehabilitation roof and asbestos abatement costs are significantly reduced due to a new tower roof and full asbestos abatement performed by the City of Harlingen in 2015.
7. Finally, while not required by TDHCA, the developer has extensive experience with Historic Projects with 11 projects of this size or larger under its belt.

## 1. PCA Experience

Wallace Architects, LLC has performed over 200 PCAs, CNAs or PNAs since 1998 in 16 states. Six (6) of these are in Texas including two (2) accepted by TDHCA underwriting in 2016. Wallace has never had a PCA rejected until now. In response to the deficiency related to the PCA, the Applicant had Gibco Environmental (who had visited the site and who has significant experience with TDHCA PCAs) create the PCA supplement for clarification purposes. Gibco has performed over 400 PCAs since 1996 and over 30 in Texas. Gibco had at least four (4) PCAs make it through underwriting in 2017, at least three (3) in 2016, and previously has never had a PCA rejected. Wallace/Gibco contends that the PCA and the supplement meet 10.306.

See attached letters from Wallace and Gibco attesting to their experience with preparing Property Condition Assessments, Exhibit "A" and Exhibit "B".

## **2. Score and Format Precedent**

Wallace Architecture performed and wrote the PCAs for Laguna Hotel Lofts (16026), Conrad Lofts (16034), and Baxter Lofts (16029) in 2016. Laguna Hotel lofts and Conrad Lofts were competitive and both had a successful underwriting report resulting in a credit allocation last year. These PCAs followed the exact style, scope, and length as the 2017 Baxter Lofts PCA. Last week, REA acknowledged that they “missed” any deficiencies in the PCA’s last year. However, it is reasonable to understand why the Applicant and PCA Issuer relied on using the same scope that was used in reports previously accepted by TDHCA.

## **3. Consistency with Regulations**

The PCA meets the requirements of §10.306 (a) of the Underwriting and Loan Policy rules for the reasons outlined in Exhibit “C”, a line by line response all the requirements in the section. For further clarification for REA, we have also attached a line by line response to the eight (8) Discussion of Recommendation points from the Underwriting Report. See Exhibit “D”.

The project is an adaptive reuse of an office building to residential project. It is a new 24 unit multifamily property within the shell of a historic building. This is discussed in the development narrative in the application, delineated in the plans, and the PCA is a detailed narrative of the scope of work. We contend that this demonstrates that the Application and Third Party Reports meet the requirements of the Multifamily Rules §10.302(e)(4)(B)(i).

## **4. Gut - Rehabs**

Ultimately, gut rehabs are very different than a standard rehabilitation project in scope and cost and are treated differently when providing scope and budget reviews. Exhaustively documenting systems (all but the main structure and skin at this building) that are beyond their useful life and that are in no way planned to be salvaged for reuse is a futile exercise. Other than the exterior skin and the main structure of the building, all systems will be new in year one (1). Our experience has seen little value in documenting systems that are scheduled to come out of the building in the first two months of construction, nor does §10.306(a) explicitly require this. A building such as Baxter Lofts, when renovated, more accurately acts as a new construction (all new systems) development within the body of a historic structure.

## **5. Design Team Due Diligence**

The design/build team and 3<sup>rd</sup> party providers have completed 14 site visits since the start of the 2016 Baxter Lofts application. These due diligence visits result in the gathering of necessary data to design and build an adaptive reuse for a known cost, that meets TDHCA’s Rules, and will maintain its historic designation. See Exhibit “E” that provides details on the various inspections conducted by the design team over the past two (2) years.

Photos were contained in the report, including interior photos. The team collectively has more than 600 photos of the interior and exterior of the building taken in 2015, 2016 and 2017. Representative photos were provided to give the report reader the feel of the condition of the building without

Mr. Tim Irvine  
July 31, 2017 Page 3

overwhelming the reader with repetitive information. Attached are contact sheets of a sample of the photographs from these site visits, Exhibit "F".

## 6. Roof and Asbestos Cost Savings

REA had concerns over the values for asbestos abatement and roofing in the PCA. The PCA discussed that the roof was in good condition and does not need to be replaced. This new roof is a result of the City of Harlingen's investment of \$144,130 into the rehabilitation of the Baxter Building in 2015 to increase the desirability of the property to prospective developers. RL Abatement Inc performed a full asbestos abatement that included a new roof on the tower during the summer of 2015. See attached Project Clearance Letter and documentation of the project value from the City of Harlingen and photographic documentation of the work, see Exhibit "G". This investment in the property means that the developer of Baxter Lofts does not need to complete a full asbestos demolition and left only a small line item in its budget to prepare for any additional asbestos abatement that might come up during the demolition process. Likewise, the line item in the roofing category in the Development Cost Schedule submitted to TDHCA included funds for a new roof on the one-story area on the west side of the tower.

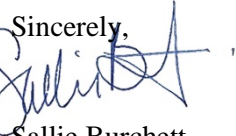
## 7. Historic Experience

Experience with rehabilitation of historic properties is not a requirement of TDHCA. As you know, historic rehabilitation is quite complicated and very different than greenfield construction. MRE Capital, LLC is an experienced historic developer in five (5) states. Members Daniel Sailler III and Jacob Mooney have developed eleven (11) historic projects, including two in Texas under construction in Plainview and Cisco. It is worth noting that MRE uses the same design/build team (Architect/Engineer/Contractor) for its projects for consistency, improved communication, efficiency, and most of all trust. Exhibit "H" is a list of Historic Rehabilitation development projects, including references to hear firsthand about their experience working with the MRE team. I will provide cell phone numbers under separate cover.

## Conclusion

We apologize for any hardship put on David Burrell and the REA team associated with the review of Baxter Lofts. However, we contend that the application and deficiency responses meet the requirements of the Rules and QAP as demonstrated in this appeal. Furthermore, MRE and their design/build team are intimate with the project and experienced in this type of rehabilitation to provide REA further comfort in the application data. With these factors under consideration, we respectfully request that you accept and approve this appeal.

Please let us know if you have any further questions or require further documentation by contacting Sallie Burchett, at (512) 473-2527 or at [sallie@structuretexas.com](mailto:sallie@structuretexas.com). Thank you for your consideration.

Sincerely,  


Sallie Burchett  
Consultant to the Project

cc: Brent Stewart





July 31, 2017

Daniel Sailer  
Baxter Housing Partners, LP  
8901 State Line Road, Suite 250  
Kansas City, MO 64114

RE: Baxter Lofts, Harlingen, TX

Dear Mr. Sailer,

Since inception in 1998, Wallace Architects, LLC has performed over 200 PCAs, CNAs and/or PNAs, all with similar formatting and content. Specifically, we have completed (6) PCAs in Texas over the last three years with two of those making it through full underwriting in 2016 and currently under construction. Until this year in Texas, we have never had a PCA, CNA or PCA not accepted outright by any State agency based upon formatting or content.

Historic gut rehab developments, such as Baxter Lofts, are unique in regards to overall existing building systems analysis, scope of work compilation and reserve replacement schedule documentation at the PCA stage. In historic buildings like this, generally 95%+ of the interior, non-structural existing systems are more than three or four times expired based upon estimated useful life analysis and in most cases, in dire need of replacement. Many historic buildings, like Baxter Lofts, that are contemplated for rehabilitation have only their exterior masonry façade and structure/super structure, elevator shaft/stairwells and in some cases historic corridor that is worth salvaging. Since 95%+ of the interior, non-structural systems are to be replaced as new in year one for a project like this, the scope of work is extensive (almost like new) and the reserve replacement schedule nearly looks like that of a brand new building. Items that are obviously in need of replacement are therefore not a point of focus of a PCA, CNA or PNA review such as this.

Similar recent (last 3 years) Historic specific PCAs, CNAs and PNAs under Wallace direction, that have been approved with rehabilitation about to start, under construction or completed include the following:

Laguna Lofts Historic Rehabilitation – Cisco, TX  
Conrad Hilton Lofts Historic Rehabilitation – Plainview, TX  
Community Place Historic Rehabilitation – Ponca City, OK  
Cherry Apartments Historic Rehabilitation – Waterbury, CT  
Aldridge Apartments Historic Rehabilitation – McAlester, OK  
Berryhill Apartments Historic Rehabilitation – Sapulpa, OK  
Will Rogers Lofts Historic Rehabilitation – Claremore, OK  
Dale Hotel Historic Rehabilitation – Guymon, OK  
Parrish Hotel Historic Rehabilitation – Pratt, KS  
Carroll Building Historic Rehabilitation – Waterbury, CT

Please contact our office if you have any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Kleffner".

Michael J. Kleffner, AIA, NCARB  
LEED AP – BD&C

July 31, 2017

Daniel Sailler  
Baxter Housing Partners, LP  
8901 State Line Road, Suite 250  
Kansas City, MO 64114

RE: Baxter Lofts, Harlingen, TX

GIBCO has performed over 400 PCAs since 1996 and over 30 in Texas. GIBCO had at least four (4) make it through underwriting in 2017, at least three (3) in 2016, and previously never had any not accepted. We maintain an extensive database of construction and rehabilitation costs and supplement these with current cost data from R. S. Means as well as cost information from contractors.

We assisted in the preparation of a supplement to the original PCA prepared for your project by Wallace Architects. The purpose of the supplement was to provide all of the information required by §10.306. Specifically, the supplement was prepared in accordance with ASTM E 2018 and complied with §10.306:

1. It contained useful life estimates of all components that were not being completely built new.
2. It discussed Code Compliance and adequately considered the costs of compliance.
3. The report included all costs necessary to comply with program rules.
4. Accessibility Requirements were addressed and costs included.
5. The stated scope of work was used to estimate the total costs.
6. The PCA provider signed the PCA Cost Supplement.
7. The immediate renovation and rehab requirements were included as well as a 30-year analysis of repairs and replacement over time.

If there are any questions, please let us know.

Sincerely,



**Jim Howell, Senior Analyst**

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306 (a)**

PCA Requirements Per TDHCA	Included in the PCA and PCA Supplement for 17010 Baxter Lofts
Meets ASTM	See pages 7-9 of this document
Must contain a statement indicating the report preparer has read and understood the requirements of this section.	Yes, see Page 10 of the PCA with Supplement, “Michael J. Kleffner, Architect and Member of Wallace Architects, LLC, has read and understands the requirements of TDHCA, Section 10.306 Property Condition Assessment Guidelines”
Must include the Department’s PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least thirty (30) years	Yes, see Page 40, shows TDHCA excel Supplement form through 30 years.
§10.302(e)(4)(B)(i) requires that the Applicant must provide a detailed narrative description of the scope of work.	A detailed, itemized narrative of the scope of work, including all necessary repairs, construction, modifications, installations, and improvements were included in each section of PCA Supplement on pages 31-37 of the PCA with Supplement.
INCLUDE A DISCUSSION AND ANALYSIS OF THE FOLLOWING:	
<b>Useful Life Estimates.</b> 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	Page 12 of the PCA with Supplement states, “Based upon visual inspection, the remaining useful life of the structure and superstructure is 50+ years”. Page 14 of the PCA addresses electrical service on site, “Electric service is beyond its useful life”. Page 37 addresses remaining useful life as it relates to the methodology used to calculate probable cost, “...along with referencing Expected Useful Life tables from various industry sources, Wallace/GIBCO indicates when a system or component will most probably require replacement” in the Probable Cost Section.
<b>Code Compliance.</b> 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	Page 13 of the PCA, addresses stairs and handrail/guardrail code compliance. Page 14 and page 36 of the PCA address code compliance of existing water and waste lines and plumbing.

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<p>responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property.</p>	<p>Page 15 and pages 35-36 of the PCA address code compliance of fire safety and smoke detectors. Page 31 addresses building zone, fire compliance, and ADA Accessibility as they relate to the project's overall code compliance and accessibility. Page 33 addresses electrical code compliance.</p>
<p><b>Program Rules.</b> 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, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant may claim points;</p>	<p>Page 39 has a scope of work that assesses all systems and components, including necessary actions, quantity of replacements, which units require the action, and detailed comments from the project architect.</p>
<p><b>Accessibility Requirements.</b> The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8) and include the specific scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).</p>	<p>Yes, accessibility requirements were addressed in the scope of work and Cost Schedule supplement. Since this is a gut rehab, the cost of accessibility is factored into the new construction, rather than modifications. Pages 15-16 address accessibility compliance and a description of necessary improvements. Page 31, in section 3.2 ADA Accessibility, cites and references Title III of the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Page 39 Scope of Work, identifies the need for construction of ADA compliant accessibility routes.</p>
<p><b><i>Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 10.101 (B)(8):</i></b></p>	
<p>(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)</p>	<p>Page 31 attests to meeting Federal Accessibility Requirements. The architect further certifies accessibility compliance in the full application.</p>
<p>(B) New Construction (excluding New</p>	<p>Does not apply to this development</p>

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<p>Construction of non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit Type (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) of otherwise exempt units (i.e. single family residence, duplexes, triplexes, and townhomes) 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.</p>	
<p>(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))</p>	<p>Page 31 attests to meeting Federal Accessibility Requirements. The architect further certifies accessibility compliance in the full application.</p> <p>Page 28 of the PCA highlights the consultants' knowledge of federal, state, and local requirements.</p>
<p><b>Reconciliation of Scope of Work and Costs.</b> The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to</p>	<p>The PCA Cost Supplement is consistent with the scope of work identified in the body of the report and in the Hard Costs presented in the Development Cost Schedule submitted at application. Page 40: Cost Schedule Supplement. Page 39 is a Scope of work that includes necessary actions that matches the list of expenses in the Cost</p>

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<p>be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and Hard Costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider;</p>	<p>Schedule Supplement.</p>
<p><b>Cost Estimates for Repair and Replacement.</b> It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.</p>	<p>See the Page 40 Supplement.</p>
<p><b>Immediately Necessary Repairs and Replacement.</b> 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</p>	<p>Page 39 Scope of Work and Page 40 supplement identifies "Provider Identifies Immediate Scope of Work"</p> <p>As this is a gut rehab, there are no immediate repairs and the project will consist of completely new construction inside.</p>

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<p>identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.</p>	
<p><b>Proposed Repair, Replacement, or New Construction.</b> 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.</p>	<p>The items that require repair or replacement beyond the initial gut rehab are identified in the Cost Schedule Supplement. They include furnaces at 14 years, drywall at years 7 and 14, appliances at year 15, elevator at year 24, and furnishings/mailboxes at years 9 and 19.</p>
<p><b>Reconciliation of Costs.</b> The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the Hard Costs presented on the Applicant's development cost schedule.</p>	<p>The PCA Cost Supplement is consistent with the scope of work identified in the body of the report and in the Hard Costs presented in the Development Cost Schedule submitted at application. See the Supplemental Cost Schedule on Page 40 for the Total Construction cost. The Total Construction Cost in the PCA is consistent with the total construction cost identified at application on the Tab 30 development cost schedule, which is \$1,884,260.</p>
<p><b>Expected Repair and Replacement Over Time.</b> The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property.</p>	<p>Page 40 Cost Schedule Supplement estimates expenses up to 30 years, including periodic costs based on estimated remaining useful life of each system or component.</p>

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<p>The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component of 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.</p>	
<p>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 thirty (30) years.</p>	<p>Page 40 Cost Schedule Supplement estimates expenses up to 30 years, including periodic costs based on estimated remaining useful life of each system or component.</p>
<p>The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.</p>	<p>See page 40. The inflation factor is included at the bottom of the Supplemental Cost Schedule.</p>
<p>The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client.</p>	<p>The cover page of PCA states that “prepared for the Texas Department of Housing and Community Affairs, located at 221 East 11th Street, Austin, TX 78701”. Page 10 of the PCA addresses that TDHCA may rely on the findings of the PCA.</p>
<p>The PCA report should 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.</p>	<p>Page 10 of the PCA states that “...Wallace Architects, LLC will not materially benefit from the Department in any other way other than receiving a fee for performing professional services related to this PCA.</p>



**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

<b>ASTM Requirements</b>	
<b>5.2.1 Documentation Review and Interviews</b>	<p>Lengthy reference documents are not included as attachments. These referenced documents are not required per ASTM guidelines to be included in the PCA, they are only provided at the consultant's discretion.</p> <p>Page 10 of the PCA identifies that the consultant had "discussions with knowledgeable parties and internal historic research".</p>
Government Agency Provided Information	Page 10 of the PCA identifies that the consultant had "discussions with knowledgeable parties and internal historic research".
Owner/User Provided Documentation and Information	Yes, see page 31 section 2.5. "WALLACE/GIBCO was presented relevant documentation that could aid in the knowledge of the subject property's physical improvement, extent and type of use, and /or assist in identifying material discrepancies between reported information and observed conditions."
Interviews	Page 30 Section 2.4 "Wallace/GIBCO met and spoke with representatives of the Management Agent of the property.
<b>5.2.2 Walk-Through Survey</b>	See page 29 for a record of all walk-throughs performed by Wallace and GIBCO.
Photographs	Pages 18-24: Site Photos are included of exterior and interior.
8.4.1 Site: Topography, Drainage, Ingress/Egress, Paving/Parking, Flatwork, Landscaping, Recreational Facilities, and Special Utility Systems	Pages 32-33, section 5.0 addresses all of these items, including utilities, on-site water systems, on-site sanitary sewer systems, property electrical/telephone/cable distribution, natural gas, parking/paving/sidewalks, drainage systems and erosion control, topography and landscaping, and general site improvements.
8.4.2 Structural Frame & Building Envelope	Page 34, sections 6.1 - 6.2 address the foundation, superstructure and floors, while section 6.4 addresses exterior walls and section 6.6 addresses exterior windows and doors.

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

8.4.3 Roofing	Page 34 section 6.3 addresses roof conditions.
8.4.4 Plumbing	Page 35 section 7.2 covers building plumbing and domestic hot water.
8.4.5 Heating	Building Heating, Ventilating and Air Conditioning (HVAC) is covered in section 7.1 on page 35
8.4.6 Air Conditioning and Ventilation	Building Heating, Ventilating and Air Conditioning (HVAC) is covered in section 7.1 on page 35
8.4.7 Electrical	Page 35 section 7.4 addresses existing electrical service and required improvements
8.4.8 Vertical Transportation	Page 34 section 6.5 addresses exterior and interior stairs and page 35 section 6.8 addresses the existing elevator equipment.
8.4.9 Life Safety/Fire Protection	Page 35-36 section 7.5 addresses Fire Protection and Security Systems
8.4.10 Interior Elements	Page 35 Section 6.7 covers common areas, entrances, and corridors. Page 36, section 8.0 covers interior finishes, dwelling appliances, Dwelling Unit HVAC, Plumbing, and electrical.
8.5 Additional Considerations	Environmental Restrictions are addressed on page 16 and on page 37-38 section 10.0. Accessibility compliance (building and site-wide) is addressed as it relates to the building's historic nature on pages 15-16 and on page 31 section 3.2
<b>5.2.3 Preparation of Opinion of Costs to Remedy Physical Deficiencies</b>	
9.2 Threshold amount for opinions of costs	These estimates are based on that information provided by the present owner and construction cost developed by construction resources and WALLACE/GIBCO's experience with past costs for similar properties, city cost indexes and assumptions regarding future economic conditions.
<b>5.2.4 Property Conditions Report</b>	
Disclosure of information source	Sources of information are mentioned on pages 10-11, 16, 17-24, and 28-32.

**Property Condition Assessment Requirements  
Uniform Multifamily Rules §10.306(a)**

Documentation	Lengthy reference documents are not included as attachments. These referenced documents are not required per ASTM guidelines to be included in the PCA, they are only provided at the consultant's discretion.
Credentials	Pages 41-42
<b>Executive Summary</b>	Pages 29-31, addresses summary of findings, purpose of PCA and scope
<b>General Description and Physical Condition</b>	Pages 31-36 address code compliance/accessibility, existing building evaluations, site improvements, building architectural and structural systems, mechanical and electrical systems, dwelling units, and other considerations
<b>Opinion of Costs</b>	Pages 37-40 address methodology used to estimate costs, along with a scope of work and Cost schedule
<b>Consultant/Field Observer Relationship</b>	Page 29, "The Client contracted with WALLACE/GIBCO to conduct a Capital Needs Assessment (CNA)/ Property Condition Report (PCR) consisting of field observation, document review and related due diligence tasks of the apartment property."
<b>Recommendations</b>	Recommendations are summarized in the scope of work on page 39 and the cost schedule on page 40.
<b>Purpose and Scope</b>	Pages 29-31, addresses summary of findings, purpose of PCA and scope.

Exhibit “D”

**Baxter Lofts Underwriting Comments Response**

The following information is a detailed response to the Underwriting Discussion of Recommendation in the Underwriting Report dated July 24, 2017 from REA to the nine (9) items that do not meet their satisfaction. The Underwriting Discussion is in black and the response is in blue.

1. Pursuant to §10.302(e)(4)(B)(i), the Application does not contain a detailed narrative description of the scope of work (to be provided by the Applicant). Because of this and pursuant to §10.306(a), a PCA provider can not fully complete the Department's PCA Cost Schedule Supplement. This schedule is intended to reconcile the Applicant's scope and costs with the PCA provider's identified scope and costs pursuant to §10.306(a)(5). The PCA supplement does not show any costs for the Applicant's scope of work. If the Applicant did not provide a scope to Wallace, that should have been discussed in the report. The narrative in the PCA is not sufficiently detailed to understand the full scope of work defined by the provider . Unlike the original PCA, the update report does have a schedule showing quantities of various items but does not provide any descriptive narrative or tie to costs.

The scope of work clearly showed the details of the work. The applicant’s scope of work is the same as what was reported, as the applicant and Wallace jointly determined the scope of work. The narrative scope is clear: Example:” Exterior windows and doors are original to the building. Existing windows are wood frame, double hung, single pane windows and were either broken, missing or in non-working order in most cases. They should be replaced with energy efficient replacement windows. Exterior doors were also in poor condition. We recommend that they be replaced as part of the rehabilitation project.”

The reviewer is not accurate in the statement that the schedule is intended to reconcile the applicant's costs and the PCA costs. The first column on the form is for all Rehab costs. The second column is for ADDITIONAL owner scope items such as new construction of an office. See the excerpt from the TDHCA FORM. Emphasis added.

Provider Identified Immediate Scope of Work	Column E should include all costs required for the rehabilitation.
Developer Additional Scope of Work	Column F should document any <i>additional costs proposed</i> by the Developer <i>that are not included in Column E</i> . (For example, new construction of a community center.) The PCA provider must opine as to the reasonableness of these costs.

2. Pursuant to §10.306(a), 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"). These standards outline a methodology for producing PCA reports. For one example, ASTM requires a Walk-Through Survey. This survey is the descriptive section of the PCA that documents current conditions. Current conditions of a property are also generally documented with many photographs in the report.

The subject report states a walk-through survey was done. No descriptive information was reported. For one example, the report does not discuss the current interior conditions including whether there are existing interior walls. It does not address whether walls will be removed, constructed or both in the renovations. A walk-through survey should contain photographs and a description of existing conditions. There are no interior photographs of the building in the report. There are a couple of interior photos in the 2016 report but not reflective of the current conditions.

Within the original PCA, the exterior wall construction, interior structure and superstructure were described as being in good condition with no major structural concerns. With the scope of work described as a gut rehab, we saw little value in documenting or describing antiquated interior wall and door systems that were well beyond their useful life and scheduled to be demolished as part of the project. Beyond the structure of the building and the exterior skin of the building, everything for this building is scheduled to be new. There have been no changes since 2016. We have nearly 600 photos taken by a variety of professionals who have visited the site. There was no indication in the rules how MANY photos should be taken. We have attached contact sheets for your reference to demonstrate some of the due diligence.

As noted in the PCA on page 28, "the conclusions presented are based on the data provided, observations made, and *conditions that existed specifically on the date of the assessment.*" As such, the conclusions found on pages 31-38, particularly in sections 3.0 through 10.0, specifically address in detail the observations that were made during the Assessment Walk-Through in accordance with ASTM standards.

In regards to interior walls, the PCA mentions on pages 12 and 32 the presence of interior walls, but notes that "many of the framed walls have been removed". All references to "framed walls" are referring to interior walls, and all references to brick walls are referring to exterior walls, thus underscoring the inclusion of discussion on existing interior walls. To account for the missing framed walls mentioned on pages 12 and 32, the scope of work indicates a need to frame, finish, and paint living area walls, and the Cost Schedule consequently includes this in its cost estimations for direct construction.

