

**SUPPLEMENTAL BOARD BOOK
OF
December 8, 2022**



Leo Vasquez III, Chair

Kenny Marchant, Vice-Chair

Ajay Thomas, Member

Brandon Batch, Member

Anna Maria Farias, Member

Holland Harper, Member

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

**A G E N D A
10:00 AM
December 8, 2022**

**Capitol Extension, Hearing Room E2.030
1100 Congress Ave
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

Leo Vasquez, 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 December 21, 2022, as National Homeless Persons' Memorial Day

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 the Board meeting minutes summary for November 10, 2022

Beau Eccles
Board
Secretary

ASSET MANAGEMENT

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Austin Colorado Creek Apartments (HTC #15423)

Rosalio Banuelos
Director of Asset
Management

MULTIFAMILY BOND FINANCE

- c) Presentation, discussion, and possible action on Inducement Resolution No. 23-011 for Multifamily Housing Revenue Bonds regarding authorization for filing applications for private activity bond authority for Aspen Park (#22623)
- d) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Palladium Oak Grove) Series 2022 Resolution No. 23-012, and a Determination Notice of Housing Tax Credits

Teresa Morales
Director of
Multifamily Bond

This will be an open, public meeting conducted under Tex. Gov't Code, chapter 551, without COVID-19 emergency waivers. There will not be a remote online or telephone option for public participation. The meeting, however, will be streamed online for public viewing. Masks will be available for members of the public who wish to attend this public meeting.

- e) Presentation, discussion, and possible action on Inducement Resolution No. 23-013 for Multifamily Housing Revenue Bonds regarding authorization for filing applications for private activity bond authority for Corona Del Valle (21600) and Socorro Village (22604)

COMMUNITY AFFAIRS

- f) Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for 2023 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

Michael De Young
Director of Community
Affairs

RULES

- g) Presentation, discussion, and possible action on adoption of amendments to 10 TAC Chapter 6, Community Affairs Programs, Subchapter B Community Services Block Grant, §6.201 Background and Definitions; §6.206 Strategic Plan, Community Assessment, and Community Action Plan; §6.207 Subrecipient Requirements; Subchapter C Comprehensive Energy Assistance Program, §6.304 Deobligation and Reobligation of CEAP Funds; §6.307 Subrecipient Requirements for Customer Eligibility Criteria, Provision of Services, and Establishing Priority for Eligible Households; §6.308 Allowable Subrecipient Administrative and Program Services Costs; §6.309 Types of Assistance and Benefit Levels; §6.310 Crisis Assistance Component; §6.311 Utility Assistance Component; §6.312 Payments to Subcontractors and Vendors; Subchapter D Weatherization Assistance Program, §6.402 Purpose and Goals; §6.403 Definitions; §6.406 Subrecipient Requirements for Establishing Household Eligibility and Priority Criteria; §6.407 Program Requirements; §6.408 Department of Energy Weatherization Requirements; §6.414 Eligibility for Multifamily Dwelling Units and Shelters; §6.416 Whole House Assessment; §6.417 Blower Door Standards; and directing that they be published for adoption in the *Texas Register*

Michael De Young
Director of Community
Affairs

MULTIFAMILY FINANCE

- h) Presentation, discussion, and possible action on multiple requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Applications awarded in the 2021 competitive 9% tax credit round

Cody Campbell
Director of Multifamily
Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Media Analysis and Outreach Report, October 2022
- b) Report on TDHCA One-Time or Temporary Allocations – Pandemic Response and Other Initiatives
- c) Report on the Draft Computation of Housing Finance Division Total and Unencumbered Fund Balances and Transfers to the Housing Trust Fund

Michael Lyttle
Director of
External Affairs
Brooke Boston
Deputy Director
of Programs
Joe Guevara
Interim Director of
Administration

ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions¹

Leo Vasquez
Chair

ITEM 3: EXECUTIVE

Executive Director’s Report

Bobby Wilkinson
Executive Director, TDHCA

¹ Note: the Chair is not restricted by this item, and may call for an Executive Session at any time during the posted meeting.