As another example, the details regarding the common areas, entrances and corridors is simply "be treated with the same replacement guidelines that have been suggested for the overall renovation". Additionally, the elevator discussion is simply that an "elevator will be added". Since the building has two elevator shafts, the Underwriter is unclear about this statement.

The statement is self explanatory and clear. This is a gut rehab type renovation and any remaining common areas will be handled the same as the living units. The drawings and the

budget reflect a single elevator proposed for the building within the existing elevator shaft.

The report states that there is documentation of interviews and research to augment the walk-through survey in the report (ASTM). The report does not have such documentation.

Section 2.4 clearly states:

In the process of conducting the CNA/ PCA and follow-up telephone calls, GIBCO/WALLACE met and spoke with representatives of the Management Agent of the property who were cooperative and provided information that appeared to be accurate based upon our site inspection.

Section 2.5 clearly states:

GIBCO/WALLACE was presented relevant documentation that could aid in the knowledge of the subject property's physical improvement, extent and type of use, and /or assist in identifying material discrepancies between reported information and observed conditions.

GIBCO/WALLACE'S review of documents submitted does not include commenting on the accuracy of such documents or their preparation, methodology, or protocol.

The PCA states that the foundations could not be observed. Limited observations were made regarding the rest of the structure. A report from a structural engineer was not reviewed or mentioned. While the PCA states "no serious structural deficiencies were observed", there is no evidence that due diligence was made to determine a more informed condition of the building (or at least discussed in the report).

While ASTM does not require an engineering review or structural investigation, in this case there is potential that serious latent conditions could exist on a building built in 1926 (the year built according to tax records). There is no discussion of this contingency and there are no funds budgeted for potential unknown costs associated with a 91 year old structure (above and beyond a typical contingency outside the PCA budget). It is reasonable that more information could be provided for a reader to assess the risk of potentially higher costs associated with the structure. It is reasonable to assume that additional structural information should be documented to be able to determine costs.

Based upon similar exhaustive reviews of historic buildings such as this and involvement with the completion of dozens of successful historic rehabilitations like this across the Country for decades, we are confident in our detailed Structural assessment of this building and confident we will not encounter additional significant structural issues outside of the current scope and budget for this development. As part of our assessment of this building and commonplace on other historic buildings, the development team brought together General Contractor, Historical Consultant, Architect, MEP Engineer, Structural Engineer and Civil Engineer to fully assess the condition of this building. There were no visible signs of deficiencies and in the professional opinion of the architect the building is structurally sound.

ASTM requires a review of building, zoning and fire safety codes. The report states that there are numerous violations and that they will all be corrected through the renovations. No detail or photographic information provided.

The building interior is dilapidated and in need of basically everything but the structure. The building code and fire safety code violations, including bare electrical wire, leaking plumbing, no fire exits sufficiently marked, etc are ALL to be handled in the scope of rehab. When you rewire a building, the fire safety and code requirements must be met and the cost is included.

Report does not state whether fire sprinkler systems exists or will be required by code. A sprinkler system is not itemized on cost schedule.

A fully operational and tested NFPA 13 fire suppression system is planned for the renovation of this building. Many times a General Contractor will lump the fire suppression budget within the overall plumbing budget and that appears to be the case in this situation as well.

Report states that upon observation that the roof needs no repairs or replacement. This is consistent with the scope of work. The cost schedule, however, shows \$31K for the roof

The \$31,000 is for the roof replacement of the single story portion of the building.

Under "Other Structures", the report says there are none. However the site plan shows two, single-story structures where amenities will be located.

There is a single story structure that is connected and open to the existing 9 story historic structure. We consider this building an extension of the main building and therefore this is not identified as "Other Structures" There are no interior partitions in this building, just sound structure that is to remain. Contractor has provided pricing, based upon preliminary drawings, for the upgrades that are to happen at this single story structure within the original budget for this project.

There is no description about the HVAC other than a recommendation for new forced air furnaces and heat-pumps. No information about where any of that equipment will reside.

The supplement clearly states the equipment will be in the units. During the rehabilitation conversion of the hotel units into apartment units, we are recommending that new forced air furnaces and heat pumps be installed in each unit with separate individualized thermostatic controls to provide heating and cooling for the units. The budget reflects such and the drawings indicate locations.

The report indicates that given the age of the property, the existence of lead-based paint and asbestos are probable. The supplement report provides for a remediation budget and recommends testing prior to starting work. Without testing about where the paint or asbestos may be located, the budget for abatement could be insufficient and speculative. As a 91-year old property, many environmental issues likely exist.

The building received a full asbestos abatement in the summer of 2015. See attached documentation in Exhibit "G". The value in the cost supplement is for additional testing and contingency additional work if required.

3. §10.306(a) also requires that the PCA report on the expected capital replacement and repairs

over term of the Affordability Period and not less than thirty (30) years. The text of the report indicates 20 years. [Typo, should say 30](#) While the PCA Supplement template provided by the Department shows a period of 30 years, a schedule of the expected life of the components was not provided. For example, there are no projections for replacement of the HVAC systems or water heaters over the period and only \$40K for the elevators.

[Based upon historic data, minor replacement of localized HVAC units may occur between years 20-25 but we haven't experienced the need for widespread replacement within the 30 year period of compliance on other similar apartment units of similar size and scope. High efficiency HVAC equipment has been sized appropriately to minimize short cycling \(unit starting/stopping many times through a short time period\) thus extending the life of the equipment to its full potential. . This HVAC equipment, with regular monthly maintenance, has proven to extend the useful life of HVAC systems well beyond standard Fannie Mae tables](#)

4. §10.306(a)(1) requires a Useful Life Estimate for each system or component of the property citing a basis or the source from which the estimate is derived. While there was a remaining useful life of 50 years (40 years in the original report) reported for the building itself, there was no discussion of how its life was determined. There was nothing provided about the components or systems of the property (whether being replaced or not). The property was built in 1926 and it would be expected that there would be some detailed discussion of the systems and components such that the report would be self-contained. The Underwriter understands that this is a gut, adaptive reuse. But no information is known about the specific systems contemplated, their useful life and impact to future operations (HVAC for example).

[The details of the scope, we contend, are provided, see notes on other sections. Our experience with concrete and brick \(the two original components that are scheduled to remain post renovation\) is that with regular maintenance, approximately every 30 years, the building should be scheduled to be repointed. Once the building is completely dried in, we fully expect the existing concrete to last another 50+ years with little or no maintenance. New high efficiency HVAC equipment,, as discussed above, does not necessitate widespread replacement within the 30 year period.](#)

5. §10.306(a)(2) requires a review and documentation of any violations of any applicable federal, state or local codes. In developing the cost estimates, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. The PCA only refers to building, zoning and fire code violations without identifying them or how the scope of work will fix the violations. The report simply states that all violations will be fixed.

[The building was built in 1926 and hasn't been occupied in decades, it is reasonable to assume that it violates almost all current building codes, as a gut rehab that will be required to obtain a permit for construction there will be numerous inspections just like new construction and no certificate of occupancy would be obtained until the building conforms to code. This requirement seems misplaced for a gut rehab.](#)

6. §10.306(a)(3) requires that the PCA 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, the Department's Uniform Physical Condition Standards, and any scoring criteria for which the Applicant is claiming points. This section is not discussed in the report at all. The Underwriter notes that the



budget does not indicate funds for ceiling fans which is a requirement of the program.

Ceiling fans would be covered under the electrical budget and are included in the original scope of work for this renovation. Furthermore, ceiling fans cost about \$35 each for a total line item of \$850, too insignificant for a detailed line item. Baxter Lofts is a small building of 24 units, the roll up of the budget is just not going to be very large.

7. §10.306(a)(4) requires that the PCA report include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section §10.101(B)(8) and include the specific scope of work and costs needed to ensure that the Develop

- The PCA identifies the sidewalks and on-street parking (which appear to be on the required accessible route) be fixed to be in compliance with handicap accessible standards. No mention is made if the owner has control of the sidewalks or if they have an agreement with the City to fix the sidewalks or parking so that they may serve as the accessible route. No off-site costs were included in the PCA budget.

There are no off site costs, the site work costs are for necessary transitions between the building and the public sidewalks, as Dan Sailler mentioned in the July 25th REA meeting. All new construction in Austin Texas has to obtain a licensing agreement to have planters in the sidewalk. New construction deals do not need to mention licensing agreements with the City. It appears that this requirement would be holding adaptive reuse to a higher standard than new construction.

- The PCA consistently references Uniform Federal Accessibility Standards ("UFAS"). However, 10 TAC §1.26(b)(2) requires all Multifamily Developments that have a full application for funding after January 1, 2014 to comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, not UFAS.

The architect has certified in the application and PCA that he will meet all application federal, state, and local laws.

- The PCA does not describe how the common areas are not fully compliant and does not appear to have a clearly defined budget item tied into the requirements that were identified. Furthermore, while the architect's certification and plans contains references to the 2% of auditory/visual units (while still referencing a UFAS standard), the PCA does not itemize costs associated with these units.

Audio/visual unit upgrades required for this project are electrical in nature and are part of the electrical budget and scope for this project. Horn/strobe style smoke detectors and horn/strobe entry doorbell system is a relatively inexpensive line item for (1) unit - 2% of overall units.

8. Between the 2016 PCA, the 2017 PCA and the recent supplement, the total costs has remained roughly the same. However, there are significant differences and omissions in line-items. Costs for the HVAC, flooring and cabinets were not itemized in the 2017 report. Other items such as doors decreased from \$100K to \$35K with no explanation. Drywall decreased \$100K. The \$88K for lead and asbestos abatement did not exist in the prior report. The major swings in costs, while

bottom line totals stay constant, are extraordinary.

The budget was being refined as to various line items. These refinements came as a result of discussions between applicant and architect. This is not extraordinary, the project sources will only support a certain cost and the parties work together to adjust and clarify budget line items to still stay in budget.

9. §10.306(a)(6) is the operative section of the rule that instructs the Underwriter in analyzing the Application and determines the costs underwritten. The narrative of the report does not provide enough detail of the existing conditions, scope of work nor tie costs to specific items. The revision to the PCA does contain the PCA Supplement but the costs stated in that document are not referenced or discussed in the PCA and inconsistent with prior information. Overall, the report is materially deficient for underwriting purposes.

Ultimately, gut rehabs are very different than a standard rehab in scope and cost and should be treated differently when providing scope and budget reviews.. Exhaustively documenting systems (all but the main structure and skin at this building) that are beyond their useful life and that are in no way planned to be salvaged for reuse is a futile exercise. Other than the exterior skin and the main structure of the building, all systems will be new in year 1. We do have a responsibility to accurately document demolition costs involved but our experience has seen little value in documenting systems that are scheduled to come out of the building in the first two months of construction. A building such as this, when renovated, more accurately acts as a new construction (all new systems) development within the body of a historic structure.

Exhibit "E"  
Baxter Design Team Site Visits

No.	Entity	Person(s)	Visit	Role
1	Wallace Architects LLC	Mike Kleffner	November 2015	Architect
2	Easland Properties LLC	Damon Admire, John Wygowski	November 2015	Contractor
3	Crockett Engineering	Greg Linneman	November 2015	Engineer
4	WT Appraisal	Clint Bumguardner & Jared Akers	February 2016	Appraiser
5	Hernly Environmental	Joni Jernly and Michelle Nelson	February 2016	ESA Provider
6	Wallace Architects LLC	Mike Kleffner	December 2016	Architect
7	Easland Properties LLC	Damon Admire	December 2016	Contractor
8	P and D Studios	Catherine Montgomery	December 2016	Historic Consultant
9	Wallace Architects LLC	Mike Kleffner	January 2017	Architect
10	Gibco Environmental	Jim Howell	February 2017	Environmental Consultant
11	Wallace Architects LLC	Richard Perkins	June 2017	Architect
12	P and D Studios	Kelli Gaston	July 2017	Historic Consultant
13	Wallace Architects LLC	Richard Perkins	July 2017	Architect
14	Wallace Architects LLC	Richard Perkins	July 2017	Architect

Exhibit "F"  
Admire Construction 2015



DSCF3011.JPG



DSCF2889.JPG



DSCF2890.JPG



DSCF2891.JPG



DSCF2892.JPG



DSCF2893.JPG



DSCF2894.JPG



DSCF2895.JPG



DSCF2896.JPG



DSCF2897.JPG



DSCF2898.JPG



DSCF2899.JPG



DSCF2900.JPG



DSCF2901.JPG



DSCF2902.JPG



DSCF2903.JPG



DSCF2904.JPG



DSCF2905.JPG



DSCF2906.JPG



DSCF2907.JPG



DSCF2908.JPG



DSCF2909.JPG



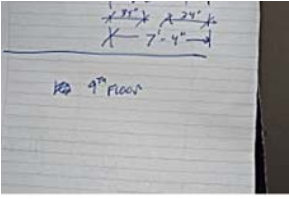
DSCF2910.JPG



DSCF2911.JPG



DSCF2912.JPG



DSCF2913.JPG



DSCF2914.JPG



DSCF2915.JPG



DSCF2916.JPG



DSCF2917.JPG



DSCF2918.JPG



DSCF2919.JPG



DSCF2920.JPG



DSCF2921.JPG



DSCF2922.JPG





DSCF2923.JPG



DSCF2924.JPG



DSCF2925.JPG



DSCF2926.JPG



DSCF2927.JPG



DSCF2928.JPG



DSCF2929.JPG



DSCF2930.JPG



DSCF2931.JPG



DSCF2932.JPG



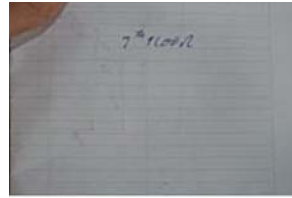
DSCF2933.JPG



DSCF2934.JPG



DSCF2935.JPG



DSCF2936.JPG



DSCF2937.JPG



DSCF2938.JPG



DSCF2939.JPG



DSCF2940.JPG



DSCF2941.JPG



DSCF2942.JPG



DSCF2943.JPG



DSCF2944.JPG



DSCF2945.JPG



DSCF2946.JPG



DSCF2947.JPG



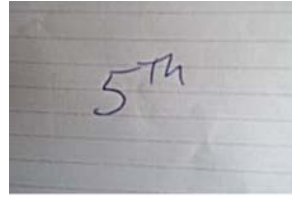
DSCF2948.JPG



DSCF2949.JPG



DSCF2950.JPG



DSCF2951.JPG



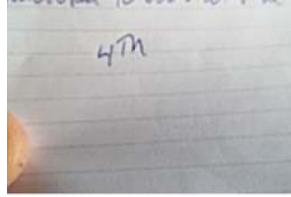
DSCF2952.JPG



DSCF2953.JPG



DSCF2954.JPG



DSCF2956.JPG



DSCF2957.JPG



DSCF2958.JPG





DSCF2959.JPG



DSCF2960.JPG



DSCF2961.JPG



DSCF2962.JPG



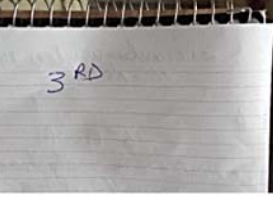
DSCF2963.JPG



DSCF2964.JPG



DSCF2965.JPG



DSCF2966.JPG



DSCF2967.JPG



DSCF2968.JPG



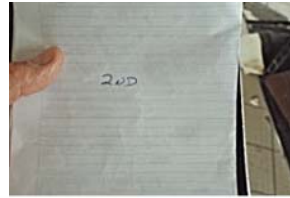
DSCF2969.JPG



DSCF2970.JPG



DSCF2972.JPG



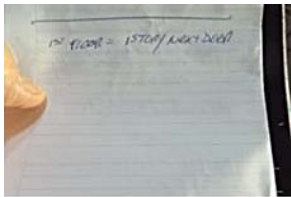
DSCF2973.JPG



DSCF2974.JPG



DSCF2975.JPG



DSCF2976.JPG



DSCF2977.JPG



DSCF2978.JPG



DSCF2979.JPG



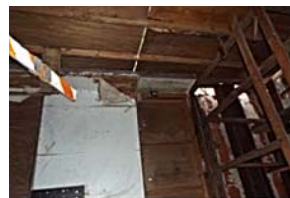
DSCF2980.JPG



DSCF2981.JPG



DSCF2982.JPG



DSCF2983.JPG



DSCF2984.JPG



DSCF2985.JPG



DSCF2986.JPG



DSCF2988.JPG



DSCF2989.JPG



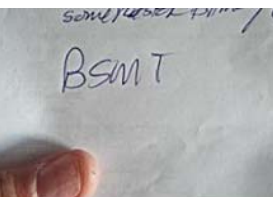
DSCF2990.JPG



DSCF2991.JPG



DSCF2992.JPG



DSCF2993.JPG



DSCF2994.JPG



DSCF2995.JPG

Admire Construction 2015



DSCF2996.JPG



DSCF2997.JPG



DSCF2998.JPG



DSCF2999.JPG



DSCF3001.JPG



DSCF3002.JPG



DSCF3003.JPG



DSCF3004.JPG



DSCF3005.JPG



DSCF3006.JPG



DSCF3007.JPG



DSCF3008.JPG



DSCF3009.JPG



DSCF3010.JPG





IMG\_7772.JPG



IMG\_7773.JPG



IMG\_7774.JPG



IMG\_7775.JPG



IMG\_7776.JPG



IMG\_7777.JPG



IMG\_7778.JPG



IMG\_7779.JPG



IMG\_7780.JPG



IMG\_7781.JPG



IMG\_7782.JPG



IMG\_7783.JPG



IMG\_7784.JPG



IMG\_7785.JPG



IMG\_7786.JPG



IMG\_7787.JPG



IMG\_7788.JPG



IMG\_7789.JPG



IMG\_7790.JPG



IMG\_7791.JPG



IMG\_7792.JPG



IMG\_7793.JPG



IMG\_7794.JPG



IMG\_7795.JPG



IMG\_7796.JPG



IMG\_7797.JPG



IMG\_7798.JPG



IMG\_7799.JPG



IMG\_7800.JPG



IMG\_7801.JPG



IMG\_7802.JPG



IMG\_7803.JPG



IMG\_7804.JPG



IMG\_7805.JPG



IMG\_7806.JPG





IMG\_7807.JPG



IMG\_7808.JPG



IMG\_7809.JPG



IMG\_7810.JPG



IMG\_7811.JPG



IMG\_7812.JPG



IMG\_7813.JPG



IMG\_7814.JPG



IMG\_7815.JPG



IMG\_7816.JPG



IMG\_7817.JPG



IMG\_7818.JPG



IMG\_7819.JPG



IMG\_7820.JPG



IMG\_7821.JPG



IMG\_7822.JPG



IMG\_7823.JPG



IMG\_7824.JPG



IMG\_7825.JPG



IMG\_7826.JPG



IMG\_7827.JPG



IMG\_7828.JPG



IMG\_7829.JPG



IMG\_7830.JPG



IMG\_7831.JPG



IMG\_7832.JPG



IMG\_7833.JPG



IMG\_7834.JPG



IMG\_7835.JPG



IMG\_7836.JPG



IMG\_7837.JPG



IMG\_7838.JPG



IMG\_7839.JPG



IMG\_7840.JPG



IMG\_7841.JPG



IMG\_7842.JPG



IMG\_7843.JPG



IMG\_7844.JPG



IMG\_7845.JPG



IMG\_7846.JPG



IMG\_7847.JPG



IMG\_7848.JPG



IMG\_7849.JPG



IMG\_7850.JPG



IMG\_7851.JPG



IMG\_7852.JPG



IMG\_7853.JPG



IMG\_7854.JPG



IMG\_7855.JPG



IMG\_7856.JPG



IMG\_7857.JPG



IMG\_7858.JPG



IMG\_7859.JPG



IMG\_7860.JPG



IMG\_7861.JPG



IMG\_7862.JPG



IMG\_7863.JPG



IMG\_7864.JPG



IMG\_7865.JPG





DSCN1740.JPG



DSCN1741.JPG



DSCN1742.JPG



DSCN1743.JPG



DSCN1744.JPG



DSCN1745.JPG



DSCN1746.JPG



DSCN1747.JPG



DSCN1748.JPG



DSCN1749.JPG



DSCN1750.JPG



DSCN1751.JPG



DSCN1752.JPG



DSCN1753.JPG



DSCN1754.JPG



DSCN1755.JPG



DSCN1756.JPG



DSCN1757.JPG



DSCN1758.JPG



DSCN1759.JPG



DSCN1760.JPG



DSCN1761.JPG



DSCN1762.JPG



DSCN1763.JPG



IMG\_0576.JPG



IMG\_0577.JPG



IMG\_0578.JPG



IMG\_0580.JPG



IMG\_0581.JPG



IMG\_0582.JPG



IMG\_0583.JPG



IMG\_0584.JPG



IMG\_0585.JPG



IMG\_0586.JPG



IMG\_0587.JPG



IMG\_0588.JPG



IMG\_0589.JPG



IMG\_0590.JPG



IMG\_0591.JPG



IMG\_0592.JPG



IMG\_0593.JPG



IMG\_0594.JPG





IMG\_1016.JPG



IMG\_1017.JPG



IMG\_1018.JPG



IMG\_1019.JPG



IMG\_1020.JPG



IMG\_1021.JPG



IMG\_1022.JPG



IMG\_1023.JPG



IMG\_1024.JPG



IMG\_1025.JPG



IMG\_1026.JPG



IMG\_1027.JPG



IMG\_1028.JPG



IMG\_1029.JPG



IMG\_1030.JPG



IMG\_1031.JPG



IMG\_1032.JPG



IMG\_1034.JPG



IMG\_1035.JPG



IMG\_1036.JPG



IMG\_1037.JPG



IMG\_1038.JPG



IMG\_1039.JPG



IMG\_1040.JPG



IMG\_1041.JPG



IMG\_1042.JPG



IMG\_1043.JPG



IMG\_1044.JPG



IMG\_1045.JPG



IMG\_1046.JPG



IMG\_1047.JPG



IMG\_1048.JPG



IMG\_1049.JPG



IMG\_1050.JPG



IMG\_1051.JPG





IMG\_1052.JPG



IMG\_1053.JPG



IMG\_1054.JPG



IMG\_1055.JPG



IMG\_1056.JPG



IMG\_1057.JPG



IMG\_1058.JPG



IMG\_1059.JPG



IMG\_1060.JPG



IMG\_1061.JPG



IMG\_1062.JPG



IMG\_1063.JPG



IMG\_1064.JPG



IMG\_1065.JPG



IMG\_1068.JPG



IMG\_1069.JPG



IMG\_1070.JPG



IMG\_1071.JPG



IMG\_1072.JPG



IMG\_1073.JPG



IMG\_1074.JPG



IMG\_1075.JPG



IMG\_1076.JPG



IMG\_1078.JPG



IMG\_1079.JPG



IMG\_1080.JPG



IMG\_1081.JPG



IMG\_1083.JPG



IMG\_1084.JPG



IMG\_1085.JPG



IMG\_1086.JPG



IMG\_1087.JPG



IMG\_1088.JPG



IMG\_1089.JPG



IMG\_1090.JPG



IMG\_1091.JPG



IMG\_1092.JPG



IMG\_1093.JPG



IMG\_1094.JPG



IMG\_1095.JPG



IMG\_1096.JPG



IMG\_1097.JPG



IMG\_1098.JPG





IMG\_1335.JPG



IMG\_1336.JPG



IMG\_1337.JPG



IMG\_1338.JPG



IMG\_1339.JPG



IMG\_1340.JPG



IMG\_1341.JPG



IMG\_1342.JPG



IMG\_1343.JPG



IMG\_1344 (1).JPG



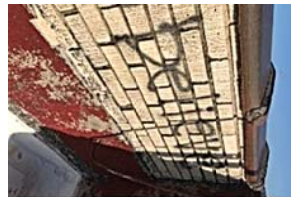
IMG\_1344.JPG



IMG\_1345 (1).JPG



IMG\_1345.JPG



IMG\_1346.JPG



IMG\_1347.JPG



IMG\_1348 (1).JPG



IMG\_1348.JPG



IMG\_1349.JPG



IMG\_1350 (1).JPG



IMG\_1350.JPG



IMG\_1351.JPG



IMG\_1352.JPG



IMG\_1353 (1).JPG



IMG\_1353.JPG



IMG\_1354.JPG



IMG\_1355.JPG



IMG\_1356.JPG



IMG\_1357.JPG



IMG\_1358 (1).JPG



IMG\_1358.JPG



IMG\_1359 (1).JPG



IMG\_1359.JPG



IMG\_1360.JPG



IMG\_1361.JPG



IMG\_1362.JPG



Wallace 2017



IMG\_1363.JPG



IMG\_1364.JPG



IMG\_1365.JPG



IMG\_1366.JPG



IMG\_1367.JPG



IMG\_1368.JPG



IMG\_1369.JPG



IMG\_1370.JPG



IMG\_1371.JPG



IMG\_1372 (1).JPG



IMG\_1372.JPG



IMG\_1373.JPG



IMG\_1374.JPG



IMG\_1375.JPG



IMG\_1376.JPG



IMG\_1377.JPG



IMG\_1378.JPG

**PROJECT CLEARANCE LETTER**

July 23, 2015

**TO:** Mr. Dan Serna, Assistant City Manager  
City of Harlingen  
City Hall 118 East Tyler Avenue  
Harlingen, Texas 78550  
Phone: (956) 216-5301  
Email: [dserna@myharlingen.us](mailto:dserna@myharlingen.us)

**SUBJECT:** Bid Number 2015-12 Asbestos Consulting Services  
**PROJECT NAME:** Old Baxter Building  
**LOCATION:** 106 South "A" Street  
Harlingen, Texas 78550

Mr. Dan Serna, Assistant City Manager:

On June 15, 2015, R & L Abatement, Inc began the removal of the designated Asbestos Containing Building Materials (ACBM) from throughout the Old Baxter Building located at 106 South "A" Street in Harlingen, Texas as regulated by The Texas Department of State Health Services (TDSHS), Texas Asbestos Health Protection Rules (TAHPR) dated February 2006 and The National Emission Standards for Hazardous Air Pollutants (NESHAP).

The designated asbestos removal was completed on schedule; all work was done in accordance with project specifications provided by ACI Environmental Consultants and in compliance with the Texas Asbestos Health Protection Rules (TAHPR) dated February 2006 and The National Emission Standards for Hazardous Air Pollutants (NESHAP).

Aggressive Clearance PCM samples were collected inside on 07-7-15 was analyzed on 07-8-15 with passing results.

On July 14, 2015, R & L Abatement, Inc began the removal of the designated Asbestos Containing Building Materials (ACBM) from throughout the Roof of the Old Baxter Building located at 106 South "A" Street in Harlingen, Texas they completed the removal on 07-22-15 as regulated by The Texas Department of State Health Services (TDSHS), Texas Asbestos Health Protection Rules (TAHPR) dated February 2006 and The National Emission Standards for Hazardous Air Pollutants (NESHAP).

Therefore with all required permits in place the Old Baxter Building located at 106 South "A" Street in Harlingen, Texas is ready for renovations to begin.

- (Please see attached field and air logs)

Sincerely,

*John Cook*

(Electronic signature)  
DSHS LIAC # 105169



TEXAS DEPARTMENT OF STATE HEALTH SERVICES

**JOHN WILLIAM COOK II DBA  
ACI ENVIRONMENTAL CONSULTANTS**

*is certified to perform as a*

**Asbestos Consultant Agency**

*in the State of Texas within the purview of Texas Occupations Code, chapter 1954, so long as this license is not suspended or revoked and is renewed according to the rules adopted by the Texas Board of Health.*

A handwritten signature in cursive script, appearing to read "David Lahey MD".

DAVID LAKEY, M.D.  
COMMISSIONER OF HEALTH

License Number: 100239

Control Number: 96723

Expiration Date: 8/2/2016

(Void After Expiration Date)

VOID IF ALTERED    NON-TRANSFERABLE



**Texas Department of  
State Health Services**

Asbestos Individual Consultant

**JOHN W COOK**

License No. 105169

Control No. 96872

Expiration Date: 6/27/2017





Sallie Burchett &lt;sallie@structuretexas.com&gt;

---

## Environmental/Asbestos Abatement related cost

---

**Serna, Dan** <dserna@myharlingen.us>

Mon, Jul 31, 2017 at 9:53 AM

To: Sallie Burchett &lt;sallie@structuretexas.com&gt;

Cc: Chris Boswell &lt;cboswell@southtexlaw.com&gt;, Daniel Sailler &lt;dsailler@mrecapital.com&gt;

Sallie,

The total cost for the **Phase I Environmental and Asbestos Abatement** total \$144,130.00 and break down as follows:

Asbestos Survey + Air Monitoring and Reporting during Abatement	= \$	9,310.00
Environmental Risk Assessment	= \$	1,700.00
Asbestos Abatement Contractor	= \$	107,120.00
Change order for <b>new roofing system and addl asbestos work</b>	= \$	26,000.00

Let me know if you have any questions or need additional information.

**Dan Serna, CPM****City Manager****City of Harlingen****Harlingen, Texas 78550****[dserna@myharlingen.us](mailto:dserna@myharlingen.us)****(956) 216-5002**

***This e-mail may contain confidential and/or privileged information. If you are not an addressee or otherwise authorized to receive this message, you should not use, copy, disclose or take any action based on this e-mail or any information contained in this message. If you have received this material in error, please advise the sender immediately by reply e-mail and delete this message.***



**Development Experience of Historic Properties**  
**MRE Capital, LLC**

**Previous Historic Projects**

1. Cold Storage Lofts, Kansas City, Missouri (developer)
2. Brand Ice Building Omaha, Nebraska (developer)
3. Surety Apartments, Muskogee, Oklahoma (developer)
4. Besse Apartments, Pittsburg, Kansas (developer)
5. Dale Lofts, Guymon, Oklahoma (developer and owner)
6. Will Rogers Apartments in Claremore, Oklahoma (developer and owner)
7. Berry Hill Apartments in Sapulpa, Oklahoma (developer and owner)
8. Aldridge Apartments in McAllister, Oklahoma 58.55% complete (developer and owner)
9. Parrish Lofts in Pratt, Kansas (developer and owner)
10. Laguna Hotel Lofts Cisco, Texas 25% complete (developer and owner)
11. Conrad Lofts Plainview, Texas 25% complete (developer and owner)

**Project References**

- Brad Blankenship - Building Inspector Pratt, Kansas
- Jeri Koehler - EDC Executive Director Claremore Oklahoma
- Ted Fisher - EDC Executive Director Sapulpa, Oklahoma
- Kimberly Meek - Former City Manager of Guymon Oklahoma current CM City of Duncan
- John Diers - EDC Executive Director Cisco, Texas
- Mike Fox - EDC Executive Director Plainview, Texas

# Exhibit D



August 30, 2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Re: Board Appeal Supplemental Information Baxter Lofts, Harlingen TDHCA App. #17010

Dear Mr. Irvine:

Please accept this supplement to the Baxter Lofts appeal submitted July 31, 2017, to provide to the TDHCA Governing Board. We contend that the application and deficiency response met the requirements of the Rules and QAP as evidenced in the attached PCA providers' certifications. Please note that the information provided in the appeal was not new information but, rather a clarification to demonstrate how the PCA and the PCA supplement met the Rule requirements.

Besides regulatory compliance, Baxter Lofts offers so much more for Region 11. The structure has been sitting vacant for 30 years and is the tallest building in downtown Harlingen. At 9 stories, it is over twice the size of its neighbors. The restoration of the Baxter Building - without a doubt - would be the most significant contribution to the revitalization of downtown Harlingen. The revitalization of the empty historic treasure in a burgeoning downtown embodies TDHCA's mission statement "to help Texans achieve an improved quality of life through the development of better communities".

I am attaching community letters of support that echo this statement from Senator Eddie Lucio, Jr., State Representative Eddie Lucio III, State Representative Oscar Longoria, Boys & Girls Club of Harlingen, Chamber of Commerce, Habitat for Humanity, Harlingen Economic Development Corporation, Loaves & Fishes, and the United Way. Included are images that demonstrate the visual and architectural significance to downtown Harlingen. Detailed testimony of the catalytic economic impact of rejuvenating a significant historic landmark in two cities (two 2016 HTC projects) is also included.

We have learned since the deficiency process that TDHCA wanted a better picture of the condition of the existing building. However, we maintain our position that the full development picture submitted at application and through the deficiency process met the minimum requirements of the Rules and QAP.

Thank you for your consideration.

Sincerely,

Sallie Burchett  
Consultant to the Project



July 31, 2017

Daniel Sailer  
Baxter Housing Partners, LP  
8901 State Line Road, Suite 250  
Kansas City, MO 64114

RE: Baxter Lofts, Harlingen, TX

Dear Mr. Sailer,

Since inception in 1998, Wallace Architects, LLC has performed over 200 PCAs, CNAs and/or PNAs, all with similar formatting and content. Specifically, we have completed (6) PCAs in Texas over the last three years with two of those making it through full underwriting in 2016 and currently under construction. Until this year in Texas, we have never had a PCA, CNA or PCA not accepted outright by any State agency based upon formatting or content.

Historic gut rehab developments, such as Baxter Lofts, are unique in regards to overall existing building systems analysis, scope of work compilation and reserve replacement schedule documentation at the PCA stage. In historic buildings like this, generally 95%+ of the interior, non-structural existing systems are more than three or four times expired based upon estimated useful life analysis and in most cases, in dire need of replacement. Many historic buildings, like Baxter Lofts, that are contemplated for rehabilitation have only their exterior masonry façade and structure/super structure, elevator shaft/stairwells and in some cases historic corridor that is worth salvaging. Since 95%+ of the interior, non-structural systems are to be replaced as new in year one for a project like this, the scope of work is extensive (almost like new) and the reserve replacement schedule nearly looks like that of a brand new building. Items that are obviously in need of replacement are therefore not a point of focus of a PCA, CNA or PNA review such as this.

Similar recent (last 3 years) Historic specific PCAs, CNAs and PNAs under Wallace direction, that have been approved with rehabilitation about to start, under construction or completed include the following:

Laguna Lofts Historic Rehabilitation – Cisco, TX  
Conrad Hilton Lofts Historic Rehabilitation – Plainview, TX  
Community Place Historic Rehabilitation – Ponca City, OK  
Cherry Apartments Historic Rehabilitation – Waterbury, CT  
Aldridge Apartments Historic Rehabilitation – McAlester, OK  
Berryhill Apartments Historic Rehabilitation – Sapulpa, OK  
Will Rogers Lofts Historic Rehabilitation – Claremore, OK  
Dale Hotel Historic Rehabilitation – Guymon, OK  
Parrish Hotel Historic Rehabilitation – Pratt, KS  
Carroll Building Historic Rehabilitation – Waterbury, CT

Please contact our office if you have any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Kleffner". The signature is fluid and cursive.

Michael J. Kleffner, AIA, NCARB  
LEED AP – BD&C



July 31, 2017

Daniel Sailler  
Baxter Housing Partners, LP  
8901 State Line Road, Suite 250  
Kansas City, MO 64114

RE: Baxter Lofts, Harlingen, TX

GIBCO has performed over 400 PCAs since 1996 and over 30 in Texas. GIBCO had at least four (4) make it through underwriting in 2017, at least three (3) in 2016, and previously never had any not accepted. We maintain an extensive database of construction and rehabilitation costs and supplement these with current cost data from R. S. Means as well as cost information from contractors.

We assisted in the preparation of a supplement to the original PCA prepared for your project by Wallace Architects. The purpose of the supplement was to provide all of the information required by §10.306. Specifically, the supplement was prepared in accordance with ASTM E 2018 and complied with §10.306:

1. It contained useful life estimates of all components that were not being completely built new.
2. It discussed Code Compliance and adequately considered the costs of compliance.
3. The report included all costs necessary to comply with program rules.
4. Accessibility Requirements were addressed and costs included.
5. The stated scope of work was used to estimate the total costs.
6. The PCA provider signed the PCA Cost Supplement.
7. The immediate renovation and rehab requirements were included as well as a 30-year analysis of repairs and replacement over time.

If there are any questions, please let us know.

Sincerely,



**Jim Howell, Senior Analyst**

# THE SENATE OF TEXAS

STATE CAPITOL, 3S.5  
AUSTIN, TEXAS 78711  
(512) 463-0127

1210 W. INTERSTATE 2, STE. 10  
PHARR, TEXAS 78577  
(956) 787-5227



7 NORTH PARK PLAZA  
BROWNSVILLE, TEXAS 78521  
(956) 548-0227

700 FM 3168  
RAYMONDVILLE, TEXAS 78580  
(956) 689-1860, EXT. 230

SENATOR  
EDDIE LUCIO, JR.

August 30, 2017

Mr. J.B. Goodwin, Chairman  
Texas Department of Housing and Community Affairs (TDHCA)  
221 East 11th Street  
Austin, Texas 78701

RE: Letter of Support for Harlingen's Baxter Lofts, #17010

Dear Chairman Goodwin and Members of the TDHCA Board,

Please accept this correspondence as my full support to the City of Harlingen on a formal appeal before you on housing tax credit project, #17010 Baxter Lofts. Because of the critical affordable housing needs that we have in our region and the importance of this housing tax project to Harlingen, I respectfully request that the Board consider the substantive merits of the matter before you and approve the formal appeal.

My longstanding support for this affordable housing endeavor is well documented with TDHCA and evidenced through the letter of support I submitted to your Board on May 23, 2016. As I shared with you then, I restate today, this project is well-deserving of the state's support. I hope that after reviewing the substantive elements of the appeal that you will agree that Harlingen's effort to preserve and revitalize the historic downtown Baxter Loft property by converting it into an affordable housing project, which will provide needed housing to low-income families, is a commendable endeavor. For these reasons, I respectfully request that the Board to take into consideration the community wide support that this project has garnered, especially the stakeholders, institutions and partners that have come together in support of this noteworthy effort (e.g., Habitat for Humanity, United Way, Harlingen Chamber of Commerce, and the Harlingen Boys & Girls Club) while you review the substantive merits of the appeal.

In closing, I thank you for providing me the opportunity to reaffirm my support to the City of Harlingen's effort to revitalize the downtown area by transforming the Baxter Loft property into an affordable housing project. With the housing needs of my district in mind, I respectfully ask that the Board focus on the fundamental elements before you and hope that you see the appeal in a favorable light. Please do not hesitate to contact me at (956) 548-0227 if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Eddie Lucio, Jr." in a cursive script.

Eddie Lucio, Jr.  
State Senator



# Texas House of Representatives



**EDDIE LUCIO III**

DISTRICT 38  
CAMERON COUNTY

August 30, 2017

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

Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is an important part of the City of Harlingen's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and secure the future prosperity of the city for our growing population.

Baxter Lofts is a much-needed project not only because it will offer low-income housing, but because it will allow the community to keep and reuse an integral community landmark. Again, I strongly support this project and can attest to the hard work and strategic planning that has gone into the City of Harlingen's goals.

If I can be of further assistance, please do not hesitate to contact my office at (512) 463-0606.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio III". The signature is enclosed in a thin black rectangular border.

Eddie Lucio, III  
State Representative  
District 38



---

STATE REPRESENTATIVE  
**OSCAR LONGORIA**

---

DISTRICT 35

August 28, 2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), State Representative Oscar Longoria (35), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and secure the future prosperity of the city for our growing population.

Our community has a sincere desire to preserve the City's history and culture through the renovation of this building, while offering our citizens affordable housing. Baxter Lofts is a much-needed project not only because it will offer low-income housing, but because it will allow the community to keep and reuse an integral community landmark. I believe wholeheartedly in this project and I know the need from the community is there, as is the commitment from the City -- making for a wonderful partnership, while preserving a community treasure.

I thank you in advance for your time in considering my request for this appeal. Please do not hesitate to contact me at (956) 797-2101, should you have any questions or wish to further discuss my request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Longoria".

Oscar Longoria  
State Representative  
House District 35





## BOYS & GIRLS CLUB OF HARLINGEN

1209 W. WASHINGTON - P.O. BOX 1982

HARLINGEN, TEXAS 78551

956-428-4183 • FAX (956) 428-2544

E-MAIL: [bclub@rgv.rr.com](mailto:bclub@rgv.rr.com)

8/18/2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.


This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and to secure the future prosperity of the city for our growing population.

We believe that Harlingen has a strong need for housing that is affordable for its citizens of modest means and has a sincere desire to preserve the City's history and culture through the renovation of this building. Baxter Lofts will most help the City meet that need.

If I can be of further help in this matter, please let me know.

Sincerely,

  
Lupita Muniz  
Chief Volunteer Officer

  
Gerald Gathright  
Chief Professional Officer



---

311 East Tyler Avenue | Harlingen, Texas 78550 | 956-423-5440

August 18, 2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and to secure the future prosperity of the city for our growing population.

We believe that Harlingen has a strong need for housing that is affordable for its citizens of modest means and has a sincere desire to preserve the City's history and culture through the renovation of this building. Baxter Lofts will most help the City meet that need.

If I can be of further help in this matter, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Gonzales".

Chris Gonzales  
President & CEO



08/18/2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and to secure the future prosperity of the city for our growing population.

We believe that Harlingen has a strong need for housing that is affordable for its citizens of modest means and has a sincere desire to preserve the City's history and culture through the renovation of this building. Baxter Lofts will most help the City meet that need.

If I can be of further help in this matter, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wayne Lowry".

Wayne Lowry, *Executive Director*

Rio Grande Habitat for Humanity  
412 W. Ash Ave.  
McAllen, TX 78501  
(956) 686-7455  
[www.habitatrgv.org](http://www.habitatrgv.org)



August 23, 2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

On behalf of the Board of Directors of the Development Corporation of Harlingen, Inc., I would like to express our organization's support for TDHCA #17010 Baxter Lofts and request that the Applicant's appeal for reconsideration and approval of the State's Tax Credit Program be approved.

The Baxter Building is currently a dilapidated structure that needs a new purpose and facelift. Rather than it being a blight to Harlingen's otherwise thriving downtown area, your approval of the Applicant's participation in the Tax Credit Program will give this building and the entire downtown area new life. Developers usually shy away from revitalization projects in smaller communities, but we have one developer who is willing to take their expertise and skills to task and turn this one building into a centerpiece for our downtown. These types of opportunities don't come around too often, and we believe it is an effective use of public funds to remove blight and improve our community's standard of living by changing the use of this property to the private sector.

We also have a need for additional affordable housing in our community. To add this revitalized building to the inventory of affordable places to live would be beneficial to the future residents and to the local businesses as well. The Development Corporation of Harlingen, Inc. stands in support of this revitalization effort versus the alternative to allow the building to sit and continue to decay. We urge you to consider helping us change downtown for the betterment of the citizens of Harlingen.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in blue ink that reads 'Raudel Garza'.

Raudel Garza  
Manager and Chief Executive Officer  
Development Corporation of Harlingen, Inc.





# Help & Hope for the Hungry, the Homeless & the Hurting

Year of the Great Physician



August 18, 2017

**Board of  
Directors, 2017**

- Minerva Simpson,  
President*
- John Butler,  
Vice-President*
- Secretary*
- Jessica Montalvo,  
Treasurer*
- Jeffry Adickes*
- Ricky Leal,  
Past President*
- Tina Briones*
- Linda Broyles*
- Norlene  
Chamberlain*
- JaAnn Cleckler*
- Ned Cooley*
- Gilbert Gonzales*
- David O'Brien*
- Charles Palmer*
- Mary Jo Vela*
- Eric Ziehe*

**Advisory Board**

- Frank Boggus*
- Velma Bowman*
- Matt Gorges*
- Col. Glenn Hill*
- Edd Kerkow*
- Greg Quisenberry*

**Executive Staff**

- Pastor Bill Reagan,  
CEO*
- Melissa Gutierrez,  
COO*

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine:

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and to secure the future prosperity of the city for our growing population.

We believe that Harlingen has a strong need for housing that is affordable for its citizens of modest means and has a sincere desire to preserve the City's history and culture through the renovation of this building. Baxter Lofts will most help the City meet that need.

If I can be of further help in this matter, please let me know.

Sincerely,





United Way of  
Northern Cameron County

P.O. Box 531227 • Harlingen, Texas 78553-1227  
956-423-5954 • Fax 956-423-2001 • [unitedwayncc@yahoo.com](mailto:unitedwayncc@yahoo.com)  
[www.unitedwayincameronwillacy.org](http://www.unitedwayincameronwillacy.org)



August 18, 2017

Mr. Tim Irvine, Executive Director  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

RE: Baxter Lofts, Harlingen, TDHCA 17010

Dear Mr. Irvine,

I am writing this letter to express support for TDHCA #17010 Baxter Lofts and to respectfully request that the Board grant the Applicant their appeal. This affordable housing development will serve the great community of Harlingen in Cameron County and is the result of planning efforts that began in 2015 to bring affordable housing to the city while also preserving a historic landmark in the downtown area. These collaborative efforts involve the support of the City, State Representative Eddie Lucio III (38), and their various institutions and partners including the Boys & Girls Club of Harlingen, Habitat for Humanity, Loaves & Fishes, United Way, and the Harlingen Chamber of Commerce.

This development is to be located at the historic Baxter Building, which at 9 stories is the tallest building in Harlingen. The redevelopment of this building is integral to Mayor Chris Boswell and the City's goals of revitalizing the downtown area, restoring historic landmarks, and stimulating economic activity in the City's central business district. Through the combined, multi-million-dollar investment from MRE Capital and the support of the State of Texas' Tax Credit program, the City of Harlingen will be able to restore vibrancy to its city center and to secure the future prosperity of the city for our growing population.

We believe that Harlingen has a strong need for housing that is affordable for its citizens of modest means and has a sincere desire to preserve the City's history and culture through the renovation of this building. Baxter Lofts will most help the City meet that need.

If I can be of further help in this matter, please let me know.

Sincerely,

Jessica Belschner  
Executive Director





# Cisco Development Corporation

A partner to help your business and improve Cisco

Governing Board  
Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

August 30th, 2017

Dear Chairman Goodwin and Board Members:

**Cisco, Texas has been dealing with a huge deteriorating eyesore in the midst of our downtown for decades.**

But we finally got lucky, resulting from a call made by MRE Capital, an investment group out of Kansas City, Missouri.

In 2004, our old eight story Laguna Hotel was purchased from our college by a private citizen, with intentions of flipping the property for financial gain. It had been setting vacant and deteriorating for years prior to its purchase. The Laguna subsequently became and remained stagnant and abandoned with no upkeep for many years. The property was destined to be abandoned by the investor since there was no interest in purchasing the property - but taxes kept accruing. It was a money pit....

At some point, the previous investor was bound to walk away from the property and leave it to taxing entities to demolish. There is no demand for a property that could not cash-flow and had no income whatsoever. Demolition had been estimated to cost in the neighborhood of \$1.5 million or more. We are like many small rural towns under 5,000 population - we simply don't have the funds or resources to take on such a project. It became a persistent problem and aesthetic negative for our town and the area. Some of the younger generations and as well as some undesirables would regularly break in, using the boarded-up building for drug trafficking and consumption - and other unpleasant and illegal activities.....*but what can you do?*

Resulting from MRE's purchase, the property is now being converted from what was likely to be a million dollar plus liability into an \$8 million dollars asset for our town. It will not only benefit us with significant real estate taxes but will also provide us with much needed housing. Like many communities our size, we don't have adequate suitable housing. Speculative builders are not coming here when they can build in the larger cities and metropolitan areas where sales values are higher along with greater demand. New housing will bring in new residents - and the ***future economic impact is tremendous.***

Programs such as state and federal tax credits are tremendously important to small communities and need to be expanded - not complicated or shrunken. This has become a tremendous blessing for Cisco - and other communities have a need for this to happen, as well!

I would welcome any questions regarding this project and what it has done and what it will continue to provide for Cisco for many decades to come.....