ITEM 4: INTERNAL AUDIT

- a) Report on the Meeting of the Audit and Finance Committee and Action on recommendations of that committee
- b) Presentation, discussion, and possible approval of the Annual Internal Audit Plan for Fiscal Year 2023

Ajay Thomas
Chair of Audit and Finance Committee
Mark Scott
Director of Internal Audit

ITEM 5: HOME AMERICAN RESCUE PLAN

Presentation, discussion, and possible action to authorize the issuance of the 2023-2 HOME American Rescue Plan Rental Development Notice of Funding Availability and publication in the *Texas Register*

Naomi Cantu
HOME American Rescue Plan Director

ITEM 6: HOUSING RESOURCE CENTER

Presentation, discussion, and possible action on the draft 2023 State of Texas Low Income Housing Plan and Annual Report; proposed repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 concerning State of Texas Low Income Housing Plan and Annual Report; proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 concerning State of Texas Low Income Housing Plan and Annual Report; and directing their publication for public comment in the *Texas Register*

Elizabeth Yevich
Director of Housing Resource Center

ITEM 7: COMMUNITY AFFAIRS

Report on the allocation of Program Year 2023 Community Services Block Grant awards

Michael De Young
Director of Community Affairs

ITEM 8: MULTIFAMILY BOND FINANCE

Quarterly report relating to staff-issued Determination Notices for 2022 Non-competitive 4% Housing Tax Credit applications

Teresa Morales
Director of Multifamily Bond

ITEM 9: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the *Texas Register* for adoption
- b) Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2023-1 Multifamily Direct Loan Notice of Funding Availability
- c) Presentation, discussion, and possible action on the adoption of the 2023 Multifamily Programs Application Procedures Manual

Cody Campbell
Director of Multifamily Programs

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

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;

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;

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;

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

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.

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 or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th 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 Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Danielle Leath, 512-475-4606, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath, al siguiente número 512-475-4606 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

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BOARD ACTION REQUEST
HOME AMERICAN RESCUE PLAN
DECEMBER 8, 2022

Presentation, discussion, and possible action to authorize the issuance of the 2023-2 HOME American Rescue Plan Rental Development Notice of Funding Availability and publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, under Section 3205 of the American Rescue Plan (ARP) Act, the Texas Department of Housing and Community Affairs (TDHCA) was allocated \$132,969,147 of HOME-ARP Program funds from the U.S. Department of Housing and Urban Development (HUD);

WHEREAS, TDHCA created a HOME-ARP Allocation Plan, which was released for public comment in January 2022, revised as a result of the public comment, submitted to HUD, and approved in May 2022;

WHEREAS, the HOME-ARP Allocation Plan programmed \$56,551,887 in affordable rental housing development and capitalized operating costs assistance (COCA) reserves, and \$3,324,229 in nonprofit capacity building/operating cost (NCO) to support rental development;

WHEREAS, up to \$10,000,000 of the rental development/COCA amount was set-aside for 2020/2021 National Housing Trust Fund (NHTF) applications or awardees which demonstrated cost increases that necessitated additional investment and met eligibility criteria; and

WHEREAS, the HOME-ARP NHTF set-aside has an Application close date of December 31, 2022, and, in order to make any additional funds available to Applicants of the 2023-2 NOFA as quickly as possible, staff recommends that the Executive Director or designee be authorized to amend this NOFA to add funds from the HOME-ARP NHTF set-aside that are unrequested into rental development/COCA;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director is authorized to amend to add funds to the 2023-2 HOME-ARP NOFA without further Board approval, from the HOME-ARP NHTF set-aside;

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the *Texas Register*, a

2023-2 HOME-ARP Rental Development NOFA for funding in the amount of approximately \$49,836,116, to be released for Application, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to suspend the 2023-2 HOME-ARP Rental Development NOFA if there are more requests for funding than funds available.

BACKGROUND

TDHCA programmed \$56,511,887 in HOME-ARP for affordable rental housing development, which is 42.5% of the total HOME-ARP funds. Eligible activities include rehabilitation, reconstruction, conversion or new construction and capitalized operating cost assistance (COCA) reserves. COCA is a unique reserve based on an eligible amount of operating costs for HOME-ARP Units with qualified populations, as defined in HUD Community Planning and Development (CPD) Notice 21-10, and further detailed below.