Best regards,

John Diers  
Executive Director





## **PLAINVIEW/HALE COUNTY**

**ECONOMIC DEVELOPMENT CORPORATION**

**1906 W 5TH • PLAINVIEW, TEXAS 79072 • 806-293-8536**

Texas Department of Housing and Community Affairs Governing Board  
Mr. J. B. Goodwin, Chairman  
221 E. 11<sup>th</sup> St.  
Austin, Texas 78701-2410

Dear Chairman Goodwin and fellow members,

My name is Mike Fox. I am the executive director of the Plainview-Hale County Economic Development Corporation. I want to share a bit of information about our community and our efforts to improve the quality of life for our citizens. In early 2013 our largest employer (2,000 workers), Cargill Meat Solutions closed their beef processing facility. This sent our community into an economic tail spin that we are still struggling to overcome. In an effort to replace a portion of those lost jobs I spend a great deal of time recruiting companies to re-locate or expand to our area.

In hosting site selection consultants or representatives of companies interested in coming here, a tour of our downtown area is part of the agenda. Our tallest building in downtown is the 8 story Hilton Hotel constructed in 1929 and vacant since the mid 1980's. Over time the building has been vandalized, windows broken and in general a community eyesore. That often served as the prospects first impression of our city. However, this is all changing since your department approved MRE Capital's Conrad Lofts project last year. This project has given a community that needed something good to happen a reason to believe in a promising future. Not only will this help revitalize our downtown area it will also be helpful in my efforts to recruit new industry while providing affordable housing to many of our deserving citizens.

Economic development comes in many forms. Conrad Lofts and proposed projects like it, including Baxter Lofts have a pivotal economic and social impact on communities like ours.

Sincerely,

A handwritten signature in blue ink that reads "Mike Fox". The signature is fluid and cursive, with the first name "Mike" and the last name "Fox" clearly legible.

Mike Fox, Executive Director



16034 Conrad Lofts, Plainview, Texas Under Construction (2016 HTC Award, MRE Capital)









fb Search

Events

Events

Calendar

Birthdays


Discover

Past

Jackson Street Days

+ Create Event

Mobile



Valley Morning Star  
Like This Page · November 7, 2015 ·

At Jackson Street Market Days.

Like Comment Share

2

OUR GIRLS Write a comment... 📷 🗨️ 🗨️ 🗨️

7e



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#17431 Commissioners' Corner Phase II, El Paso)

**RECOMMENDED ACTION**

**WHEREAS**, a 4% Housing Tax Credit ("HTC") application for Commissioners' Corner Phase II, sponsored by the Paisano Housing Redevelopment Corporation, was submitted to the Department on June 23, 2017, which was the 75-day deadline to be placed on the September 7, 2017, Board meeting agenda;

**WHEREAS**, the proposed issuer of the bonds is Alamito Public Facilities Corporation ("PFC") and their inducement resolution was adopted on June 28, 2017;

**WHEREAS**, 10 TAC §10.201(2)(B) of the Uniform Multifamily Rules requires that for applications designated as Priority 3 by the Bond Review Board ("BRB") the HTC application will not be accepted until after the issuer has induced the bonds, with such documentation to be included in the application;

**WHEREAS**, this application is part of a reconfiguration of an application that received a 2016 Competitive HTC allocation as two developments, one with 9% HTC and the other with bonds and 4% HTC;

**WHEREAS**, staff did not initially find that the reconfiguration of the original 2016 9% allocation into two financially distinct transactions, one of which is the subject 4% tax credit with Tax-Exempt Bonds, was necessary for completion of the original proposed development;

**WHEREAS**, based on ongoing discussions with the developer and lender in working through some initial concerns regarding the structure of the transaction, staff was aware of the intent to submit the 4% HTC application prior to application and inducement deadlines; however, due to posting requirements of the issuer the inducement resolution was not obtained as required under 10 TAC §10.201(2)(B) prior to the June 23, 2017, submission deadline;

**WHEREAS**, a waiver of 10 TAC §10.201(2)(B) is warranted as the Department endeavors to assist the 2016 allocations to remain financially viable after the downturn in the equity markets last fall and staff was able to complete an evaluation in time for this Board meeting;

**WHEREAS**, the Certificate of Reservation from the Texas Bond Review Board was issued on July 20, 2017, and will expire on December 17, 2017;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large portfolio Category 3 and deemed acceptable, with conditions, by the Executive Award and Review Advisory Committee (“EARAC”) after review and discussion;

**WHEREAS**, EARAC considered the proposed application and concluded that they could neither recommend approval nor denial of the proposed development without prior Board action on the related amendment request on this agenda as item 6 a), which will impact the feasibility of this Development;

**WHEREAS**, if the Board approves the amendment request, EARAC recommends approval of this application at the amount and with the conditions described; and

**WHEREAS**, if the Board denies the amendment request, this development described in this application will not be able to operate independently, and EARAC recommends denial;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$538,417 in 4% Housing Tax Credits, as presented to the Board for its consideration this meeting, includes necessary waivers of existing rules pursuant to the Board's prior action at the March 2017, Board meeting, is hereby \_\_\_\_\_ and any approval is subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website and the following conditions resulting from the previous participation review:

1. Correction of uncorrected HH Income above Limit and Social Service events at North Mountain Village (ID 4249/HTC 05060) by November 1, 2017.
2. The Housing Authority of the City of El Paso ("HACEP") agrees to ensure that the Compliance Monitoring and Tracking System ("CMTS") is updated with current and correct contact information within 10 days of a change. Quarterly reviews of CMTS should be conducted to ensure a responsible party is properly identified as the Owner contact for all affiliated Developments.
3. HACEP will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.
4. HACEP agrees that for future applications submitted through December 31, 2018 a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted as part of the application.

### **BACKGROUND**

*General Information:* Commissioners’ Corner Phase II, proposed to be located at 10700 Montana Avenue in El Paso, El Paso County, involves the new construction of 92 units of which 62 will be rent and income

restricted at 60% of Area Median Family Income (“AMFI”), 20 will be rent and income restricted at 50% AMFI, and the remaining 10 units will be income restricted at 30% AMFI. The development will serve the general population and the site conforms to the current zoning. The census tract (0103.03) has a median household income of \$41,250, is in the second quartile, and has a poverty rate of 14.1%.

The Development will be the second phase to Commissioners’ Corner, a 9% HTC development that received an award in 2016. The applicant experienced difficulty regarding the Development’s feasibility due to unforeseen changes in the equity and debt markets in early 2017. In order to preserve the award, the applicant has requested to reduce 185 units originally proposed for Commissioners’ Corner by half, thereby requesting an amendment to the 9% award, and include 92 of those units in a 4% HTC application. Both phases will be developed simultaneously and are part of the Rental Assistance Demonstration program where the Housing Authority of the City of El Paso will replace obsolete public housing and relocate tenants.

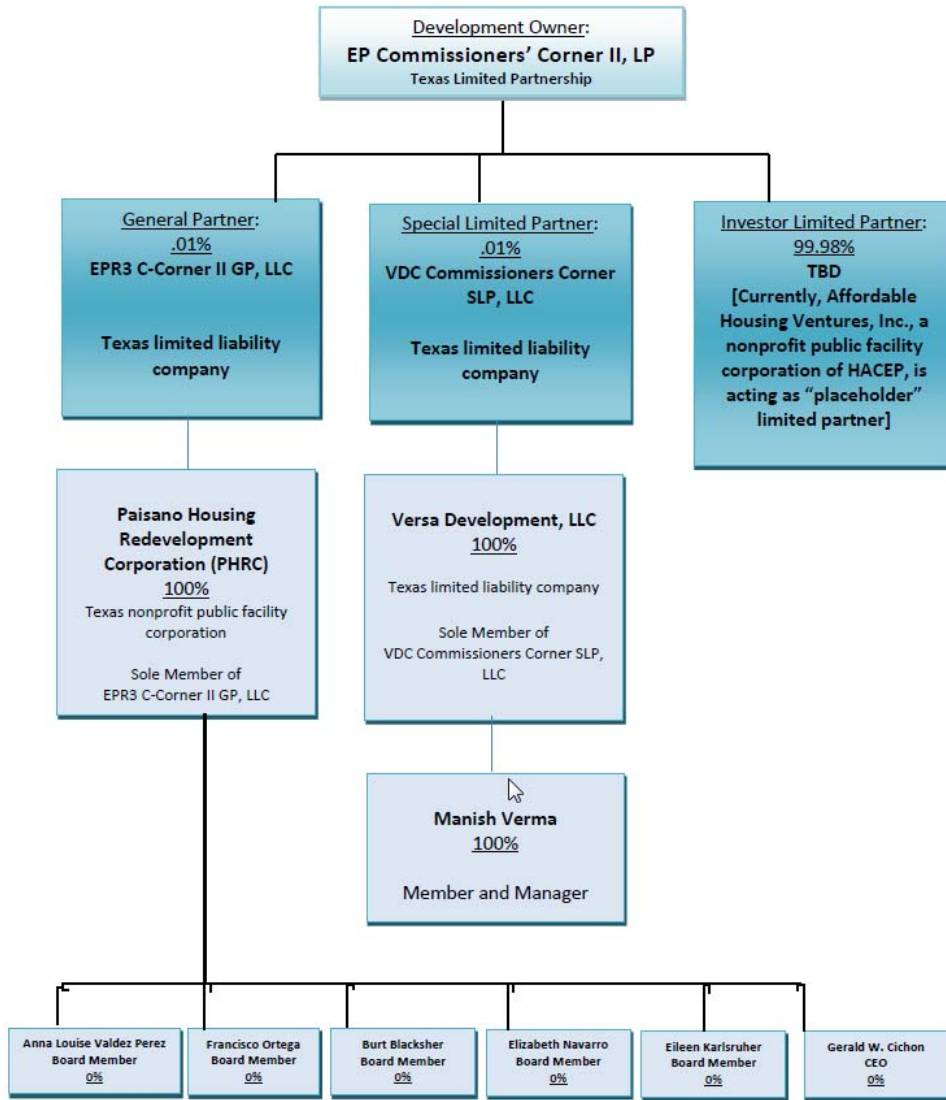
In May 2017, staff began having formal discussions with the developer and lender regarding the proposed structure of Commissioner’s Corner. The amendment relating to the original 9% award is on the Board agenda today (with a neutral staff recommendation) and the subject of this award is the 4% HTC piece. In response to the downturn in the equity markets last fall, staff presented an action item to the Board in March 2017, which identified several ways the Department could endeavor to assist those 2016 allocations that were struggling to maintain their equity pricing and remain financially viable. Although the structure proposed in this application, effectively splitting the 2016 allocation into two developments and financing through separate mechanisms, was not one of the tools identified by staff in that action item, staff has spent the past several months evaluating the proposal and how it could work under the rules currently in effect. It wasn’t until the logistics of how it could work were solidified did the applicant finalize its plans to submit the 4% HTC application. Based on the various deadlines that required some navigation, staff identified the need for a waiver pertaining to 10 TAC §10.201(2)(B). The application was submitted in a timeframe that adhered to the 75-day deadline which allowed staff the time it needed to evaluate the application; however, the application was submitted without evidence that the request for bond volume cap had been approved by the issuer. Staff was aware of the intent to submit the application and was aware that the request had been placed on the issuer’s Board agenda for consideration at the time the HTC application was submitted. Moreover, considering the partnership of the applicant and the issuer in this transaction, staff believes the constraints in obtaining the inducement resolution were primarily related to the posting requirements and deadlines associated with the issuer’s Board meeting. Staff believes the circumstances surrounding this request comport with 10 TAC §10.207 and recommends a waiver of 10 TAC §10.201(2)(B) be granted if the Board approves the related amendment request.

While the Board action in March 2017, was broad, it is unclear that the specifics of the proposed reconfiguration falls within the rule waivers identified in that action. The Department’s rules do not provide for the complete reconfiguration of a site and development financing plan with the same amount of housing tax credits as were originally awarded while resulting in less units nor do the Department’s rule contemplate the original units under a different financing scenario (the subject of this action item). Any such approval therefore is subject to the Board’s discretion, if any, in rule making.

*Organizational Structure and Previous Participation:* The Borrower is EP Commissioners’ Corner II, LP, and includes the entities and principals as indicated in Exhibit A. The applicant’s portfolio is considered an Extra Large Category 3 and the previous participation was deemed acceptable by the EARAC subject to the aforementioned conditions after review and discussion. EARAC also reviewed the proposed financing and the underwriting report, and recommends issuance of a Determination Notice.

*Public Comment:* The Department received a letter of opposition from State Representative Joseph C. Pickett and no letters of support were received.

# EXHIBIT A



7f

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation, discussion, and possible action regarding alternative financing structures under the 2017-1 Multifamily Direct Loan Notice of Funding Availability.

**RECOMMENDED ACTION**

**WHEREAS**, the 2017-1 Multifamily Direct Loan Notice of Funding Availability (“2017-1 NOFA”) was approved at the Board meeting on December 15, 2016 and has subsequently been amended several times;

**WHEREAS**, 10 TAC Chapter 13, concerning the Multifamily Direct Loan Rule, was also approved at the Board meeting on December 15, 2016;

**WHEREAS**, the Department has typically awarded Direct Loan funds as construction-to-permanent loans, whereby a borrower closes on the loan prior to construction start, draws down the funds over the course of construction, and then the entirety of the funds drawn converts to a permanent loan with a monthly or annual repayment for a term of 15 to 40 years;

**WHEREAS**, a borrower has requested that the Department explore the use of Direct Loan funds as a construction loan only that would be repaid 24 to 36 months from loan closing; and

**WHEREAS**, while not explicitly prohibited by the 2017-1 NOFA or Multifamily Direct Loan Rule, this type of loan structure is different enough from how the Department typically structures its Direct Loans that staff believes that this departure from the normal course of business deserves Board consideration and approval to explore this structure;

**NOW, therefore, it is hereby**

**RESOLVED**, that staff may continue to explore this loan structure in such a way that does not expose the Department to undue risk and in such a way that all necessary federal and state requirements continue to be met;

**FURTHER RESOLVED**, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

A potential Direct Loan awardee contacted staff several weeks ago about potentially using the Direct Loan funds as a construction loan only rather than the construction-to-permanent loan structure that the



Department typically utilizes. The applicant proposed drawing down the entirety of the Direct Loan funds at loan closing prior to construction start and paying a nominal interest rate over the 24-36 month course of construction. The loan would then be paid off in full upon rent stabilization, such as 90 days at 90% occupancy or closing of the permanent financing. The reason for this request, according to the applicant, is that using the Direct Loan funds as a bridge/construction loan would allow some of the equity contributions to be deferred until later in construction, thereby increasing the equity price. In order to achieve what the applicant is requesting, the Board would have to waive 10 TAC §13.11(p)(3) and (9), which requires that no more than 50% of the Direct Loan award be drawn in the first draw and that the remaining 50% be drawn in accordance with construction completion.

Staff believes that further discussion with the applicant will result in a mutually agreeable loan structure that achieves Department objectives while not exposing the Department to undue risk. Any further direction from the Board will be incorporated into the loan structure discussion with the applicant.

8a

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and directing its publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

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

**WHEREAS**, the Department, as required by §42(m)(1) of the Internal Revenue Code and Tex. Gov’t Code §2306.67022, developed this proposed Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

**WHEREAS**, pursuant to Tex. Gov’t Code, §2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30;

**NOW, therefore, it is hereby**

**RESOLVED**, that the proposed amendment of 10 TAC Chapter 11, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

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

**BACKGROUND**

*General Information:* Attached to this Board Action Request is the staff draft of the 2018 proposed Qualified Allocation Plan (“QAP”), which reflects staff’s recommendations for the Board’s consideration. Beginning in December of 2016, staff began meeting with stakeholders to discuss this coming year’s QAP and Uniform Multifamily Rules. Staff and stakeholders met a total of six times and discussed items such as dispersion and underserved area, equity pricing, opportunity areas, visitability, and financial feasibility. Staff also posted several items to the Department’s Online

Forum, where stakeholders were invited to comment on aspects of the QAP and Rules and new proposals from staff. Staff made a concerted effort in the month of August to solicit stakeholder input on the staff draft of the 2018 QAP. Staff published a staff draft on August 11, 2017, and stakeholders were invited to submit their input by letter, email, or phone. The first window for receiving input closed on Wednesday, August 23, 2017, at 5:00 p.m. Austin local time. Staff released another draft on Tuesday, August 29, 2017, and invited stakeholders to submit more feedback through the morning of Thursday, August 31, 2017. Staff received input from many stakeholders, including the development community, advocates, and government officials. Lastly, the QAP and Rules Committee of the Governing Board was, at the time of the posting of these materials, set to hold a meeting on Wednesday, September 6, 2017, to discuss the staff drafts of the 2018 QAP and Rules.

After consideration of the input and feedback provided and after evaluating the 2017 application round, staff believes that the proposed 2018 QAP will serve the State of Texas' interests well, furthering the policies of both statute and the Board. In keeping with those policies, staff has proposed changes to specific sections of the QAP. A more detailed breakdown of the specific changes is included below. Staff believes that in proposing these modifications and keeping all other items in the QAP the same, stakeholders can better formulate plans for future developments instead of trying to anticipate what changes will be made to the QAP.

Rule-Making Timeline: Upon Board approval, the final staff draft of the proposed 2018 QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 22, 2017, and October 12, 2017. The QAP will be brought before the Board in November for approval, followed by the statutorily mandated submission to the Office of the Governor by November 15, 2017, for him to approve, approve with changes, or reject. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than December 1, 2017, the adopted QAP will be published in the *Texas Register*.

Statutory Changes: Significant changes in the 2018 Draft QAP include the incorporation of statutory changes made during the 85<sup>th</sup> Legislative Session. These changes include the following:

House Bill 3574 amended language in Tex. Gov't Code §2306.6710(a) as follows:

“

(a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by the board in the qualified allocation plan. Educational Quality may be considered by the department as part of the threshold criteria but shall not be considered by the department as a scoring factor. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

(b) Effective September 1, 2019, Section 2306.6710(a), Government Code, is amended to read as follows:

(a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by the board in the qualified allocation plan. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

SECTION 2. The change in law made by this Act applies only to an application for low income

housing tax credits that is submitted to the Texas Department of Housing and Community Affairs during an application cycle that is based on the 2018 qualified allocation plan or a subsequent plan adopted by the governing board of the department under Section 2306.67022, Government Code. An application that is submitted during an application cycle that is based on an earlier qualified allocation plan is governed by the law in effect on the date the application cycle began, and the former law is continued in effect for that purpose.

SECTION 3. Not later than September 1, 2019, the department shall report the outcome of considering Educational Quality in threshold and not as a scoring factor in an application.

SECTION 4. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.”

In response to this legislation, staff has removed the Educational Quality scoring item from the Qualified Allocation Plan and from Tie-Breaker Factors. In order to comply with Section 3 of the bill, applicants will continue to be required to supply information regarding school scoring in their applications, so that data will be available to compile the required report.

Summary of Proposed Changes: The majority of the amendments to the 2018 QAP center on clarifying rules and Board policies. More significant recommendations by staff—primarily those that can be considered changes of policy—are described below. Citation and page references are indicated for ease of reference.

**§11.1 – General** (*Page 1 of 43*). Subsection (g) was added with the intention of encouraging the submission of complete and accurate Applications, and to make the Application process as fair and transparent as possible.

**§11.2 – Program Calendar** (*Page 3 of 43*). This section is modified to reflect dates for the 2018 Application round. The only significant change is staff proposing an earlier Third Party Request for Administrative Deficiency deadline of 05/01/2018.

**§11.3 – Housing De-Concentration Factors** (*Page 4 of 43*). Regarding subsection (a), staff has added language that determines which Applications will be deemed priority and non-priority if two or more Applications seem to violate this rule. Staff has proposed to remove the population requirement for subsection (d), which means that the Department will disqualify any census tract where the number of HTC units per total households is greater than 20%, not just those Places with a population above 100,000 people. This limitation, of course, can be waived with the appropriate letter from the applicable Governing Body. Lastly, staff has added language regarding the proximity of nearby Development Sites in subsection (f), with the aim of protecting existing Developments from market saturation.

**§11.4 – Tax Credit Request and Award Limits** (*Page 6 of 43*). With the added language in subsection (a), staff has proposed that Applicants must limit their total credit request to \$3 million by June 29<sup>th</sup>. Staff believes that this request must be made of Applicants in order to encourage the submission of real, competitive Developments. Otherwise, staff is concerned that an Applicant with multiple Applications totaling well over the \$3 million cap will use the waiting list as a means of “insurance” to bide time and hedge against risk or error. This can be seen as discouraging competition and as an inefficient use of staff time and Departmental resources, given the amount of effort expended to review Applications.

Staff has also capped consultant or advisor fees at \$150,000.

**§11.5 – Competitive HTC Set-Asides** (*Page 8 of 43*). In paragraph (2), staff has proposed that all competitive Applications that score within the USDA Set-Aside will be scored according to Rural criteria. Many USDA Developments were built in what were once considered “rural” areas, but given Texas’ cities’ population growth in recent decades, many of these Development Sites now fall within the boundaries of Urban areas. This rule change mitigates the stricter requirements associated with Urban Applications. Staff has also sought to clarify further the means by which an Application may compete within the At-Risk Set-Aside in paragraph (3).

**§11.7 – Tie-Breaker Factors** (*Page 15 of 43*) Staff has removed two previous tie-breakers and added a new tie-breaker. Tie-breakers regarding the menu items of Opportunity Index and the ratings of elementary, middle, and high schools have been removed. A new tie-breaker regarding underserved Places or, if located outside of a Place, counties, has been proposed in paragraph (3). This item would count the total number of HTC units and divide that number by the total population, which is also what staff does in order to comply with the requirements of Tex. Gov’t Code §2306.6703(a)(4). The proposed Development in a Place or if outside a Place, a county, with the lowest score for this calculation will win the tie-breaker. Staff believes this tie-breaker methodology to be an effective means of dispersion.

**§11.9 – Competitive HTC Selection Criteria** (*Page 19 of 43*). Staff has made several changes to this section. They are addressed separately.

- *Sponsor Characteristics* (*Page 20 of 43*). Staff has expanded this particular item to allow two types of participation from either a HUB or a Qualified Nonprofit. Subparagraph (A) rewards material participation and is worth two (2) points, whereas subparagraph (B) rewards involvement that is not material but still significant, and it is worth one (1) point.
- *Opportunity Index* (*Page 22 of 43*). Staff’s changes in paragraph (4) largely revolve around clarifying the parameters and intent of the menu items. The menu item regarding proximity to museums has been removed, and a menu item regarding Meals on Wheels or a similar service has been added.
- *Underserved Area* (*Page 27 of 43*). Like Opportunity Index, staff has focused largely on clarifying the language of these scoring items. Whether or not a census tract intersects with the boundaries of an incorporated area has been removed from subparagraph (C). The requirement that the census tract fall entirely within the boundaries of an incorporated area remains true with subparagraph (E), which staff refers to as “the flower” since it also includes surrounding census tracts. The surrounding census tracts do not have to fall within the boundaries of the incorporated area. In 2017, paragraph (E) was limited to Places with populations of 300,000, but for the 2018 competitive cycle, staff has lowered the population floor to 150,000. This will increase the number of eligible cities from eight (8) to 18.
- *Tenant Populations with Special Housing Needs* (*Page 28 of 43*). Staff has reintroduced participation in the Section 811 Project Rental Assistance Program back into the QAP. In the 2017 competitive cycle, it was in Chapter 10. Note that the specific requirements of the 811 program are delineated in the new 10 TAC Chapter 8.

- *Proximity to Urban Core (Page 29 of 43)*. Staff has lowered the population threshold that qualifies a city for points from 300,000 to 200,000. In effect, this increases the number of qualifying cities from eight (8) to 13. Staff focused on three primary criteria in determining where to set the population threshold: population and population growth; the presence of low- to moderate-income jobs; and the physical attributes of these cities’ “cores.” This scoring item is still worth five (5) points.
- *Criteria Promoting Community Support and Engagement (Page 29 of 43)*. Going forward, staff will begin adding to Applications on the Department’s website the letters of support, neutrality, or opposition received.
- *Commitment of Development Funding by Local Political Subdivision (Page 31 of 43)*. Previously, Tex. Gov’t Code §2306.6725(e) allowed the Department to set “the amount of required funding” at a “de minimis amount.” In the 2017 competitive cycle, staff often saw local political subdivisions providing something of value equal to just \$1. While Tex Gov’t Code §2306.6725(f) reads that “Subsection (e) and this subsection will expire September 1, 2019,” subsection (e) states that this de minimis provision applies “for the 2016 and 2017 qualified allocation plans.” Thus, staff has introduced a more substantial value requirement for Development funding from a local political subdivision. Staff has proposed \$500 for Urban Developments and \$250 for Rural Developments.
- *Concerted Revitalization Plan (Page 35 of 43)*. Staff has added language that clarifies what constitutes a substantial plan of revitalization for an area that warrants a LIHTC capital investment.
- *Readiness-to-Proceed (Page 38 of 43)*. Staff has proposed the addition of a scoring item that will not necessarily affect Applications in the 2018 competitive round, but will affect the scoring of Applications in the 2019 competitive round. If an Application that receives an allocation can commence construction by the last business day of the calendar year, then an individual associated with that Application can add a point to any one Application of their choosing and of which they are a part in the 2019 competitive cycle.
- *Adaptive Reuse or Rehabilitation Cost per Square Foot (Page 39 of 43)*. Staff has proposed removing the cost of acquisition on a cost per square foot basis from this scoring item. Instead, staff will ask Applications proposing Adaptive Reuse or Rehabilitation Developments to only provide hard costs per square foot for the purposes of this scoring item in subparagraph (E). Thus, the costs have been lowered compared to 2017, but again, this is because staff has removed acquisition costs for the purposes of scoring.

**§11.10 – Third Party Request for Administrative Deficiency for Competitive HTC Applications – (Page 42 of 43)**. Staff has added a sentence that reiterates to Applicants and stakeholders that information received after the Request for Administrative Deficiency deadline will not be considered by staff or presented to the Board.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended sections are in effect, enforcing or administering the amended sections do not create foreseeable costs or revenues for state or local governments.



PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that encompasses requirements for all applications applying for housing tax credit funding through the Department. There will not be any new economic cost to any individuals required to comply with the new sections. The average cost of filing an application is between \$50,000 and \$60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017, to October 12, 2017, to receive Public Comment on the amended QAP. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patrick Russell, QAP Public Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, or by email, [patrick.russell@tdhca.state.tx.us](mailto:patrick.russell@tdhca.state.tx.us), SUBJECT: QAP PUBLIC COMMENT. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 12, 2017.

STATUTORY AUTHORITY. The amended QAP is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Texas Government Code §2306.67022, which specifically authorizes the Department to adopt a Qualified Allocation Plan.

## Housing Tax Credit Program Qualified Allocation Plan

### §11.1.General.

**(a) Authority.** This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein collectively constitute the QAP required by Tex. Gov't Code, §2306.67022.

**(b) Due Diligence and Applicant Responsibility.** Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports, frequently asked questions, and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual and Frequently Asked Questions website posting are not rules and are provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data from outside sources in order to assist Applicants in the Application process, **it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application.** As provided by Tex. Gov't Code §2306.6715(c), an ~~a~~Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process. Individual Scoring notices or similar communications are a courtesy only.

**(c) Competitive Nature of Program.** Applying for competitive housing tax credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1. As a result of the highly competitive nature of applying for tax credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be

waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.

**(d) Definitions.** The capitalized terms or phrases used herein are defined in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Tex Gov't Code, Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage.

**(e) ~~Census~~ Data.** Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, 2017~~6~~, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall ~~generally~~ be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

**(f) Deadlines.** Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

**(g) Documentation to Substantiate Items and Representations in an Application.** In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants should use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process, unless the missing documentation is determined to be a Material Deficiency. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an

Administrative Deficiency must have been clearly established at the time of submission of the Application.

**§11.2. Program Calendar for Competitive Housing Tax Credits.**

Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/05 <del>4</del> /2017 <del>8</del>	Application Acceptance Period Begins.
01/09/2017 <del>8</del>	Pre-Application Final Delivery Date (including waiver requests).
02/17 <del>6</del> /2017 <del>8</del>	Deadline for submission of application for .ftp access if pre-application not submitted
03/01/2017 <del>8</del>	<p>Full Application Delivery Date (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors).</p> <p>Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).</p>
04/01 <del>2</del> /2017 <del>8</del>	Market Analysis Delivery Date pursuant to §10.205 of this title.
05/01/2018	<u>Third Party Request for Administrative Deficiency</u>
Mid-May	<del>Final</del> Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/01/2017	<u>Third Party Request for Administrative Deficiency</u>
06/23 <del>2</del> /2017 <del>8</del>	Public Comment to be included in the Board <u>materials relating to presentation for awards are due in accordance with 10 TAC §1.10.</u>

Deadline	Documentation Required
June	<u>On or before June 30, publication of the list of <del>Release of</del> Eligible Applications for Consideration for Award in July.</u>
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/2017	Carryover Documentation Delivery Date.
<del>067/3001/20189</del>	10 Percent Test Documentation Delivery Date.
12/31/2019 <del>20</del>	Placement in Service.
Five (5) business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

**§11.3.Housing De-Concentration Factors.** Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

**(a) Two Mile Same Year Rule (Competitive HTC Only).** As required by Tex. Gov't Code, §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate this rule, the lower scoring Application will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

**(b) Twice the State Average Per Capita.** As provided for in Tex. Gov't Code, §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application ~~Round-Acceptance Period~~ begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins at the time the Certificate of Reservation is issued by the Texas Bond Review Board), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code, §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the

Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §10.4 of this title (relating to Program Dates), as applicable.

**(c) One Mile Three Year Rule. (§2306.6703(a)(3))**

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The ~~d~~D~~e~~velopment serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The ~~d~~D~~e~~velopment has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

(C) The ~~d~~D~~e~~velopment has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.



(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

**(d) Limitations on Developments in Certain Census Tracts.** An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey ~~and the Development is in a Place that has a population greater than 100,000~~ shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable.

**(e) Additional Phase.** Applications proposing an additional phase of an existing tax credit Development serving the same Target Population, or Applications proposing Developments that are adjacent to an existing tax credit Development serving the same Target Population, ~~or Applications that are proposing a Development serving the same Target Population on a contiguous site to another Application awarded in the same program year,~~ shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

**(f) Proximity of Development Sites.** If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

#### **§11.4. Tax Credit Request and Award Limits.**

**(a) Credit Amount (Competitive HTC Only).** (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than \$3 million in a single Application Round. ~~If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will select the Development(s) that most effectively satisfies the Department's goals in fulfilling set-aside priorities and are highest scoring in the regional allocation. Prior to June 29, an Applicant that has Applications pending for more than \$3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the \$3 million cap. If the Applicant has not made this self-selection by this date, staff may make the selection. The methodology for making this determination will be to assign first priority to an Application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria~~



will not be considered a priority Application and will not be reviewed unless the Applicant withdraws a priority Application. The non-priority Application(s) will be terminated when the Department awards \$3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside. All entities that are under common Control are Affiliates. For purposes of determining the \$3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate or Guarantor solely because it:

- (1) raises or provides equity;
- (2) provides "qualified commercial financing;"
- (3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or
- (4) receives fees as a ~~Development Consultant or advisor or Developer~~ that do not exceed ~~10 percent of the Developer Fee (or 20 percent for Qualified Nonprofit Developments and other Developments in which an entity that is exempt from federal income taxes owns at least 50% of the General Partner) to be paid or~~ \$150,000, ~~whichever is greater.~~

**(b) Maximum Request Limit (Competitive HTC Only).** For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the ~~sub-region~~subregion based on estimates released by the Department on December 1, or \$1,500,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the 2016 credit ceiling. For all Applications, the Department will consider the amount in the ~~F~~funding Rrequest of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than \$2 million in a single Application Round. (§2306.6711(b))

**(c) Increase in Eligible Basis (30 percent Boost).** Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under §42 of the Code. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted units, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation.

For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2 of this chapter or Resolutions Delivery Date in §10.4 of this title, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area (“SADDA”) (based on Small Area Fair Market Rents (“FMRs”) as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, an SADDA designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) The Development meets one of the criteria described in subparagraphs (A) - (E) of this paragraph pursuant to §42(d)(5) of the Code:

(A) the Development is located in a Rural Area;

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; or

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

**§11.5. Competitive HTC Set-Asides.** (§2306.111(d)) This section identifies the statutorily-mandated set-asides which the Department is required to administer. An Applicant may elect to compete in each of the set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-Aside, the Application must meet the requirements of the Set-Aside as of the Full Application Delivery Date. Election to compete in a Set-Aside does not constitute eligibility to compete in the Set-Aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-Aside will be considered not to be participating in the Set-Aside for purposes of qualifying for points under §11.9(3) of this chapter (related to Pre-Application Participation). Commitments of competitive HTCs issued by the Board in the current program year will be applied to each set-aside, Rural regional allocation, Urban regional allocation, and/or USDA set-aside for the current Application round as appropriate.

**(1) Nonprofit Set-Aside.** (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of §42(h)(5) of the Code and Tex. Gov't Code, §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this set-aside (*e.g.i.e.*, greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-Aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-Aside is deemed to be applying under that set-aside unless their Application specifically includes an affirmative election to not be treated under that set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the set-aside.

**(2) USDA Set-Aside.** (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-Aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable ~~sub-region~~subregion unless the Application is receiving USDA Section 514 funding. ~~Commitments of Competitive Housing Tax Credits issued by the Board in the current program year will be applied to each set-aside, Rural Regional Allocation, Urban Regional Allocation and/or USDA Set-Aside for the current Application Round as appropriate.~~ Applications must also meet all requirements of Tex Gov't Code, §2306.111(d-2). All Applications that can score under the USDA set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-Aside and it is located in an Urban subregion, it will be scored as Urban.

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-Asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-Aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

**(3) At-Risk Set-Aside.** (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-Aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5

percent of the State Housing Credit Ceiling associated with this set-aside may be given priority to Rehabilitation Developments under the USDA Set-Aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet ~~all the following requirements of Tex. Gov't Code, §2306.6702(a)(5)-:~~

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. For purposes of this subparagraph, Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(ii) ~~a~~Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment ~~without penalty or has been prepaid.~~

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the Pre-Application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be Rehabilitated or Reconstructed must have received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g) and must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code. To the extent that an Application is eligible under §2306.6702(a)(5)(B)(ii) ~~(b)~~ and the units being reconstructed were disposed of or demolished prior to the beginning of the Application Acceptance Period, the housing units must have been disposed of or demolished in the two-year period preceding the application for housing tax credits. The Application will be categorized as New Construction.

(ii) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program.

(iii) Notwithstanding any other provision of law, an at-risk Development described by Tex. Gov't Code § 2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code § 2306.6714 (a-1)(2) are later converted under RAD.



(~~C~~D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code, §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred ~~to the Development Site (i.e. the site proposed in the tax credit Application)~~ with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units (*e.g.*, the Applicant may add market rate units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria)-; OR

(iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide a resolution from both local governing bodies.

(~~D~~E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, ~~or~~ renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which the Application is made must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(~~E~~F) 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 year's<sup>1</sup> IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the ~~Right of First Refusal~~. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the Pre-Application Final Delivery Date.

(FG) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

**§11.6.Competitive HTC Allocation Process.** This section identifies the general allocation process and the methodology by which awards are made.

**(1) Regional Allocation Formula.** The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("~~sub-region~~~~subregion~~") Housing Tax Credits in an amount consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code, §2306.1115. The process of awarding the funds made available within each ~~sub-region~~~~subregion~~ shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of regional allocation together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide Applicants the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular ~~sub-region~~~~subregion~~ or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the \$3 million credit limit per Applicant, the Department will make its recommendation ~~by selecting the Development(s) that most effectively satisfy the Department's goals in meeting set-aside and regional allocation goals based on the criteria described in §11.4(a) of this chapter.~~ Where sufficient credit becomes available to award an Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline ~~and/or changes to the Application as necessary~~ to ensure to the fullest extent feasible that available resources are allocated by December 31.

**(2) Credits Returned and National Pool Allocated After January 1.** For any credits returned after January 1 and eligible for reallocation (~~not including credit returned and reallocated under force majeure provisions~~), the Department shall first return the credits to the ~~sub-region~~~~subregion~~ or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the ~~sub-region~~~~subregion~~ and be awarded in the collapse process to an Application in another region, ~~sub-region~~~~subregion~~ or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to ~~and any remaining credits and~~ awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application ~~as may be amended~~ after underwriting review.

**(3) Award Recommendation Methodology.** (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d))) are attained. The minimum requirement may be exceeded in order to award the full credit request

or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 ~~sub-regionsubregions~~ to award under the remaining steps, ~~but these funds would generally come from the statewide collapse;~~

(C) Initial Application Selection in Each ~~Sub-RegionSubregion~~ (Step 3). The highest scoring Applications within each of the 26 ~~sub-regionsubregions~~ will then be selected provided there are sufficient funds within the ~~sub-regionsubregion~~ to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website.

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

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iv)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural ~~sub-regionsubregion~~") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most underserved Rural ~~sub-regionsubregion~~ as compared to the ~~sub-regionsubregion~~'s allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one ~~sub-regionsubregion~~ is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved ~~sub-regionsubregion~~:

(i) the ~~sub-regionsubregion~~ with no recommended At-Risk Applications from the same Application Round; and

(ii) the ~~sub-regionsubregion~~ that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any ~~sub-regionsubregion~~ in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected in a prior step) in the most



underserved sub-region in the State compared to the amount originally made available in each sub-region. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code, §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application in the next most underserved sub-region. In the event that more than one sub-region is underserved by the same percentage, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved sub-region:

(i) the sub-region with no recommended At-Risk Applications from the same Application Round; and

(ii) the sub-region that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-Aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-Aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a sub-region to be selected instead of a higher scoring Application not participating in the Nonprofit Set-Aside.

**(4) Waiting List.** The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or sub-region from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested set-asides. This may cause some lower scoring applications to be selected instead of a higher scoring application. (§2306.6710(a) - (f); §2306.111)

**(5) Credit Returns Resulting from Force Majeure Events.** In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met

to its satisfaction, be allocated separately from the current year's tax credit allocation, and ~~shall~~ not be subject to the requirements of paragraph (2) of this section. Requests to ~~separately~~ allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "*Force Majeure*" events that occurred after the start of construction and before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a *Force Majeure* event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. *Force Majeure* events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by *Force Majeure*;

(C) A Development Owner claiming *Force Majeure* must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

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

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

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event; and

~~(H) The Development Owner submits a signed written request for a new Carryover Agreement concurrently with the voluntary return of the HTC's.~~

#### **§11.7. Tie Breaker Factors.**

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved ~~sub-regions~~subregions in the rural or statewide collapse.

(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside.

(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.

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

~~(4) The Application with the highest average rating for the elementary, middle, and high school designated for attendance by the Development Site.~~

(3) Applications proposed to be located in a Place, or if located completely outside a Place, a county, that has the fewest HTC units per capita, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report.

~~(5) Applications proposed to be located in a census tract with the lowest poverty rate as compared to another Application with the same score.~~

~~(6) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development. Developments awarded Housing Tax Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph. The linear measurement will be performed from closest boundary to closest boundary.~~

### **§11.8. Pre-Application Requirements (Competitive HTC Only).**

**(a) General Submission Requirements.** The ~~p~~Pre-~~a~~Application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, ~~sub-regions~~subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section, ~~with all required information and exhibits provided pursuant to the Multifamily Programs Procedures Manual.~~

(1) The ~~p~~Pre-~~a~~Application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required ~~p~~Pre-~~a~~Application fee as described in §10.901 of this title (relating to Fee Schedule), not later than the Pre-application Final Delivery Date as identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the ~~p~~Pre-~~a~~Application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a ~~p~~Pre-~~a~~Application.

(2) Only one ~~pPre-a~~Application may be submitted by an Applicant for each Development Site.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a ~~pPre-a~~Application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the ~~pPre-a~~Application is more limited in scope than ~~an-the~~ Application, ~~pPre-a~~Applications are subject to the same limitations, restrictions, or causes for disqualification or termination as ~~a-full~~Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the ~~pPre-a~~Application.

**(b) Pre-Application Threshold Criteria.** Pursuant to Tex Gov't Code, §2306.6704(c) ~~pPre-a~~Applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

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

(A) Site Control meeting the requirements of §10.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the ~~pPre-a~~Application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following Undesirable Neighborhood Characteristics under §10.101(a)(~~43~~):

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(2) Evidence in the form of a certification provided in the ~~pPre-a~~Application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the ~~p~~Pre-aApplication is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a ~~city-municipality~~ are required to notify both ~~city-municipal~~ and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format required in the ~~Pre-application~~Public Notification Template provided in the ~~pre-application~~Uniform 2018 Multifamily Application Template. The Applicant is ~~encouraged-required~~ to retain proof of delivery in the event the Department ~~requires-requests~~ proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the ~~p~~Pre-aApplication is submitted. Note that between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may change. By way of example and not by way of limitation, events such as redistricting may cause changes which will necessitate additional notifications at full Application. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;
- (ii) Superintendent of the school district in which the Development Site is located;
- (iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (vi) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (vii) All elected members of the Governing Body of the county in which the Development Site is located; and
- (viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

- (i) The notification must include, at a minimum, all of the information described in subclauses (I) – (VI) of this clause.
  - (I) the Applicant's name, address, an individual contact name and phone number;
  - (II) the Development name, address, city, and county;
  - (III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;
  - (IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;



(V) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.); and

(VI) the approximate total number of Units and approximate total number of ~~L~~ow-~~I~~ncome Units.

(ii) The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

(iii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(iv) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

**(c) Pre-~~a~~Application Results.** Only ~~p~~Pre-~~a~~Applications which have satisfied all of the ~~p~~Pre-~~a~~Application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for ~~p~~Pre-~~a~~Application points. The order and scores of those Developments released on the Pre-~~A~~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-~~A~~application Submission Log. Inclusion of a ~~p~~Pre-~~A~~application on the Pre-~~A~~application Submission Log does not ensure that an Applicant will receive points for a ~~p~~Pre-~~A~~application.

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

**(a) General Information.** This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex Gov't Code, Chapter 2306, §42 of the Code, and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. All measurements will include the entire site, including ingress/egress requirements and any easements regardless of how they will be held. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements. ~~When providing a pre-application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development~~

~~may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.~~

**(b) Criteria promoting development of high quality housing.**

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (8 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

- (i) five-hundred fifty (550) square feet for an Efficiency Unit;
- (ii) six-hundred fifty (650) square feet for a one Bedroom Unit;
- (iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;
- (iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and
- (v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

(B) Unit and Development Features (7 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions) and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions: the ownership structure contains a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date, or Qualified Nonprofit Organization provided the Application is under the Nonprofit Set-Aside. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, ~~e~~Cash ~~f~~Flow from operations, and ~~d~~Developer ~~f~~Fee which taken together equal at least ~~8~~50 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, ~~3~~025 percent of the ~~d~~Developer ~~f~~Fee, and ~~3~~05 percent of ~~e~~Cash ~~f~~Flow from operations.

~~(B)~~ The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or



compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (1 point)

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

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

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

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

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

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

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

(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).

(3) Tenant Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's tenants, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) Opportunity Index Points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located ~~in~~ entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

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

(ii) The Development Site is located entirely within ~~in~~ a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 points)

(B) An ~~a~~ Application that meets the foregoing criteria may qualify for additional points ~~(for a maximum of seven (7) points)~~ for any one or more of the following factors. Each ~~facility or amenity~~ may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a

nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development. Any costs or membership fees associated with making use of a recreational amenity cannot exceed \$50 per person per month (assume cost is for a single admittance per month and membership fee is for annual membership paid on a monthly basis):

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in clauses (I) through (XIII) of this subparagraph.

(I) The Development ~~S~~site is located ~~less than 1/2 mile~~ on an accessible route that is less than 1/2 mile from the entrance to a public park with an accessible playground. The route and the playground both of which must meet 2010 ADA standards. (1 point)

(II) The Development Site is located ~~less than 1/2 mile~~ on an accessible route that is less than 1/2 mile from the entrance of a Public ~~T~~ransportation stop or station with a route schedule that provides regular service to employment and basic services. The route and the public transportation stop must meet 2010 ADA standards. For purposes of this scoring item, regular is defined as scheduled service beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point)

(III) The Development ~~s~~Site is located within 1 mile of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(IV) The Development Site is located within 3 miles of a health-related facility, such a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(V) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VI) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for

determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VII) The development ~~s~~Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 6 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding (1 point)

(VIII) The Development Site is located within 5 miles of an accredited University or ~~C~~ommunity ~~C~~ollege ~~campus, as confirmed by the Texas Higher Education Coordination Board ("THECB").~~ To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered ~~C~~ommunity ~~C~~olleges. ~~—The U~~niversityies and-or Community ~~C~~olleges must have a physical locationcampus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 20101-20145 American Community Survey 5-year Estimate. (1 point)

~~(X) Development site is within 2 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value.~~ (1 point)

(XI) Development ~~s~~Site is within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development ~~s~~Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development ~~s~~Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in clauses (I) through (XII) of this subparagraph.

(I) The Development ~~s~~Site is located within 4 miles of a full-service grocery store or pharmacy. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point for grocery stores and 1 point for pharmacies)

(II) The Development ~~s~~Site is located within 4 miles of health-related facility, such a full service hospital, community health center, or minor emergency center. Physician offices and physician specialty offices are not considered in this category. (1 point)

(III) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(IV) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(V) The ~~d~~Development ~~s~~Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open during normal operating hours at least 5 days a week. The library must not be age or subject-restricted and must be at least partially funded with government funding -(1 point)

~~(VI) The development site is located within 4 miles of a public park (1 point) The Development Site is located on an accessible route that is less than 1 mile from a public park with an accessible playground. The route and the playground both must meet 2010 ADA standards. (1 point)~~

(VII) The Development Site is located within 15 miles of an accredited University or ~~C~~community ~~C~~college ~~campus~~, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item.(1 point)



(VIII) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the 2010-2014 American Community Survey 5-year Estimate (1 point)

~~(IX) Development site is within 4 miles of a museum that is a government-sponsored or non-profit, permanent institution open to the public and is not an ancillary part of an organization whose primary purpose is other than the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. (1 point)~~

(IX) Development ~~s~~Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development ~~s~~Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XII) Development ~~s~~Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership) (1 point)

(XII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

#### ~~(5) Educational Quality.~~

~~In order to qualify for points under Educational Quality, the elementary school and the middle school or high school within the attendance zone of the Development must have a TEA rating of Met Standard. Except for Supportive Housing Developments, an Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A)–(E) of this paragraph, as determined by the Texas Education Agency. A Supportive Housing Development may qualify to receive no more than two (2) points for a Development Site located within the attendance zones of public schools meeting the criteria as described in subparagraphs (A) or (B) of this paragraph, as determined by the Texas Education Agency. For districts without attendance zones, the schools closest to the site which may possibly be attended by the tenants must be used for scoring. Choice districts with attendance zones will use the school zoned to the Development site. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a tenant from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable ratings will be the 2016 accountability rating determined by the Texas Education Agency for the State, Education Service Center region, or individual campus. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to~~

have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

~~(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score (3 points);~~

~~(B) The Development Site is within the attendance zone of any two of the following three schools (an elementary school, a middle school, and a high school) with an Index 1 score at or above the lower of the score for the Education Service Center region, or the statewide score. (2 points, or 1 point for a Supportive Housing Development); or~~

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

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

~~(E) If the Development Site is able to score one or two points under clauses (B) through (D) above, one additional point may be added if one or more of the features described in subclause (1)–(4) is present:~~

~~(i) The Development Site is in the attendance zone of an elementary school that has Met Standard, and has earned at least one distinction designation by TEA (1 point);~~

~~(ii) The Development Site is located in the attendance zone of a general admission high school with a four-year longitudinal graduation rate in excess of the statewide four-year longitudinal graduation rate for all schools for the latest year available, based on the TEA 2016 Index 4: Postsecondary Readiness Data table for the district found at <http://tea.texas.gov/2016accountability.aspx>. (1 point)~~

~~(iii) The development is in the primary attendance zones for an elementary school that has met standard and offers an extended day Pre-K program. (1 point)~~

~~(iv) The development site within the attendance zone of an elementary school, a middle school and a high school that all have a Met Standard rating for the three years prior to application. (1 point)~~



(65) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (E) of this paragraph, and the Application contains evidence substantiating qualification for the points. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection then the Application is not eligible for points under subparagraphs (A) and (B) of this paragraph. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of Aan Economically Distressed Area (1 point);

(C) The Development Site is located entirely within a census tract that does not have a Development that is less than 30 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report; A census tract within the boundaries of an incorporated area that has not received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development within the past 15 years and continues to appear on the Department's inventory-(3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report. For areas not scoring points for (C) above, a census tract that does not have a Development subject to an active tax credit LURA (or has received a tax credit award but not yet reached the point where its LURA must be recorded);-(2 points);

(E) The Development Site is located entirely within a A-census tract within the whose boundaries of are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts for which neither the census tract in which the Development is located nor the contiguous census tracts do not have a Development that is less than 15 years old according to the Department's property inventory tab of the Site Demographic Characteristics Report received an award or HTC allocation within the past 15 years and continues to appear on the Department's inventory. This item will apply in cities Places with a population of 300150,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(76) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive ~~up to~~ two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8). Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).