Within the rental housing activity of the \$56,511,877 is a \$10,000,000 set-aside for direct awards to qualifying 2020 or 2021 National Housing Trust Fund (NHTF) Developments. This set-aside was created to preserve existing Department investments in NHTF-funded developments that may otherwise be financially infeasible. The HOME-ARP NHTF Set-Aside Applications were accepted in August 2022, and the set-aside will close December 31, 2022. After deducting the HOME-ARP NHTF Set-Aside, there is \$46,511,877 available for the 2023-2 HOME-ARP Rental Development NOFA for construction or COCA reserves.

TDHCA also programmed \$3,324,229 of HOME-ARP funding for nonprofit capacity building/operating cost assistance (NCO) to support rental development. NCO within the 2023-2 HOME-ARP Rental Development NOFA is for expanding/improving or supporting the existing operating costs of the organization so that it can better carry out rental development. The NCO for rental development is being released in the 2023-2 HOME-ARP Rental Development NOFA. The maximum amount for NCO is \$75,000 per year for up to three years. However, if the total requests for HOME-ARP rental capital/COCA is greater than the amount released in the NOFA, TDHCA reserves the right to not award NCO and convert the NCO funds to rental capital/COCA funds, or to award the highest scoring eligible HOME-ARP rental award(s).

Therefore, the 2023-2 HOME-ARP Rental Development NOFA announces the availability of \$49,836,116 in HOME-ARP funds for Applications seeking rental development/COCA and NCO to start the Application Acceptance Period on December 9, 2022. Applications under this NOFA will have two Application Acceptance Dates: the first will be January 31, 2023, and the second will be March 1, 2023. The first Application Acceptance period will be for Developments that are only requesting HOME-ARP from TDHCA, or are requesting HOME-ARP layered with 2022 or 2023 4% HTCs, 2022 9% HTC, HOME annual, or National Housing Trust Fund (NHTF). NHTF Applicants are only eligible in the event that the per-unit

subsidy limit for NHTF would be exceeded with additional NHTF. The second Application Acceptance period will be only for 2023 9% HTC Supportive Housing Applicants, if funding is available. All Applications will be processed by score and Application Acceptance Date.

Additional funds may become available after December 31, 2022, when the HOME-ARP NHTF Set-Aside closes. Currently there are two applicants within the HOME-ARP NHTF Set-Aside requesting \$8,127,177 total. If no additional HOME-ARP NHTF Applications are received by December 31, 2022, the remaining \$1,872,823 will be added to the affordable rental housing and COCA reserves amount in the 2023-2 HOME-ARP NOFA. Additionally, if either of the HOME-ARP NHTF Set-Aside Applicants are withdrawn or terminated, their application funding currently under review will be added to the 2023-2 HOME ARP Rental Development NOFA. The moving of the funds from the HOME-ARP NHTF Set-Aside to the 2023-2 NOFA would be accomplished without further Board approval.

If there are more requests for HOME-ARP Rental Development than funding available, staff is requesting the authority to suspend the NOFA and not accept any more applications by amending the NOFA but without further Board approval. Staff may restart accepting applications under the NOFA if the applications under review are withdrawn, terminated, or recommended for less than the original request so that there is additional funding available.

For the 2023-2 HOME-ARP Rental Development NOFA, the minimum request is \$500,000. The maximum request for the applications submitted by the first Application Acceptance Date is \$15,000,000, up to 100% of the HOME-ARP eligible costs, and is inclusive of COCA and NCO. The maximum request for applications submitted by the second Application Acceptance Date is \$7,000,000, up to 100% of the HOME-ARP eligible costs, and is inclusive of COCA and NCO. These loan structures are available for all funds and in all set-asides: fully amortizing for all Applicants or deferred forgivable for Supportive Housing Applications, as defined at 10 TAC §11.1(d)(126). FHA Insured senior debt is not available at this time.