(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for

points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.

(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC Chapter 8.3 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department’s Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (“811 Rule”), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

(C) Applications proposing Developments that do not meet the requirements of subparagraphs (A) or (B) of this paragraph may qualify for two (2) points by meeting the requirements of this subparagraph. (C). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for Section 811 Project Rental Assistance Demonstration program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to affirmatively market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to affirmatively-specifically market Units to Persons with Special Needs.

(87) Proximity to the Urban Core. A Development in a City-Place, as defined by the US Census Bureau, with a population over 3200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main City-Hall facility municipal government administration building if the population of the city-Place is more than 500,000, or within 2 miles of the main City-Hall facility municipal government administration building if the population of the city is 3200,000 - 500,000499,999. The main City-Hall facility municipal government administration building will be determined by the location of regularly scheduled City Council, City Commission, or similar municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

**(d) Criteria promoting community support and engagement.**

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

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

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

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

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of ~~d~~Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals \$500 or more for Applications located in Urban subregions or \$250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if the Development Site is located in an area declared to be a disaster area under Tex. Gov't Code §418.014 at the time of Full Application Delivery Date submission or at any time within the two-year period preceding the Full Application Delivery ~~d~~ Date of submission, the Development Site is located in an area declared to be a disaster area under the Tex Gov't Code, §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in existence-current, valid existence with boundaries that contain the entire Development Site prior to as of the Pre-Application Final Delivery Date ~~and its boundaries must contain the entire Development Site.~~ In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and

mailing address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code, §2306.004(23-a) and includes at least two separate residential households;

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

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

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization ~~is encouraged to~~ should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this ~~section~~ paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;



(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2017~~8~~. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development ~~and clearly state support for or opposition to the specific Development, and express whether the letter conveys support, neutrality, or opposition.~~ This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2 of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or

letters that do not specifically refer to the Development ~~or specifically express support or opposition~~ will receive zero (0) points. ~~A letter that does not directly express support but expresses it indirectly by inference (e.g. "the local jurisdiction supports the Development and I support the local jurisdiction") will be treated as a neutral letter.~~ A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community.

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The community or civic organization must provide evidence of its tax exempt status (e.g., a copy of its tax-exempt determination letter or its listing on a federal or state government website) and evidence it remains in good standing. An Organization must also provide evidence of its and its existence and participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as



identified in §11.2 of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a situation requiring concerted revitalization, and where a concerted revitalization plan has been developed and executed. The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The concerted revitalization plan, which may be a Tax Increment Reinvestment Zone ("TIRZ") or Tax Increment Finance ("TIF") or similar plan, that must meets the criteria described in subclauses (I) - (IV) of this clause:

(I) The concerted revitalization plan must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. These problems may include the following:

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

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

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

but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:

(-a-) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;

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

(-c-) developing health care facilities;

(-d-) providing public transportation;

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

(-f-) improving under-performing schools.

(IV) The adopted plan must have sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must have been flowing in accordance with the plan, such that the problems identified within the plan will have been sufficiently mitigated and addressed prior to the Development being placed into service.

(V) The plan must be current at the time of Application and must officially continue for a minimum of three years thereafter.

(ii) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the target efforts outlined in the plan. The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the ~~city~~ municipality or county as contributing more than any other to the concerted revitalization efforts of the ~~city-municipality~~ or county (as applicable). A ~~city~~ municipality or county may only identify one single Development during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the ~~city-municipality~~ or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that ~~is currently has been~~ leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed ~~prior to 1985~~25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs, as confirmed by the PCA or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance from Undesirable Site Features or Undesirable Neighborhood Characteristics.

~~(ii) Applications will receive 3 points for the rehabilitation of a development in a rural area that is currently leased at 85% or greater by low income households and which was initially constructed prior to 1985 as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program if the proposed location requires no disclosure of Undesirable Neighborhood Features under Section §10.101(a)(4) or required such disclosure but the disclosed items were found acceptable.~~

~~(iii) Applications may receive (2) points in addition to those under subclause (i) or (ii) of this clause if the Development is explicitly identified in a letter by the city or county as contributing more than any other Development to the concerted revitalization efforts of the city or county (as applicable). A city or county may only identify one single Development during each Application Round for the additional points under this subclause. The letter from the Governing Body of the city or county that approved the plan is required to be submitted in the Application. If multiple Applications submit valid letters under this subclause from the same Governing Body, none of the Applications shall be eligible for the additional points. A city or county may, but is not required, to identify a particular Application as contributing more than any other Development to concerted revitalization efforts. Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; and~~

(iii) Applications may receive (1) additional point if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii)..

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

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Readiness-to-Proceed. If the Application indicates that the Applicant has firm commitments for all required equity and financing and commits that upon receipt of an award the Applicant will commence construction no later than the last business day of the calendar year, the Applicant may request one (1) additional point for the competitive tax credit Application of their choice in the next cycle. The Application must include designation of the individual who will use the point in the next competitive cycle, and the additional point may not be transferred to other Applicants. In the current competitive cycle, an Applicant can receive at most one (1) point. In the next competitive cycle, Applications can use no more than one (1) point from this paragraph; points cannot be combined in one Application. Failure to commence construction prior to the last business day of the year will result in the Applicant being unable to request the point and this may not and will not be waived, altered, or extended under the waiver rule or otherwise.

(23) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this-scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 50 square feet per Unit.

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

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

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

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$72.80 per square foot;

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

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

(iv) The voluntary Eligible Hard Cost per square foot is less than \$104 per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than \$78 per square foot;

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

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

(iv) The voluntary Eligible Hard Cost per square foot is less than \$109.20 per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost is less than \$93.60 per square foot; or

(ii) The voluntary Eligible Hard Cost is less than \$114.40 per square foot.

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

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$104 per square foot~~50 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs ~~plus acquisition costs included in Eligible Basis~~ that are less than ~~\$135.20 per square foot~~60 per square foot, plus or minus \$1 per square foot for every 50 square feet above or below a 900 square feet unit.

~~(34)~~ Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted ~~during by~~ the Pre-Application ~~Acceptance Period~~Final Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (G) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than ~~six-four (64)~~ points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at ~~p~~aPre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at ~~p~~aPre-application;

(G) The Development Site does not have the following Undesirable Neighborhood Characteristics as described in 10 TAC §10.101(a)~~(43)~~ that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.



(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The ~~p~~Pre-~~a~~A Application met all applicable requirements.

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

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than eight (8) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than nine (9) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ten (10) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

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

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits by issuance of Forms 8609. The Application must include either documentation from the Texas Historical



Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the ~~sub-region~~subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, 2015.

**(f) Point Adjustments.Factors Affecting Eligibility in the 2019 Application Round**

Staff ~~will~~may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in the 2019 Application Round or that it should be assigned a penalty deduction of one (1) point for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it make a deduction of up to five (5) points for any of the items listed in paragraph (1) of this subsection, unless the person approving the extension (the Board or Executive Director, as applicable) makes an affirmative finding setting forth that the facts which gave rise to the need for the extension were beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. (§2306.6710(b)(2))

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline, the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements of a HOME or National Housing Trust Fund award from the Department.

(3) If the Developer or Principal of the Applicant violates the Adherence to Obligations.

(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the Applicant or Affiliate of an Application submitted in the current Application Round.

**§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.**

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request the staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff

will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. Requestors must provide, at the time of filing the challenge, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board's takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. Information received after the RFAD deadline will not be considered by staff or presented to the Board.

DRAFT

8b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**SEPTEMBER 7, 2017**

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

**RECOMMENDED ACTION**

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

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

**NOW, therefore, it is hereby**

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

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

**BACKGROUND**

General Information: Attached behind this Board Action Request is the proposed 2018 Draft Uniform Multifamily Rule which reflects staff's recommendations for the Board's consideration. This rule establishes the general requirements associated with making an award of multifamily development funding and/or assistance. In getting the 2018 rulemaking process underway, staff disseminated anticipated changes utilizing various methods. Staff hosted monthly roundtable discussions throughout the year that, while they were mostly focused on scoring items in the Qualified Allocation Plan, discussion on several of those scoring items had applicability to site eligibility and other items within the Uniform Multifamily Rule. Additionally, staff participated in several discussions at the TAAHP Conference in July 2017, and discussed proposed changes and solicited feedback. Staff evaluated the

information received in all of these discussions and considered them in developing its proposed draft rules.

Rule-Making Timeline: Upon Board approval, the draft Uniform Multifamily Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 22, 2017, and October 12, 2017, and there will also be a consolidated public hearing during this time to garner public comment. The Uniform Multifamily Rules will be brought before the Board in November for final approval, provided to the Governor for his approval, approval with changes, or rejection, and subsequently published in the *Texas Register* for adoption.

Subchapters for this Action Request: This Board Action Request includes the subchapters, as noted below, that are part of the 2018 draft Uniform Multifamily Rule. Subchapter D can be found under a separate Board Action Request on this agenda with its proposed changes and Subchapter E is scheduled to be presented at the Board meeting of October 12, 2017.

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

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

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

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

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

1. **Subchapter A §10.3 Definitions** (*Various Pages in Subchapter A*). The changes to this subchapter include modifications to the Administrative Deficiency definition to reflect how staff will evaluate information in the application to substantiate points under scoring items. The Supportive Housing definition has been modified to incorporate the sufficiency of the applicant, general partner, or guarantor in a supportive housing development as well as the provider of the services to be offered. The definition for Secondary Market Area has been removed.
2. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Undesirable Site Features** (*Page 1 of 21 in Subchapter B*). Language has been added to underscore that even if an exemption is being requested, mitigation may still be required. Clarifying language has been added to reflect that if a state or federal agency has minimum separation distances to the site features listed in this section then the Department will defer to that agency and require the same. The list has been modified to include illegal dumping sites as an undesirable site feature.

3. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Mandatory Development Amenities** (*Page 10 of 21 in Subchapter B*). The requirement that all units be wired with phone and data cabling has been modified to reflect that such cabling should reflect current technology. Modifications are also made to requirement that all units have air conditioning and heating.
4. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Common Amenities** (*Page 11 of 21 in Subchapter B*). Some of the common amenities listed in this section have been modified to provide clarification based on the Department’s monitoring expectations. Moreover, the requirement that limited green amenities be included and list thereof is proposed to be removed, leaving it at the option of the applicant whether to incorporate green building features.
5. **Subchapter B §10.101 Site and Development Requirements and Restrictions – Development Accessibility Requirements** (*Page 20 of 21 in Subchapter B*). The Department’s accessibility requirements regarding visitability has been modified to reflect the specific features that a unit must have.
6. **Subchapter C §10.204 Required Documentation for Application Submission.** (*Various Pages in Subchapter C*). Modifications to this section include allowing the certification process for 4% applications where aspects of the application have changed but the changes do not have a material effect on the original underwriting (*Page 3 of 37*); clarifies how staff may initiate the withdrawal of a 4% HTC application; (*Page 4 of 37*); clarifies how Traditional Carryforward applications will be treated as it relates to de-concentration and capture rate provisions (*Page 6 of 37*); provides clarifying language that 4% HTC applications with outstanding deficiency items will not be prioritized for further review but will effectively be suspended from review (*Page 6 of 37*); provides additional clarification regarding the intent of the administrative deficiency process (*Page 6 of 37*); proposes that 4% HTC and Direct Loan only applications with unresolved deficiency items will be suspended from further review and further states a timeframe by which outstanding items need to be resolved once the funding source becomes oversubscribed (*Page 8 of 37*); modifies the ineligibility criteria associated with applicants and applications to include false certifications contained in the application (*Page 11 of 37*); requires 4% HTC and Direct Loan only applications layered with HUD financing to submit the HUD application and further clarifies that the HUD application can be submitted after the HTC application is submitted (*Page 22 of 37*); requires building and unit floor plans be submitted on rehabilitation and adaptive reuse developments and that they indicate the accessible units (*Page 26 of 37*); removes the Section 811 Program as a threshold item since it has been added as a scoring item for Competitive HTC applications; (*Page 31 of 37*); and language regarding the information and case that must be made when requesting that a waiver be granted (*Page 35 of 37*).
7. **Subchapter G §10.901 Fee Schedule, Appeals and Other Provisions** (*Various Pages in Subchapter G*). Changes to this section include removing the Administrative Deficiency Notice Late Fee to be consistent with revisions made to other sections of the rule (*Page 2 of 7*) and a provision that Building Inspection Fees paid may be refunded if the development does not move forward (*Page 3 of 7*).

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions. The proposed amendments eliminate certain definitions and modifications are made to others.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017 through October 12, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 12, 2017.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.



The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter B, concerning Site and Development Requirements and Restrictions. The proposed amendments clarify that mitigation may still be required even if an exemption is being requested for undesirable site features. The list of undesirable site features has been modified and minimum separate distances has been clarified. Several of the amenities have been modified as well.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017 through October 12, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 12, 2017.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. The proposed amendments modify several 4% Competitive HTC requirements, clarifies several threshold requirements of applications and modifies the waivers that may be granted by the Board.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017 through October 12, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 12, 2017.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10 Subchapter G, concerning Fee Schedule, Appeals and Other Provisions. The proposed amendments remove one of the fees listed and modify several others.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendments are in effect, the public benefit anticipated, as a result of the amendment, will be improved efficiency in reviewing an application for multifamily funding. There will not be any additional economic cost to any persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no new economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 22, 2017 through October 12, 2017, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Teresa Morales, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1895.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 12, 2017.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

## Uniform Multifamily Rules

### Subchapter A – General Information and Definitions

**§10.1.Purpose.** This chapter applies to an award of multifamily development funding or other assistance including the award of Housing Tax Credits by the Texas Department of Housing and Community Affairs (the "Department") and establishes the general requirements associated in making such awards. Applicants pursuing such assistance from the Department are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 ~~Subchapter C of this title~~ (relating to ~~Previous Participation~~[Administration](#)), [Chapter 8 of this title \(relating to 811 Project Rental Assistance Program Rule\)](#), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), [Chapter 13 \(relating to Multifamily Direct Loan Rule\)](#), and other Department rules. This chapter does not apply to any project-based rental assistance or operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

#### **§10.2.General.**

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

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

**(c) Census Data.** Where this chapter requires the use of ~~census or~~ American Community Survey data, the Department shall use the most current data available as of October 1, ~~2016~~2017, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall ~~generally~~ be disregarded. ~~For Rural Area and Urban Area designations, the Department shall use in establishing the designations, the U.S. Census Bureau's Topographically Integrated Geographic Encoding and Referencing ("TIGER") shape files applicable for the population dataset used in making such designations.~~ Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1 but before the Application Acceptance Period, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

**(d) Public Information Requests.** Pursuant to Tex. Gov't Code, §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits, and as a waiver of any of the applicable provisions of Tex. Gov't Code, Chapter 552, with the exception of any such provisions, ~~if any, as that~~ are considered by law as confidential and have been identified as such by the Applicant. ~~not subject to a waiver.~~ The fact that an Applicant identifies any particular materials as confidential does not mean that they will, if made the subject of a request under the Texas Open Records Act, be withheld from production, that being a matter to be determined by the Office of the Attorney General. To the extent that an Applicant provides materials from a third party it is the responsibility of the Applicant to confirm with the third party whether any assertion of confidentiality is applicable. The Department will proceed on the basis of those assertions in or in connection with the Application having been reviewed by the Applicant with such persons as it deemed necessary, and no third party may assert the confidentiality of any such materials that were not, at the time of submission, identified as confidential.

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

**(f) Deadlines.** Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be submitted on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend

or holiday and on which the Department is open for general operation. Unless otherwise noted [or otherwise required in statute](#) deadlines are based on calendar days.

### **§10.3.Definitions.**

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

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

(2) Administrative Deficiencies--Information requested by Department staff that ~~is~~[staff](#) requires~~d~~ to clarify [or explain](#) ~~or correct~~ one or more inconsistencies; ~~or~~ to provide non-material missing information in the original Application; or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. [A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. Any missing item\(s\) relating to a scoring item will be deemed by staff to have constituted a Material Deficiency that supports the non-award of the points. By way of example, if an Applicant checks a box for three points for a particular scoring item but provides supporting documentation that would support two points, staff would treat this as an inconsistency and issue an Administrative Deficiency which might ultimately lead to a correction of the checked boxes to align with the provided supporting documentation and support an award of two points. However, if the supporting documentation was missing altogether, this could not be remedied and the point item would be assigned no points.](#)

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any

nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

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

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

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

(i) nine percent for 70 percent present value credits, pursuant to the Code, §42(b);  
or

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

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

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

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

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters 11, 12, or 13 and who [have undertaken or](#) may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, site control will be transferable to that entity. The formation of the ownership entity, qualification to do



| business (if needed), and transfer of [any](#) such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters 11, 12 and 13, as applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(23) Competitive Housing Tax Credits (“HTC”)--Tax credits available from the State Housing Credit Ceiling.

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

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

(26) Contract--See *Commitment*.

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

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

(29) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. However, [by way of illustration](#), if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations [where such powers have been specifically delegated to one or more members](#), include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

~~(30) 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.~~

(30~~1~~) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(31~~2~~) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(32~~3~~) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(33~~4~~) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's [preliminary](#)

determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

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

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

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

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

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

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

(3940) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702)

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

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

(423) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment ("TCAP Repayment") or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans -will be determined by [provisions in Chapter 13 of this title \(relating to Multifamily Direct Loan Rule\)](#) and the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

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

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

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

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

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

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

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

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

(4950) Executive Award and Review Advisory Committee (“EARAC” also referred to as the “Committee”)--The Department committee ~~required by~~ ~~created under~~ Tex. Gov’t Code §2306.1112.

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

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

(A) the date specified in the Land Use Restriction Agreement or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

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

(534) General Contractor (including “Contractor”)--One who contracts ~~for to perform~~ the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the

subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

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

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

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

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

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

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

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

(5960) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(601) 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.

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

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



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

(645) Historically Underutilized Businesses (“HUB”)--An entity that is certified as such under and in accordance with Tex. Gov’t Code, Chapter 2161 ~~by the State of Texas~~.

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

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

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

(689) Housing Quality Standards (“HQS”)--The property condition standards described in 24 CFR §982.401.

(6970) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

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

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

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

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

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

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

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

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

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

(7980) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

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

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

(823) 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.

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

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

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

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

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

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

(890) 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.

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

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

(B) a record of such an impairment; or

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

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

(923) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. Any part of a census designated place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

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

(945) 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.

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

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

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

(A) partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

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

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

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

(99100) 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.

| (100~~1~~) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §10.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

| (101~~2~~) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

| (102~~3~~) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within §42(h)(6)(F) of the Code and as further delineated in §10.408 of this chapter (relating to Qualified Contract Requirements).

| (103~~4~~) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

| (104~~5~~) Qualified Entity--Any entity permitted under §42(i)(7)(A) of the Code and any entity controlled by such qualified entity.

| (105~~6~~) Qualified Nonprofit Development--A Development which meets the requirements of §42(h)(5) of the Code, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

| (106~~7~~) Qualified Nonprofit Organization--An organization that meets the requirements of §42(h)(5)(C) of the Code for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and §42(h)(5) of the Code.

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

| (108~~9~~) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of an equal number of units or less on the Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction.

| (109~~10~~) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse.

(§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

(1104) Related Party--As defined in Tex. Gov't Code, §2306.6702.

(1112) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

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

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

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

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

(1134) Request--See *Qualified Contract Request*.

(1145) Reserve Account--An individual account:

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

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

(1156) Right of First Refusal ("ROFR")--An Agreement to provide a right to purchase the Property to a Qualified Entity or a Qualified Nonprofit Organization, as applicable, with priority to that of any other buyer at a price established in accordance with an applicable LURA.

(1167) Rural Area--

(A) a Place that is located:

- (i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;
- (ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or
- (iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

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

~~(118) Secondary Market--Sometimes referred to as "Secondary Market Area." The area defined by the Qualified Market Analyst as described in §10.303 of this chapter.~~

~~(119) Secondary Market Area ("SMA")--See Secondary Market.~~

~~(117)~~<sup>120</sup> Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

~~(118)~~<sup>121</sup> Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §10.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner, to develop a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

~~(119)~~<sup>122</sup> Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

~~(120)~~<sup>3</sup> State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including §42(h)(3)(C) of the Code, and Treasury Regulation §1.42-14.

~~(121)~~<sup>4</sup> 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.

~~(122)~~<sup>5</sup> Supportive Housing--~~A R~~ residential rental ~~d~~Developments ~~that is:~~



(A) intended for occupancy by ~~individuals or~~ households in need of specialized and specific non-medical services in order to maintain independent living;

(B) the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider and that service provider has demonstrated an established and compliant track record of providing such services in residential settings for at least three years;

(C) the services offered generally include case management and tenant services that either aid tenants in addressing debilitating conditions or assist tenants in securing the skills, assets, and connections needed for independent living post residency and, if the population is anticipated to have issues such as substance abuse or psychiatric disorders, an on-site person able to coordinate responses to a wide variety of situations reasonably anticipated to arise in the population served (such on-site position to be staffed and available on a 24/7 basis). Resident populations primarily include the homeless and those at-risk of homelessness; and

(D) the Applicant, General Partner, or Guarantor must meet the following:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) demonstrate that it has secured sufficient funds necessary to maintain the Development's operations through the Affordability Period; and

(iii) provide evidence of a history of fundraising activities sufficient to fill unanticipated operating losses;

(E) is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). Any amendment to an Application or LURA pertaining to debt will result in the issuance of IRS Form(s) 8609.

~~Supportive housing developments generally include established funding sources outside of project cash flow that require certain populations be served and/or certain services provided. The developments are expected to be debt free or have no permanent foreclosable or noncash flow debt. A Supportive Housing Development financed with tax-exempt bonds with a project based rental assistance contract for a majority of the Units may be treated as Supportive Housing under all subchapters of this chapter, except Subchapter D of this chapter (relating to Underwriting and Loan Policy). If the bonds are expected to be redeemed upon construction completion, placement in service or stabilization and no other permanent debt will remain, the Supportive Housing Development may be treated as Supportive Housing under Subchapter D of this chapter.~~

~~The services offered generally include case management and address special attributes of such populations as Transitional Housing for homeless and at risk of homelessness, persons who have experienced domestic violence or single parents or guardians with minor children.~~

(1236) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Subchapter F of this chapter (relating to Compliance Monitoring), and published on the Department's web site ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

(1247) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are ~~entirely~~ Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations. ~~An existing Development that has been designated as a Development serving the general population may not change to become an Elderly Development, or vice versa, without Board approval.~~

(1258) 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.

(1269) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(127130) Third Party--A Person who is not:

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

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

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

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

(128131) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(~~129132~~) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

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

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

(~~1303~~) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(~~1314~~) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

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

[\(136\) Underwriting 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.](#)

(~~1376~~) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter, Chapter 11, ~~12 or 13~~ and ~~Chapter 12~~ of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(~~1387~~) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(~~1398~~) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(~~14039~~) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedroom, full bathrooms or a square footage difference equal to or more than 120 square feet. For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(1410) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least twelve (12) consecutive months following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(1421) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (116117)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §10.204(5) of this chapter.

(1432) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this chapter (relating to Utility Allowances).

(1443) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

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

definition. A Board determination or a staff determination not timely appealed cannot be further appealed or challenged.

**§10.4.Program Dates.** This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

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

**(2) Notice to Submit Lottery Application Delivery Date.** No later than December ~~8, 2017~~<sup>9, 2016</sup>, Applicants that receive an advance notice regarding a Certificate of Reservation must submit a notice to the Department, in the form prescribed by the Department.

**(3) Applications Associated with Lottery Delivery Date.** No later than December ~~15, 2017~~<sup>16, 2016</sup>, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

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

**(5) Third Party Report Delivery Date** (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §10.205 must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be submitted no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

**(6) Resolutions Delivery Date.** Resolutions required for Tax-Exempt Bond Developments must be submitted no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

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

## Subchapter B – Site and Development Requirements and Restrictions

### §10.101.Site and Development Requirements and Restrictions.

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

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

**(2) Undesirable Site Features.** Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph ~~may will~~ be considered ineligible ~~unless it is as~~ determined by the Board, ~~unless the Applicant provides that~~ information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this title (relating to the Qualified Allocation Plan) may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then



such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. [If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.](#) In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

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

(B) Development Sites located within 300 feet of a solid waste [facility](#) or sanitary landfill [facilities or illegal dumping sites \(as such dumping sites are identified by the local municipality\)](#);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code, §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which the buildings are located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, 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;

(F) Development Sites located within 500 feet of heavy industrial (i.e. facilities that require extensive ~~capital investment in use of~~ land and machinery, ~~are not easily relocated and~~ produce high levels of external noise, [dust or fumes](#) such as manufacturing plants, fuel storage facilities (excluding gas stations) etc. [or that in the course of normal business there is a high volume of rail or truck traffic to deliver materials or transport goods](#));

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident zones or clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids. Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance (“PIPA”);

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

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

### **(3) Undesirable Neighborhood Characteristics.**

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8(b) of this title (relating to Pre-Application Requirements). For all other Applications, An Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. The Applicant understands that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the undesirable neighborhood characteristics become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. ~~Termination due to non-disclosure may be appealed pursuant to §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)).~~ An Applicant’s own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described

in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the undesirable neighborhood characteristics are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is not subject to appeal.

(B) The undesirable neighborhood characteristics include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the undesirable neighborhood characteristic(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as an eligible Site despite the presence of such undesirable neighborhood characteristic, an Applicant must demonstrate actions being taken that would lead a reader to conclude that there is a high probability –and reasonable expectation the undesirable characteristic will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the undesirable characteristic demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the undesirable neighborhood characteristic disclosed.

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

(ii) The Development Site is located in a census tract or within 1,000 feet of any census tract in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has

failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. [Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site.](#) The applicable school rating will be the ~~2017~~2016 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Development Sites subject to an Elderly Limitation is considered exempt and does not have to disclose the presence of this characteristic.

(C) Should any of the undesirable neighborhood characteristics described in subparagraph (B) of this paragraph exist, the Applicant must submit the Undesirable Neighborhood Characteristics Report that contains the information described in clauses (i) - (viii) of this subparagraph and [mitigation pursuant to](#) subparagraph (D) of this paragraph as such information might be considered to pertain to the undesirable neighborhood characteristic(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

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

(iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

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

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

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

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve ~~the a 2017~~ [Met Standard rating, for the previous two academic years \(regardless of whether the school Met Standard in those years\), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph \(D\)\(iv\) of this paragraph;](#) and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of undesirable neighborhood characteristics should be relevant to the undesirable characteristics that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application and may include, but is not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of ~~the availability of adult education and job training that will lead to full-time permanent employment for~~

~~tenants~~ sustained job growth and employment opportunities, career training opportunities or job placement services, -evidence of gentrification in the area (including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence that crime rates are decreasing, based on violent crime data from the city's police department or county sheriff's department, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that would yield a crime rate below the threshold indicated in this section. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire ~~2015 and 2016~~ 2016 and 2017 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the local police department or local law enforcement agency, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts may be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan whereby it is contemplated that a responsible party will use the property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include documentation from a school official



with oversight of the school in question that indicates current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan. For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted. The letter should, at a minimum and to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, [plans to implement early childhood education](#), and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful. In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and augment classroom performance.

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

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) ~~Factual~~ Determination that the undesirable characteristic(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph.; or

(iii) The Applicant has requested a waiver of the presence of undesirable neighborhood characteristics on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure.

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



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

**(A) General Ineligibility Criteria.**

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

**(B) Ineligibility of Elderly Developments.**

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

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

**(3) Rehabilitation Costs.** Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance and ~~-.The~~meet the minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least \$25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$20,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least \$30,000 per Unit in Building Costs and Site Work.

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

(A) All bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;~~RG-6/U COAX or better and CAT3 phone cable or better, wired to each bedroom, dining room and living room;~~

(B) Laundry connections;

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

(D) Screens on all operable windows;

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

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

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

## **(5) Common Amenities.**

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

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

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all tenants and made available throughout normal business hours and maintained throughout the Affordability Period. Tenants must be provided written notice of the elections made by the Development Owner. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific spaces or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. ~~for activities must be sized appropriately to serve the proposed Target Population.~~ Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected, ~~which includes~~

~~those amenities required under subparagraph (C)(xxxiii) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least some of the amenities required under subparagraph (C)(xxxiii) of this paragraph~~ must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities ~~must be accessible and~~ must be available to all units via an accessible route.

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

- (i) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);
- (ii) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (2 points);
- (iii) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);
- (vii) Swimming pool (3 points);
- (viii) Splash pad/water feature play area (1 point);
- (ix) Furnished fitness center. Equipped with a variety of fitness equipment ~~options that includes with~~ at least one of the following option per for every 40 Units ~~or partial increment of 40 Units~~: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, ~~sauna~~, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control. All Developments must have at least two equipment options but are not required to have more than five equipment options regardless of number of Units (2 points);

- (x) Equipped ~~and functioning~~ business/computer center ~~or equipped computer learning center~~. Must be equipped with 1 computer for every 40 Units (maximum of 5 computers needed) loaded with basic applications/programs to enable email/internet access, word processing, Excel, etc. (~~maximum of 5 computers needed~~), 1 laser printer per computer lab and at least one scanner which may be integrated with printer (2 points);
- (xi) Furnished Community room (2 points);
- (xii) Library with an accessible sitting area (separate from the community room) (1 point);
- (xiii) Enclosed community sun porch or covered community porch/patio (1 point);
- (xiv) Service provider office in addition to leasing offices (1 point);
- (xv) Regularly staffed service provider office in addition to leasing offices (3 points);
- (xvi) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
- ~~(xvii) Health Screening Room (1 point);~~
- (xviii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- ~~(xviii)~~ Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- ~~(xix)~~ Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xx) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected; or
- (xxi) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected;
- (xxii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiii) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxiv) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to tenants; and theater seating (3 points);

(xxvi) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash ~~or a dog wash station with plumbing for hot and cold water connections and tub drainage~~ (requires that the Development allow dogs) (1 point);

(xxvii) ~~Common area~~ Wi-Fi (with coverage throughout the clubhouse and/or community building) (1 point);

(xxviii) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site. (3 points);

(xxiii\*) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) ~~and allows sufficient parking relative to the development size~~ (1 point);

(xxix) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(xxxi) Porte-cochere (1 point); or

(xxxii) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of ~~four~~three categories: ~~Limited Green Amenities~~, Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than ~~four~~two (2) points total under this clause.

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

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

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

~~(c) water conserving fixtures that meet the EPA's WaterSense Label. Such fixtures must include low-flow or high efficiency toilets, bathroom lavatory faucets, and showerheads. Rehabilitation Developments may install WaterSense faucet aerators (minimum of 30% more efficient) instead of replacing the entire faucets;~~

~~(d) Energy Star qualified water heaters or install those that are part of an overall Energy Star efficient system;~~

- ~~(c) install individual or sub-metered utility meters for electric and water. Rehabilitation Developments may claim sub-meter only if not already sub-metered at the time of Application;~~
- ~~(f) healthy finish materials including the use of paints, stains, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standard;~~
- ~~(g) install daylight sensor, motion sensors or timers on all exterior lighting and install fixtures that include automatic switching on timers or photocell controls for all lighting not intended for 24-hour operation or required for security;~~
- ~~(h) recycling service (includes providing a storage location and service for pick-up) provided throughout the Compliance Period;~~
- ~~(i) construction waste management system provided by contractor that meets LEEDs minimum standards;~~
- ~~(j) for Rehabilitation Developments clothes dryers vented to the outside;~~
- ~~(k) for Developments with 41 units or less, at least 25% by cost FSC certified salvaged wood products;~~
- ~~(l) locate water fixtures within 20 feet of water heater;~~
- ~~(m) drip irrigate at non-turf areas;~~
- ~~(n) radiant barrier decking for New Construction Developments or other "cool" roofing materials (documentation must be submitted that substantiates the "cool" roofing materials used are durable and that there are energy savings associated with them);~~
- ~~(o) permanent shading devices for windows with solar orientation (does not include solar screens, but may include permanent awnings, fixed overhangs, etc.);~~
- ~~(p) Energy Star certified insulation products (For Rehabilitation Developments, this would require installation in all places where insulation could be installed, regardless of whether the area is part of the scope of work);~~
- ~~(q) full cavity spray foam insulation in walls;~~
- ~~(r) Energy Star rated windows;~~
- ~~(s) FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring;~~
- ~~(t) sprinkler system with rain sensors;~~
- ~~(u) NAUF (No Added Urea Formaldehyde) cabinets;~~
- ~~(v) Solar screens on all windows (north-facing windows may exclude solar screens if north-facing operable windows provide insect screens).~~

**(II) Enterprise Green Communities** ~~(4 points)~~. The Development must incorporate all mandatory and optional items applicable to the



construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

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

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

## **(6) Unit Requirements.**

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

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

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

- (i) Covered entries (0.5 point);
- (ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);
- (iii) Microwave ovens (0.5 point);

- (iv) Self-cleaning or continuous cleaning ovens (0.5 point);
- (v) Refrigerator with icemaker (0.5 point);
- (vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);
- (vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (viii) Covered patios or covered balconies (0.5 point);
- (ix) Covered parking (~~including~~ may be garages or carports, attached or freestanding) and include ~~of~~ at least one covered space per Unit (1.5 points);
- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- ~~(xii) Built-in (recessed into the wall) computer nook (0.5 point);~~
- (xiii) Built-in (recessed into the wall) shelving unit (0.5 point);
- ~~(xiii)~~ (xiv) Recessed or track LED lighting in kitchen and living areas (1 point);
- ~~(xiv)~~ (xv) Thirty (30) year ~~shingle or metal~~ roofing (~~excludes Thermoplastic Polyolefin (TPO) roofing material~~) (0.5 point);
- ~~(xv)~~ (xvi) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- ~~(xvi)~~ (xvii) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points); and
- ~~(xvii)~~ (xviii) Walk-in closet in master bedroom (0.5 points).

**(7) Tenant Supportive Services.** The supportive services include those listed in subparagraphs (A) - (Z) of this paragraph. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this chapter (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner. No fees may be charged to the tenants for any of the services, there

must be adequate space for the intended services and services offered should be accessible to all (*e.g.* exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

- (A) partnership with local law enforcement to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);
- (B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);
- (C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);
- (D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (1 point);
- (E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);
- (F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);
- (G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);
- (H) annual health fair provided by a health care professional(1 point);
- (I) quarterly health and nutritional courses (1 point);
- (J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);
- (K) scholastic tutoring (shall include daily (Monday – Thursday) homework help or other focus on academics) (3 points);
- (L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

- (N) twice monthly arts, crafts, and other recreational activities (*e.g.* Book Clubs and creative writing classes) (2 points);
- (O) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) (1 point);
- (P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);
- (Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);
- (R) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points);
- (S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
- (T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);
- (U) contracted career training and placement partnerships with local worksorce offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);
- (V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);
- (W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);
- (X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);
- (Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and
- (Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

- (i) Facility for treatment of alcohol and/or drug dependency;
- (ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;
- (iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or
- (iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

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

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (“affected units”) must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement.

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) There must be an accessible or exempt route, as provided for in the Fair Housing Design Act Manual, from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (a) – (e) of this clause.

(a) at least one zero-step, accessible entrance;

(b) at least one visitable bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(c) the bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(d) there must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(e) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights. ~~New Construction (excluding New Construction of~~

~~non-residential buildings) Developments where some Units are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit Type (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) of otherwise exempt units (i.e. single family residence, duplexes, triplexes, and townhomes) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.~~

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

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration~~Substantial Alteration~~, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act).

## Subchapter C

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

**§10.201.Procedural Requirements for Application Submission.** This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §10.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application [\(or notices thereof\)](#), or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

#### **(1) General Requirements.**

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §10.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

(B) Applying for multifamily funds from the Department is a technical process that must be followed completely. As a result of the competitive nature of some funding sources, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that makes timely adherence impossible. If an Applicant chooses to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Applicants must ensure that all documents are legible, properly organized and tabbed, and that materials provided in digital media are fully readable by the Department.



Department staff receiving an application may perform a cursory review to see if there are any glaring [or readily apparent](#) problems. This is a cursory review and may not be relied upon as confirmation that the Application was complete or in proper form.

(C) The Applicant must [timely](#) upload a PDF copy and Excel copy of the complete Application to the Department's secure web transfer server. Each copy must be in a single file and individually bookmarked as further described in the Multifamily Programs Procedures Manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Uniform Application must also be uploaded to the secure web transfer server. It is the responsibility of the Applicant to confirm the upload to the Department's secure web transfer server was successful and to do so in advance of the deadline. Where there are instances of computer problems, mystery glitches, etc. that prevents the Application from being received by the Department prior to the deadline the Application may be terminated.

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

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

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

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §10.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at

least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

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

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

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

**(3) Certification of Tax Exempt Bond Applications with New Docket Numbers.**

Applications that receive an affirmative Board Determination, but for which closing on the bonds does not occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: ~~which means that at a minimum, the following cannot have changed:~~ Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if

the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §10.203 of this chapter (relating to Public Notifications (§2306.6705(9))) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

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

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

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

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

**(4) Withdrawal of Application.** An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. For Tax-Exempt Bond Applications that are under review by staff and there are changes to or a lapse in the financing structure or there are still aspects of the Application that are in flux, staff may consider the Application withdrawn and will provide the Applicant of notice to that effect. Once it is clear to staff that the various aspects of the Application have been solidified staff may re-instate the Application and allow the updated

[information, exhibits, etc. to supplement the existing Application, or staff may require an entirely new Application be submitted if it is determined that such changes will necessitate a new review of the Application. This provision does not apply to Direct Loan Applications that may be layered with Tax-Exempt Bonds.](#)

**(5) Evaluation Process.** Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §10.302 of this chapter (relating to Underwriting Rules and Guidelines) and §~~13.60.307~~ of this ~~title~~chapter (relating to [Multifamily Direct Loan Rule](#)~~Requirements~~). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §10.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §10.101(a)(3) (relating to Undesirable Neighborhood Characteristics). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §10.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

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

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

- (i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is Traditional Carryforward associated with an Application the Department will utilize the date the complete HTC Application that is associated with the Traditional Carryforward is submitted to the Department; and
- (ii) For all other Developments, the date the Application is received by the Department; and
- (iii) Notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. ~~In general, those~~ Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. Moreover, Applications that have undergone a program review and there are threshold, eligibility or other items that remain unresolved, staff may suspend further review and processing of the Application, including underwriting and previous participation reviews, until such time the item(s) has been resolved or there has been a specific and reasonable timeline provided by which the item(s) will be resolved. By way of illustration, if during staff's review a question has been raised regarding whether the Applicant has demonstrated sufficient site control, such Application will not be prioritized for further review until the matter has been sufficiently resolved to the satisfaction of staff.

**(7) Administrative Deficiency Process.** The purpose of the Administrative Deficiency process is to allow an Applicant to provide clarification, ~~correction~~ explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Applicants are encouraged to utilize manuals, frequently asked questions, or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Applicants are also encouraged to contact staff directly with



questions regarding completing parts of the Application. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the Administrative Deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of the Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Any narrative created by response to the Administrative Deficiency cannot contain new information. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure an Administrative Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the Administrative Deficiency process not unduly slow the review process, and since the process is intended to clarify or ~~correct~~explain matters or obtain at the Department's request non-material missing information (that should already ~~been~~be in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives an Administrative Deficiency to address the matter fully by the close of business on the date by which resolution must be complete and the Administrative Deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as a point deduction or termination.

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

following the date of the deficiency notice, then the Application shall be terminated, subject to appeal. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of Administrative Deficiency documentation or the imposing of point reductions for late responses alters the score assigned to the Application, such score will be reflected in the updated application log published on the Department's website.

(C) Administrative Deficiencies for all other Applications or sources of funds. ~~If Administrative Deficiencies are not~~ must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, ~~then an Administrative Deficiency Notice Late Fee of \$500 for each business day the deficiency remains unresolved will be assessed, and the Application will not be presented to the Board for consideration until all outstanding fees have been paid.~~ Applications with unresolved deficiencies after 5:00 p.m. on the ~~seventh~~ tenth business day following the date of the deficiency notice will be ~~terminated or~~ suspended from further processing and the Applicant will be provided with notice to that effect, until such time the item(s) are sufficiently resolved to the satisfaction of the Department. ~~so long as the active Application does not impact the processing or underwriting of other Applications. The Applicant will be responsible for the payment of fees accrued pursuant to this paragraph regardless of any termination. Department staff may or may not assess an Administrative Deficiency Notice Late Fee for or terminate. If, during the period of time when the Application is suspended from review Applications for Tax-Exempt Bond or Direct Loan Developments during periods when private activity bond volume cap or Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule).~~ are undersubscribed. Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

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



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

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

**(9) Challenges to Opposition.** Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §10.4 of this chapter and no later than May 1, ~~2018~~<sup>2017</sup> for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

**§10.202. Ineligible Applicants and Applications.** The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in §42 of the Code, Tex. Gov't Code, Chapter 2306, and

other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

**(1) Applicants.** An Applicant ~~may~~**shall** be considered ineligible if any of the criteria in subparagraphs (A) - (M) of this paragraph apply to those identified on the organizational chart for the Applicant, Developer and Guarantor. An Applicant is ineligible if the Applicant, Developer, or Guarantor:

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

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

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

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

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

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

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

(H) has failed to cure any past due fees owed to the Department within the time frame provided by notice from the Department and at least ten (10) days prior to the Board meeting at which the decision for an award is to be made;

(I) would be prohibited by a state or federal revolving door or other standard of conduct or conflict of interest statute, including Tex. Gov't Code, §2306.6733, or a provision of Tex. Gov't Code, Chapter 572, from participating in the Application in the manner and capacity they are participating;

(J) has, without prior approval from the Department, had previous Contracts or Commitments that have been partially or fully deobligated during the twelve (12) months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such deobligation results in ineligibility under this chapter;

(K) has provided ~~falseified~~ or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), ~~or~~ Commitment, or Determination Notice for a Development;

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

(M) fails to disclose, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction, that has terminated voluntarily or involuntarily within the past ten (10) years or plans to or is negotiating to terminate their relationship with any other affordable housing development. Failure to disclose is grounds for termination. The disclosure must identify the person or persons and development involved, the identity of each other development, and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. An Application may be referred to the Board for termination based upon factors in the disclosure. Staff shall present a determination to the Board as to a person's fitness to be involved as a principal with respect to an Application using the factors described in clauses (i) – (v) of this subparagraph as considerations:

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

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

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

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

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

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

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

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

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

(i) at the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been a person covered by Tex. Gov't Code, §2306.6703(a)(1) or §2306.6733;

(ii) the Applicant proposes to replace in less than fifteen (15) years any private activity bond financing of the Development described by the Application, unless the exceptions in Tex. Gov't Code, §2306.6703(a)(2) of the are met.

**§10.203. Public Notifications** (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should a change in elected official occur between the submission of a pre-application and the submission of an Application, Applicants are required to notify the newly elected (or appointed) official no later than the Full Application Delivery Date.

**(1) Neighborhood Organization Notifications.**

(A) The Applicant must identify and notify all Neighborhood Organizations on record with the county or the state as of 30 days prior to the Full Application Delivery Date and whose boundaries include the entire proposed Development Site. As used in this section, “on record with the state” means on record with the Secretary of State.

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

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

notification. Only a timely and compliant written notification to the correct person constitutes notification.

- (A) Neighborhood Organizations on record with the state or county as of 30 days prior to the Full Application Delivery Date whose boundaries include the [entire](#) Development Site;
- (B) Superintendent of the school district in which the Development Site is located;
- (C) Presiding officer of the board of trustees of the school district in which the Development Site is located;
- (D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);
- (F) Presiding officer of the Governing Body of the county in which the Development Site is located;
- (G) All elected members of the Governing Body of the county in which the Development Site is located; and
- (H) State Senator and State Representative of the districts whose boundaries include the Development Site.

### **(3) Contents of Notification.**

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

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

(B) [The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;](#)

(C) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is or will be in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and.

(D) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

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

**(1) Certification, Acknowledgement and Consent of Development Owner.** A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and, that they have given it with all required authority and with actual knowledge of the matters certified.

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

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552, ~~and the Texas Public Information Act.~~

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



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

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

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

(F) The Applicant will attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code, §2306.6734.

(G) The Development Owner will ~~specifically 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~~ specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

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

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

**(2) Applicant Eligibility Certification.** A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §10.202 of this chapter (relating to Ineligible Applicants and Applications).

(A) for for-profit corporations, any officer authorized by the board of directors, regardless of title, to act on behalf of the corporation, including but not limited to the

president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder;

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

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

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

**(3) Architect Certification Form.** The certification, addressing all of the accessibility requirements [applicable to the Development Site](#), must be executed by the Development engineer; ~~or an accredited architect or Third Party accessibility specialist after careful review of the Department's accessibility requirements.~~ (§2306.6722; §2306.6730) [The certification must include a statement describing how the accessibility requirements relating to Unit distribution will be met. An acceptable, but not required, form of such statement may be obtained in the Multifamily Programs Procedures Manual.](#)

**(4) Notice, Hearing, and Resolution for Tax-Exempt Bond Developments.** In accordance with Tex. Gov't Code, §2306.67071, the following actions must take place with respect to the filing of an Application and any Department awards for a Tax-Exempt Bond Development.

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

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

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

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

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

- (i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a) ~~and subparagraph (A) of this paragraph;~~
- (ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;
- (iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b) ~~and subparagraph (B) of this paragraph;~~ and
- (iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

#### **(5) Designation as Rural or Urban.**

(A) Each Application must identify whether the Development Site is located in an Urban Area or Rural Area of a Uniform State Service Region. The Department shall make

available a list of Places meeting the requirements of Tex. Gov't Code, §2306.004(28-a)(A) and (B), for designation as a Rural Area and those that are an Urban Area in the Site Demographics Characteristics Report. Some Places are municipalities. For any Development Site located in the ETJ of a municipality and not in a Place, the Application shall have the Rural Area or Urban Area designation of the municipality whose ETJ within which the Development Site is located. For any Development Site not located within the boundaries of a Place or the ETJ of a municipality, the applicable designation is that of the closest Place.

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the ~~2018~~2017 Application Round, such requests must be made no later than ~~December 15, 2017~~December 16, 2016. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

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

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

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

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

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

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

**(6) Experience Requirement.** Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years 2014 through 2017, ~~2015 or 2016~~ which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included ~~in~~ the development and placement in service of 150 units or more. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

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

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

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

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

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

## **(7) Financing Requirements.**

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

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

(II) a valid recorded deed(s) of trust lien on the Development in the name of the Development Owner as grantor in favor of the party providing such financing and covered by a lender's policy of title insurance in their name;

(ii) Term sheets for interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money must:

(I) have been signed by the lender;

(II) be addressed to the Development Owner or Affiliate;

(III) for a permanent loan, include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization;

- (IV) include either a committed and locked interest rate, or the currently projected interest rate and the mechanism for determining the interest rate;
- (V) include all required Guarantors, if known;
- (VI) include the principal amount of the loan;
- (VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds; and
- (VIII) include and address any other material terms and conditions applicable to the financing. The term sheet may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits, if applicable; or

(iii) For Developments proposing to refinance an existing USDA Section 515 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

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

(C) Owner Contributions. If the Development will be financed in part by a capital contribution by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The



contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §10.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

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

- (i) an estimate of the amount of equity dollars expected to be raised for the Development;
- (ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;
- (iii) pay-in schedules;
- ~~(iv) anticipated developer fees paid during construction;~~
- (iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and
- (v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds.