One of the reasons HOME-ARP was created was to serve specific populations called qualifying populations (QPs). These include:

- Households that are experiencing homelessness, per 24 CFR §91.5;
- Households at-risk of homelessness with incomes below 30% AMI, per 24 CFR §91.5;
- Households with at-risk of homelessness criteria and incomes up to 50% AMI, per HUD CPD Notice 21-10;
- Households fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, per HUD 24 CFR §5.2003;
- Households with 30% AMI with severe housing cost burden defined as paying more than 50% of monthly household income toward housing costs, per HUD CPD Notice 21-10;
- Households who have qualified as homeless previously, are currently housed with temporary/emergency assistance, and who need additional housing assistance or supportive services to avoid a return to homelessness, per HUD CPD Notice 21-10; or
- Veterans (and their families) that meet one of the above definitions.

At least 70% of the HOME-ARP Units must be for households that are QP. QP households pay no more than 30% of their income toward rent, and will be underwritten at zero rent, unless paired with project based assistance. In order to support zero rent Units, HOME-ARP has several flexibilities such as:

- No maximum unit subsidy
- COCA for up to 15 years
- Possibility to adopt the Public Housing Authority utility allowance which may better pair with project-based assistance (not available for Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF , unless the Development is all-bills paid)
- Up to 30% of the HOME-ARP units may be high HOME rent; up to 10% may be at 80% AMI at high HOME rent, and the rest of the non-QP HOME ARP units may be for 60% AMI at high HOME rent.

All Applications awarded under this NOFA will be subject to the requirements of 10 TAC Chapters 1, 2, 10, and 13 – the Multifamily Direct Loan rule – and applicable sections of 10 TAC Chapter 11, the Qualified Allocation Plan. Applications layered with 9% Housing Tax Credits will be further required to meet Competitive HTC criteria set forth in 10 TAC Chapter 11. Applications layered with Private Activity Bond financing will also be subject to provisions of Chapter 12. However, certain waivers and alternative requirements in 10 TAC are being recommended to allow for better alignment with the waivers and new regulations outlined in HUD Community Planning and Development Notice 21-10 and Appendix. These waivers are listed in Attachment A of the NOFA.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME-ARP RENTAL HOUSING
2023-2 NOTICE OF FUNDING AVAILABILITY (NOFA)

(1) **Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$46,511,887 in HOME Investment Partnerships Program (HOME) American Rescue Plan (ARP) for the development of affordable multifamily rental housing including funds for a portion of the property’s eligible capitalized operating expenses, and \$3,324,229 in nonprofit capacity building/nonprofit operating funds for eligible costs related to developing the capacity of nonprofit organizations to successfully carry out HOME-ARP eligible activities related to rental housing. Only applicants applying for development funds are eligible to apply for the operating funds. Applicants under the HOME-ARP 2023-2 NOFA will be accepted during two Application Acceptance periods, if sufficient funds remain. The first Application Acceptance period will be primarily for qualifying 4% Housing Tax Credit (HTC) or Multifamily Direct Loan Applicants. The second Application Acceptance period will be for layering HOME-ARP with the 2023 9% HTC Application. The availability and use of these funds are subject to the following rules, including definitions, with several waivers as listed in Appendix A:

- a. Texas Administrative Code¹
 - 10 TAC Chapter 1 (Administration)
 - 10 TAC Chapter 2 (Enforcement)
 - 10 TAC Chapter 10 (Uniform Multifamily Rules)
 - 10 TAC Chapter 11 (Qualified Allocation Plan)
 - 10 TAC Chapter 12 (Multifamily Housing revenue Bond Rules)
 - 10 TAC Chapter 13 (Multifamily Direct Loan Rule)
 - [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

- b. Texas Government Code
 - Tex. Gov’t Code Chapter 2306

¹ Waivers are listed in Appendix A of HOME-ARP NOFA 2023-2.

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations
24 CFR Part 92 ([HOME Investment Partnerships Program Final Rule](#))

CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (HOME-ARP Notice)
(<https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/>)

- d. Fair Housing

Federal Fair Housing Act, 42 U.S.C. 3601-19.

<https://www.tdhca.state.tx.us/fair-housing/index.htm>

- e. Other Federal laws and regulations:

Environmental Compliance

All projects must have some type of environmental review in accordance with 24 CFR Part 50 or 58 as applicable. <https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

HOME-ARP must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Section 104(d) of Housing and Community Development Act of 1974; and HUD Handbook 1378.

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Labor Standards

HOME-ARP funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

<https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm>

Employment Opportunities

HOME-ARP requires compliance with 24 CFR Part 75 (Section 3).

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

NOTE – the Section 3 requirements changed in 2021. Applicants should review the changes to assure they can meet the new hiring and reporting requirements.

- f. HOME-ARP Allocation Plan

HUD-approved amendment to the 2021 Action Plan for the HOME-ARP Allocation Plan.

<https://www.tdhca.state.tx.us/HARP.htm>

- (2) **HOME-ARP Background.** TDHCA was allocated \$132,969,147 of funds from the U.S. Department of Housing and Urban Development (HUD) under Section 3205 of the American Rescue Plan Act, which HUD has called the HOME-ARP Program. HUD issued

waivers and new activities from HOME annual funds for HUD-ARP per CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (<https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/>).

In its approved HOME-ARP Allocation Plan, TDHCA programmed funds into affordable rental housing including Capitalized Operating Cost Assistance Reserves (COCA); non-congregate shelter; nonprofit capacity building/nonprofit operating cost assistance (NCO); and administration/planning for TDHCA.

TDHCA programmed \$56,511,887 for affordable rental housing, which is 42.5% of the total HOME-ARP funds. Within the rental housing activity is a \$10,000,000 set-aside for direct awards to qualifying National Housing Trust Fund (NHTF) Developments. This set-aside was created to preserve existing Department investments in NHTF-funded developments that may otherwise be at risk of not financially feasible. If the set-aside is not fully used prior to the opening of the HOME-ARP Rental NOFA, funds from the set-aside may be amended into the HOME-ARP Rental NOFA.

TDHCA also programmed \$6,648,458 of HOME-ARP funding for NCO, which is 5% of the total HOME-ARP funds. Approximately \$3.3 million is programmed to support non-congregate shelter development and approximately \$3.3 million is programmed to support rental development. The \$3.3 million in NCO for rental development is being released in this affordable rental housing NOFA. However, should the total requests for HOME-ARP rental capital/COCA requests be greater than the amount released in this NOFA, TDHCA reserves the right to not award NCO within its NOFA and convert the NCO funds to rental capital/COCA funds, or to award the highest scoring eligible HOME-ARP rental award(s).

One of the reasons HOME-ARP was created was to serve specific populations called qualifying populations (QPs). These include:

- Households that are experiencing homelessness, per 24 CFR §91.5;
- Households at-risk of homelessness with incomes below 30% Area Median Income (AMI), per 24 CFR §91.5;
- Households with at-risk of homelessness criteria and incomes up to 50% AMI, per HUD CPD Notice 21-10;
- Households fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, per HUD 24 CFR §5.2003;
- Households with 30% AMI with severe housing cost burden defined as paying more than 50% of monthly household income toward housing costs, per HUD CPD Notice 21-10;
- Households who have qualified as homeless previously, are currently housed with temporary/emergency assistance, and who need additional housing assistance or supportive services to avoid a return to homelessness, per HUD CPD Notice 21-10; or
- Veterans (and their families) that meet one of the above definitions.

At least 70% of the HOME-ARP Units must be for households that are QP. QP households pay no more than 30% of their income toward rent, and will be underwritten at zero rent, unless paired with project based assistance. In order to support zero rent Units, HOME-ARP has several flexibilities such as:

- No maximum unit subsidy
- COCA for up to 15 years
- Possibility to adopt the Public Housing Authority utility allowance which may better pair with project-based assistance (not available for Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF , unless the Development is all-bills paid)
- Up to 30% of the Units may be for low-income households (60% or 80% AMI) at high HOME rent

More information about HOME-ARP QPs, flexibilities and financial layering possibilities may be found online at <https://www.tdhca.state.tx.us/home-arp/index.htm>.

(3) Applicant Eligibility.