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

## **(8) Operating and Development Cost Documentation.**

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

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

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

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

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

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

(ii) If costs for Off-Site Construction are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the Off-Site Cost Breakdown prepared by a Third Party engineer must be provided. The certification from a Third Party engineer must describe the necessity of the off-site improvements, including the relevant requirements of the local jurisdiction with authority over building codes. If any Off-Site Construction costs are included in Eligible Basis, a letter must be provided from a certified public

accountant allocating which portions of those costs should be included in Eligible Basis. If off-site costs are included in Eligible Basis based on PLR 200916007, a statement of findings from a CPA must be provided which describes the facts relevant to the Development and affirmatively certifies that the fact pattern of the Development matches the fact pattern in PLR 200916007.

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

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. [For Applications that do not include Direct Loan funds or 811 PRA](#), ~~if~~ the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

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

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

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

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

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

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

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

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

- (v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and
- (vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

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

(A) For all New Construction, Reconstruction and Adaptive Reuse Developments a site plan is submitted that includes the items identified in clauses (i) – (v) of this subparagraph and for all Rehabilitation Developments, the site plan includes the items identified in clauses (i) – (ix) of this subparagraph:

- (i) includes a unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application;
- (ii) identifies all residential and common buildings;
- (iii) clearly delineates the flood plain boundary lines and shows all easements;
- (iv) if applicable, indicates possible placement of detention/retention pond(s);
- (v) indicates the location and number of the parking spaces;
- (vi) indicates the location and number of the accessible parking spaces;
- (vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;
- (viii) delineates compliant accessible routes; and
- (ix) indicates the distribution of accessible Units.

(B) Building floor plans must be submitted for each building type. ~~Applications for Rehabilitation (excluding Reconstruction) are not required to submit building floor plans unless the floor plan changes. Applications for Adaptive Reuse are only required to include building plans delineating each Unit by number and type.~~ Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

(C) Unit floor plans for each type of Unit must be included in the Application and must include the square footage for each type of Unit. Unit floor plans must be submitted for the accessible Units. Applications for Adaptive Reuse are only required to include Unit floor plans for each distinct ~~typical Unit type~~ floor plan such as one-bedroom, two-bedroom and for all ~~Unit types~~ floor plans that vary in Net Rentable Area by 10 percent from the typical ~~Unit~~ floor plan; and

(D) Elevations must be submitted for each side of each building type (or include a statement that all other sides are of similar composition as the front) and include a percentage estimate of the exterior composition and proposed roof pitch. Applications for Rehabilitation and Adaptive Reuse may submit photographs if the Unit configurations are not being altered and post-renovation drawings must be submitted if Unit configurations are proposed to be altered.

**(10) Site Control.**

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control 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. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

(B) In order to establish Site Control, one of the items described in clauses (i) - (iii) of this subparagraph must be provided. In the case of land donations, Applicants must demonstrate that the entity donating the land has Site Control as evidenced through one of the items described in clauses (i) - (iii) of this subparagraph or other documentation acceptable to the Department.

(i) a recorded warranty deed vesting indefeasible title in the Development Owner or, if transferrable to the Development Owner, an Affiliate of the Owner, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or

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

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

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

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

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

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

(C) Requesting a Zoning Change. The Application must include evidence in the form of a letter from a local government official with jurisdiction over zoning matters that the Applicant or Affiliate has made formal application for a required zoning change and that the jurisdiction has received a release whereby the applicant for the zoning change has agreed to hold the political subdivision and all other parties harmless in the event the appropriate zoning is not granted. Documentation of final approval of appropriate zoning must be submitted to the Department with the Commitment or Determination Notice.

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

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

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

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

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

### **(13) Ownership Structure and Previous Participation.**

(A) Organizational Charts. A chart must be submitted that clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer and Guarantor, identifying all Principals thereof and providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and 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. The List of Organizations form, as provided in the Application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development.

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

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



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

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to §42(h)(5) of the Code and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

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

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

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

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

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

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

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

(B) All Other Applications. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner must submit an IRS determination letter which states that

the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code; and the Nonprofit Participation exhibit as provided in the Application. If the Application involves a nonprofit that is not exempt from taxation under §501(c)(3) or (4) of the Code, then they must disclose in the Application the basis of their nonprofit status.

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

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

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

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

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

~~(16) Section 811 Project Rental Assistance Program. All Competitive HTC Applications, Direct Loan only Applications and Tax-Exempt Bond Development Applications that are layered with Direct Loan funds must meet the requirements of subparagraphs (A) or (B) of this paragraph. Applications that are unable meet the requirements of subparagraphs (A) or (B) must certify to that effect in the Application.~~

~~(A) Applicants must apply for and obtain a determination by the Department that an Existing Development is approved to participate in the Department's Section 811 Project Rental Assistance Program ("Section 811 PRA Program"). The approved Existing Development must commit at least the lower of 10 units or 10% of the total number of Units in the Development to the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines (§PRA.305) or other requirements limit the proposed Development to fewer than 10 Units. An approved Existing Development may be used to satisfy the requirements of this paragraph in more than one Housing Tax Credit or other Multifamily Housing program Application, as long as at the time of Carryover, Award Letter or Determination Notice, as applicable, the minimum number of Units as stated above are provided for each Development awarded housing tax credits or Direct Loan funds. Once an Applicant submits their Application, Applicants may not withdraw their commitment to satisfy the threshold criteria of this subparagraph, although an Applicant may request to utilize a different approved Existing Development than the one submitted in association with the awarded Application to satisfy this criteria. Existing Developments that are included in an Application that does not receive an award are not obligated to participate in the Section 811 PRA Program. An Applicant may be exempt from having to provide 811 units in an Existing Development if approval from either their lender or investor cannot be obtained and documentation to that effect is submitted in the Application, but they would be required to provide such Units through subparagraph (B) of this paragraph.~~

~~(B) Applicants that cannot meet the requirements of subparagraph (A) of this paragraph must submit evidence of such through a self certification that the Applicant and any Affiliate do not have an ownership interest in or control of any Existing Development that would meet the criteria outlined in the Section 811 PRA Program Request for Applications, and if applicable, by submitting a copy of any rejection letter(s) that have been provided in response to the Request for Applications. In such cases, the Applicant is able to satisfy the threshold requirement of this paragraph through this subparagraph (B). Applications must meet all of the requirements in clauses (i) – (v) of this subparagraph. Applicants must commit at least the lower of 10 Units or 10% of the total number of Units in the Development for which the Application(s) has been submitted for participation in the Section 811 PRA Program unless the Integrated Housing Rule (10 TAC §1.15) or Section 811 PRA Program guidelines or other requirements limit the proposed Development to fewer than 10 Units. Once elected in the Application(s), Applicants may not withdraw their~~

~~commitment to have the proposed Development participate in the Section 811 PRA Program unless the Department determines that the Development cannot meet all of the Section 811 PRA Program criteria or the Applicant chooses to request an amendment by Carryover, Award Letter, or subsequent to the issuance of the Determination Notice but prior to closing (for Tax-Exempt Bond Developments), or to place the Units on an Approved Existing Development. If the Applicant or an Affiliate obtain an ownership interest in an Approved Existing Development, the Applicant can submit an Amendment request authorizing that the Application satisfies this criteria under subparagraph (A), not subparagraph (B). Such an Amendment request will be considered a non-material change that has not been implemented, and Applicants will not be subject to the amendment fee required under §10.901(13) (relating to Fee Schedule, Appeals and other Provisions).~~

~~(i) The Development must not be an ineligible Elderly Development;~~

~~(ii) Unless the Development is also proposing to use any federal funding, the Development must not be originally constructed before 1978;~~

~~(iii) The Development must have Units available to be committed to the Section 811 PRA Program in the Development, meaning that those Units do not have any other sources of project-based rental assistance within 6 months of receiving Section 811 PRA Program assistance, not have an existing use restriction for Extremely Low income households, and the Units do not have an existing restriction for Persons with Disabilities;~~

~~(iv) The Development Site must be located in one of the following areas: Austin-Round Rock MSA, Brownsville-Harlingen MSA, Corpus Christi MSA; Dallas-Fort Worth-Arlington MSA; El Paso MSA; Houston-The Woodlands-Sugar Land MSA; McAllen-Edinburg-Mission MSA; or San Antonio-New Braunfels MSA; and~~

~~(v) No new construction activities or projects shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow sections (i) – (iii) of this subparagraph. Existing structures may be assisted in these areas, except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, but must meet the following requirements:~~

~~(I) The existing structures must be flood-proofed or must have the lowest habitable floor and utilities elevated above both the 500-year floodplain and the 100-year floodplain.~~

~~(II) The project must have an early warning system and evacuation plan that includes evacuation routing to areas outside of the applicable floodplains.~~

~~(III) Project structures in the 100-year floodplain must obtain flood insurance under the National Insurance Program. No activities or projects located within the 100-year~~

~~floodplain may be assisted in a community that is not participating in or has been suspended from the National Flood Insurance Program.~~

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

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

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

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

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

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

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

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

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

**(4) Appraisal.** This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §10.304 of this chapter, is required for any

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

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

**§10.207. Waiver of Rules ~~for Applications.~~**

**~~(a) General Waiver Process.~~** This waiver section, unless otherwise specified, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant is encouraged to submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. ~~Waiver requests that are limited to~~



~~Development design and construction elements not specifically required in Tex. Gov't Code, Chapter 2306 must meet the requirements of paragraph (1) of this subsection. All other~~ waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

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

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

**~~(3b) Waivers Granted by the Board.~~** The Board may not grant a waiver, ~~in its discretion, may waive any one or more of the rules in Subchapters A through G of this chapter, Chapter 11, Chapter 12 and Chapter 13, except no waiver shall be granted to~~ provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board, ~~in its discretion,~~ may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

## Subchapter G – Fee Schedule, Appeals and other Provisions

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

**(1) Competitive Housing Tax Credit Pre-Application Fee.** A pre-application fee, in the amount of \$10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private 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, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

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

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

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

be eligible to receive a discount of 10 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be \$1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

**(4) Refunds of Application Fees.** Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute ~~10~~20 percent, the site visit will constitute ~~10~~20 percent, program review will constitute 40 percent, and underwriting review will constitute ~~40~~20 percent.

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

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

~~**(67) Third Party Deficiency Request Fee.** For Competitive Housing Tax Credits (HTC) Applications, a fee equal to \$500 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).~~

~~**(78) Housing Tax Credit Commitment Fee.** No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.~~

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

**(910) Building Inspection Fee.** (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of \$750 must be submitted. ~~Building inspection fees in excess of \$750 may be charged to the Development Owner not to exceed an additional \$250 per Development.~~ If the Development Owner has paid the fee and returns the Housing Credit Allocation or for Tax-Exempt Bond Developments, is not able to close on the bonds, then the Building Inspection Fee may be refunded upon request.

**(1011) Tax-Exempt Bond Credit Increase Request Fee.** Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

**(1112) Extension Fees.** All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements submitted at least thirty (30) calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of \$2,500. Fees for each subsequent extension request on the same activity will increase by increments of \$500~~A subsequent request on the same activity, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline, must include a fee of \$3,000 and if a third request for such amendment is made, it must include a fee of \$3,500.~~ An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

**(1213) Amendment Fees.** An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of \$2,500. Fees for each subsequent amendment request related to the same application will increase by increments of \$500. A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of

~~\$3,000 and if a third request for such amendment is made, it must include a fee of \$3,500.~~ Amendment fees and fee increases are not required for the Direct Loan programs.

**(1314) Right of First Refusal Fee.** Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of \$2,500.

**(1415) Qualified Contract Pre-Request Fee.** A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of \$250.

**(1516) Qualified Contract Fee.** Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of \$3,000.

**(1617) Ownership Transfer Fee.** Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of \$1,000.

**(1718) Unused Credit or Penalty Fee.** Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with Internal Revenue Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director ~~may~~**will** recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

**(1819) Compliance Monitoring Fee.** Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal \$40 per tax credit Unit

and \$34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

**(1920) Public Information Request Fee.** Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't 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.

**(2021) Adjustment of Fees by the Department and Notification of Fees.** (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and **Direct LoanHOME** programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

#### **§10.902.Appeals Process (§2306.0321; §2306.6715).**

(a) An Applicant or Development Owner may appeal decisions made by the Department pursuant to the process identified in this section. Matters that can be appealed include:

- (1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;
- (2) The scoring of the Application under the applicable selection criteria;
- (3) A recommendation as to the amount of Department funding to be allocated to the Application;
- (4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;
- (5) Denial of a change to a Commitment or Determination Notice;
- (6) Denial of a change to a loan agreement;



(7) Denial of a change to a LURA;

(8) Any Department decision that results in the ~~erroneous~~ termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

(f) Board review of an Application related appeal will be based on the original Application.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))



**§10.903. Adherence to Obligations.** (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

**§10.904. Alternative Dispute Resolution (ADR) Policy.** In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions.

**THIS TAB INCLUDES  
PRINTED MATERIALS  
SUBMITTED IN  
CONNECTION WITH  
REQUESTS TO MAKE  
PUBLIC COMMENT**

The logo for RAD (Rental Assistance Demonstration) features the letters 'RAD' in a bold, sans-serif font. The letter 'A' is stylized with a house-like shape inside it, colored in orange and brown tones. The letters 'R' and 'D' are in a dark grey color.

RENTAL ASSISTANCE  
DEMONSTRATION

 Housing Authority of the City of El Paso



**TDHCA**  
**9.7.2017**

THE TRANSFORMATION OF EL PASO



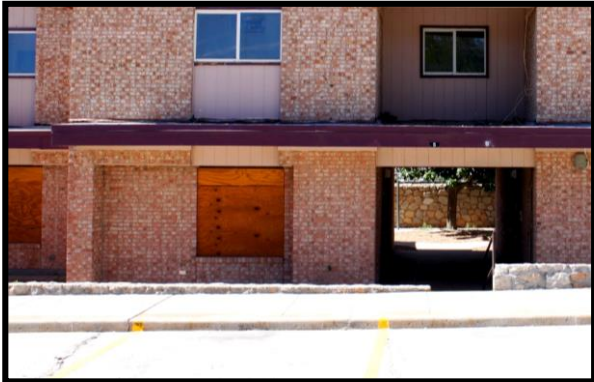
# EL PASO'S IMPENDING **HOUSING CRISIS**



**Housing Authority  
of the City of El Paso**



# El Paso's Impending Housing Crisis



**Machuca:** 49 out of 122 units (40%) offline due to asbestos.



**Tays:** 11 out of 359 units (3%) offline due to structural damage & asbestos.



**Kathy White:** Crumbling Walls



**Eisenhower:** Rotting ductwork behind asbestos walls and ceilings

RAD AS A  
SOLUTION TO  
TRANSFORM  
**PUBLIC**  
HOUSING



# What is RAD?



## (RAD)

The Rental Assistance Demonstration

**SECTION 9**  
PUBLIC HOUSING



**SECTION 8**  
MULTI FAMILY



ADDRESS THE  
**\$26 BILLION**  
BACKLOG in  
capital improvements  
across the U.S.



**60,000** out of **1.3 million**

total **PUBLIC HOUSING UNITS** provided



first come, first served basis

**PUBLIC HOUSING ASSETS**  **LOCAL PHA**

which can then leverage those assets to **RAISE SIGNIFICANT CAPITAL.**

**40** yrs. **GUARANTEED**  
**SUSTAINABLE FEDERAL REVENUE**



**PHAs** must use that capital to **REHABILITATE** their units to acceptable standards.



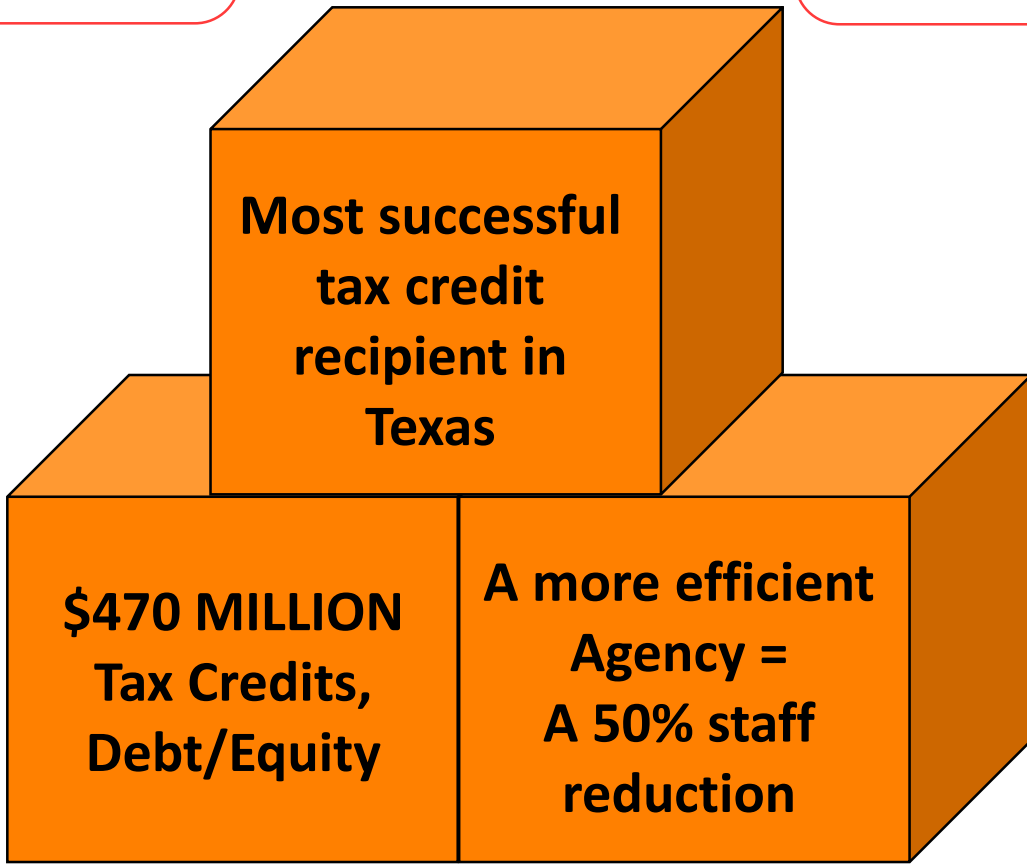


# RAD: HACEP's Revitalization Effort

**6,100 Public Housing Units**



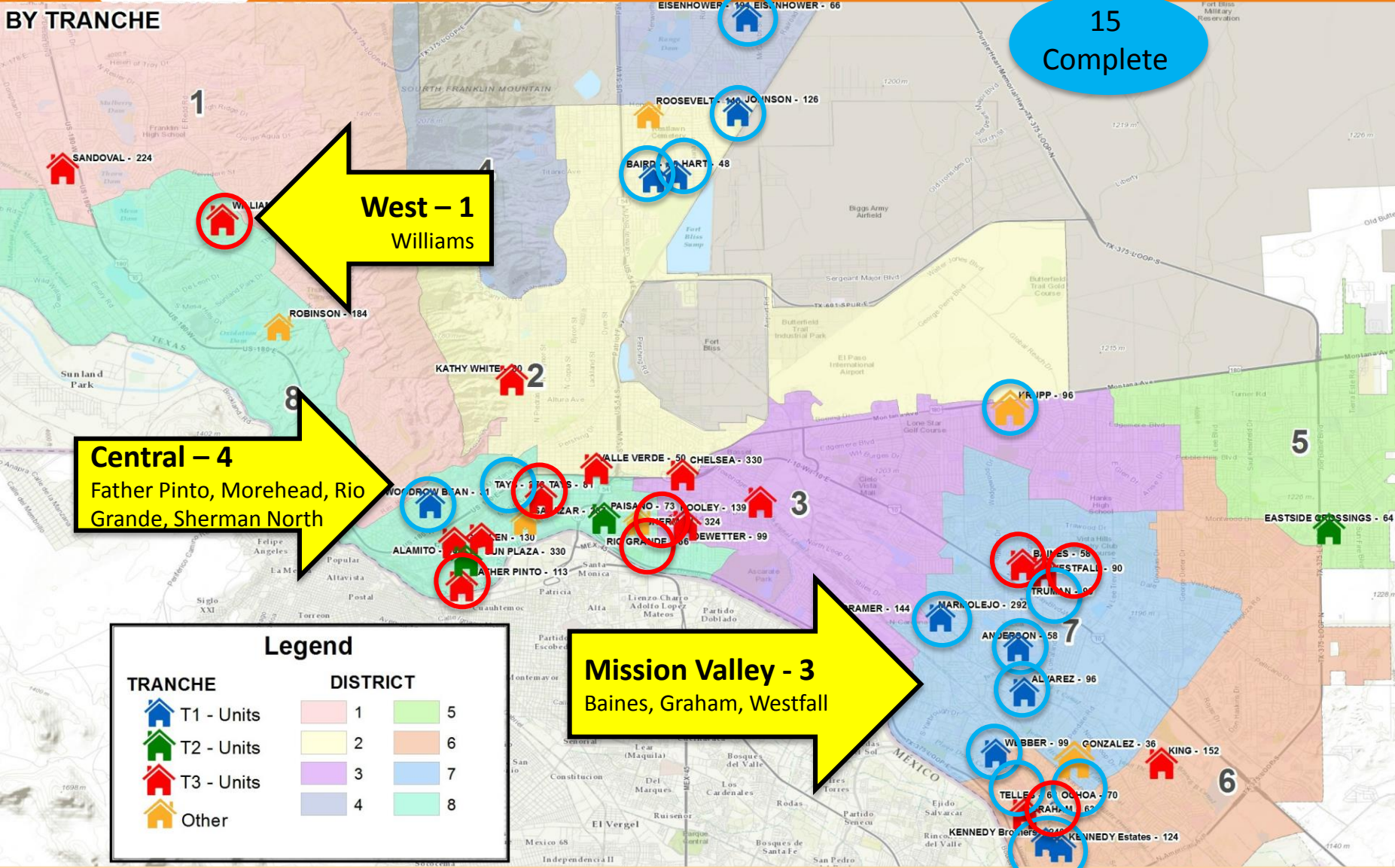
**First Largest RAD Conversion in U.S.**



# TRANSFORMING EL PASO

BY TRANCHE

15 Complete



**West - 1**  
Williams

**Central - 4**  
Father Pinto, Morehead, Rio Grande, Sherman North

**Mission Valley - 3**  
Baines, Graham, Westfall

Legend	
TRANCHE	DISTRICT
T1 - Units	1  5
T2 - Units	2  6
T3 - Units	3  7
Other	4  8



# HOW RAD BENEFITS EL PASO





# BENEFITS TO EL PASO

**+1,000** JOBS

**MIXED-INCOME  
& MIXED-USE**  
neighborhoods

**NO COST**  
to local taxpayers



NEW residences will feature  
**GREEN ENERGY** efficiency

**6,346**

REVITALIZED PUBLIC HOUSING UNITS



Aligned with **STRATEGIC HOUSING OBJECTIVES** outlined in  
**Plan El Paso 2012**

## \$1.3 BILLION INVESTMENT

A successful RAD initiative is dependent on a strong partnership between HACEP and the City of El Paso to secure 9% Low Income Housing Tax Credits (LIHTC) from the Texas Department of Housing and Community Affairs (TDHCA).

**This commitment will ensure a \$500 million infusion of capital into El Paso, *at no cost to local taxpayers*, that will translate into more than \$1 billion of economic impact and create 1,000+ jobs.**





# SOUTH TAYS COMMUNITY (9%)





# H. KRUPP COMMUNITY (9%)







# UNDER CONSTRUCTION(9%)



**Sherman-North Community**  
18 Low-Rise Buildings  
178 Residential Units (+34 units)

**Westfall Community**  
90 Residential Units





**RAAD**

RENTAL ASSISTANCE  
DEMONSTRATION

 Housing Authority of the City of El Paso

# OPERATIONS & LOGISTICS

## “The Numbers”

THE TRANSFORMATION OF EL PASO



# NUMBERS: THE HIGHLIGHTS

**TOTAL MOVES**

**2,542**

Temps: 1,392 // Returns: 1,150

**UNDER CONSTRUCTION**

**533**

**COMPLETED RAD Conversions**

**2,417**

**530  
JOBS**



Approx. Investment To-Date: \$550 MILLION