- a. The first Application Acceptance period will be for Developments that are only requesting HOME-ARP from TDHCA, or are requesting HOME-ARP layered with 2022 or 2023 4% HTC, 2022 9% HTC, HOME annual, or National Housing Trust Fund (NHTF). NHTF Applicants are only eligible in the event that the per unit subsidy limit for NHTF would be exceeded with additional NHTF. Applications layered with 2020 or 2021 4% or 9% HTCs or 2023 9% HTCs are ineligible to apply during the first Application Acceptance Period.
- b. The second Application Acceptance period will be only for 2023 9% HTC Supportive Housing Applicants, if funding is available.
- c. A choice-limiting action may not have occurred, except for site acquisition that was completed before the contemplation of federal funds, or except where the Application had prior environmental clearance prior to the choice limiting action under 24 CFR Part 50 or Part 58, and where the prior 24 CFR 50 or 58 "Responsible Entity" agrees in writing by the Application Acceptance Date, to make a determination of supplemental funding or perform a re-evaluation of the original review.

(4) Minimum and Maximum Amounts. The minimum request amount is \$500,000. The maximum request amount for the first Application Acceptance Date is \$15 million, up to 100% of the HOME-ARP eligible costs, and is inclusive of COCA and NCO. The maximum request amount for the second Application Acceptance Date is \$7 million, up to 100% of the HOME-ARP eligible costs, and is inclusive of COCA and NCO.

(5) Set-Asides. HOME-ARP funds are not subject to the Regional Allocation Formula, per waiver of Tex Gov't Code §2306.111. As a special purpose NOFA, the HOME-ARP Rental Development NOFA will not have set-asides.

(6) Activity Suspended for Applications with Federal Housing Administration (FHA) Insured

Senior Debt. Applicants proposing to layer Federal Housing Administration (FHA)-insured senior debt with a HOME-ARP Loan will not receive an Application Acceptance Date, until such time as the Department reaches agreement with FHA regarding its HOME-ARP forms of Subordination Agreement and Rider (FHA Agreements). The Department will amend the NOFA if and when agreement is reached and advertise the amendment via the Homelessness Issues, Programs, and Policies list serve and by posting a notice here: <https://www.tdhca.state.tx.us/multifamily/special-initiatives.htm>.

(7) **Scoring items for Rental Development/COCA.**

During the second Application Acceptance Period, scoring for the 2023 9% Housing Texas Credits will determine the prioritization of HOME-ARP awards.

a. Previous rental experience with persons experiencing homelessness and persons with specific needs. A Development is eligible for a maximum of 9 experience points (cumulative) from i – vi of this subparagraph. Applicant may only apply for a maximum of 9 points.

i. Serving persons with homelessness-related rental assistance. Applicant will receive points based on their organization’s previous experience owning and operating housing that support persons exiting homelessness, including HUD Veterans Affairs Supportive Housing (HUD-VASH), Emergency Housing Vouchers (EHV), Emergency Solutions Grants, Homeless Housing and Services Program Homeless Assistance, Ending Homelessness Fund Homeless Assistance, Continuum of Care Rapid Re-housing, or other federal, state, or local programs that serve a population that is defined as homeless. Acceptable documentation includes rental assistance agreements at properties owned/operated by Applicant showing government program used, or payments received at properties owned/operated by Applicant through government program (redacted for Personal Identifiable Information, if applicable). If the government program is not HUD-VASH, EHV, Emergency Solutions Grants, Homeless Housing and Services Program, Ending Homelessness Fund, or Continuum of Care rapid re-housing, then a description of the government program must be provided that highlights a requirement that assisted households are exiting homelessness. The persons assisted must have been served within ten (10) years of the Application due date. Applicant may receive six (6) points providing evidence of having served with rental assistance the same number of persons exiting homelessness as the number of HOME-ARP Units requested in the Application for HOME-ARP. (6 points)

ii. Serving Persons with Specific Needs. Applicant will receive three (3) points based on their organization’s previous experience owning and operating housing that support persons with specific housing needs, as defined in 10 TAC §11.2(d)(126)(C) with the exception of persons experiencing homelessness. This includes persons at-risk of homelessness; persons with physical, intellectual, or developmental disabilities; youth aging out of foster care; persons eligible to receive primarily non-medical home or community-based services; persons transitioning out of institutional care; persons unable to secure permanent housing elsewhere due to specific, non-

medical, or other high barriers to access and maintain housing; Persons with Special Housing Needs including households where one or more individuals have alcohol or drug additions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized in 10 TAC §11.2(d)(126)(D) as represented in the Application and determined by the Department on a case-by-case basis. Acceptable documentation includes contracts/MOUs indicating provision of rental assistance through a source that requires one of the specific needs or existing tenant selection plans indicating leasing preference longer than the initial lease up of twelve months or limitation of Units for persons with specific needs. (3 points)

iii. Placement from referral. Applicant may receive three (3) points with submission of a letter from a Continuum of Care (CoC) lead agency or local homeless service providers that they have successfully referred and placed persons experiencing homelessness at one or more property(ies) owned/managed by Applicant within twenty-four months of the application due date. (3 points)

iv. Current marketing to homeless service providers. Applicant may receive three (3) points with submission of letter from a CoC lead agency or local homeless service providers confirming that the Principal of the Applicant has actively marketed available units in the past to the CoC or local homeless service provider within twelve months of the application due date. (3 points)

v. Existing property with preference for persons experiencing homelessness, at-risk of homelessness, or persons fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking. Applicant may receive three (3) points for having at least one existing Property owned/managed by the Applicant that has current tenant selection preference for persons experiencing homelessness, at-risk of homelessness, or fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, as evidenced by tenant selection plan, Land Use Restriction Agreement, Memorandums of Understanding (MOUs), Admissions and Continued Occupancy Policies (ACOP), or letters from lenders at property owned/managed by the Applicant that has a tenant selection preference for persons experiencing homelessness or at-risk of homelessness. (3 points)

vi. Mitigation factors. Applicant may receive three (3) points for submission of a current a tenant selection plan or tenant eligibility forms showing that its screening criteria at an existing property owned by a Principal of the Applicant targeted for persons experiencing homelessness or at-risk of homelessness that allows for mitigation of two or more issues common to the population, such as not denying tenants based on credit history, prior rental payment history, or eviction at property owned/managed by the Applicant. An example of mitigation includes a process such

as one described at 10 TAC §11.2(b)(126)(B)(v)(II) regarding criminal screening mitigation. (3 points)

b. **Project Commitments.** HOME-ARP rental application scoring takes into consideration commitments to reserve Units for persons who are experiencing or have experienced homelessness, and to have ongoing rental assistance available. A Development is eligible for a maximum of 15 commitment points (cumulative) from i – iv of this subparagraph. An Applicant may only apply for a maximum of 15 points. The award of any points claimed will require that the item(s) committed are reflected in the LURA and Contract for the Development.

i. **Active marketing to homeless service providers.** Applicant may receive five (5) points for commitment to actively market available QP Units to the CoC lead agency or local homeless service provider at least annually for the affordability period. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points)

ii. **Mitigation factors commitment.** Applicant may receive five (5) points for commitment to have a tenant selection plan at the proposed HOME-ARP development that will have screening criteria to allow for mitigation of two or more issues common to the homeless or at-risk of homelessness population, such as not denying tenants based on credit history, prior rental payment history, or eviction at property owned/managed by the Applicant. An example of mitigation includes a process such as one described at 10 TAC §11.2(b)(126)(B)(v)(II) regarding criminal screening mitigation. The tenant selection plan with the mitigation factors would need to be in effect during the federal compliance period. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points)

iii. **Exiting homelessness.** Applicant will receive points based on a commitment to have Units for two Qualified Populations (QPs): Homeless per 24 CFR §91.5, and formerly homeless but housed with temporary resources, per HUD CPD Notice 21-10. Any commitment will be reflected in the written agreement and LURA for HOME-ARP. At initial lease-up, the Department will require a ninety-day period during which Units must either be occupied by persons who meet the definition of homeless under 24 CFR §91.5, or were formerly homeless but housed with temporary resources per HUD CPD Notice 21-10; or the Units must be held vacant. After the initial lease up and if a HOME-ARP Unit becomes available, the Department will require a sixty-day period during which Units must either be occupied by persons who meet the definition of homeless under 24 CFR §91.5, or were formerly homeless but housed with temporary resources per HUD CPD Notice 21-10; or the Units must be held vacant. After the ninety-day or sixty-day periods, respectively, the Development Owner will no longer be required to hold Units vacant but will be required to specifically market Units to persons exiting homelessness. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the development. An Application may receive a maximum of ten (10) points according to the range below.

- A. 30% of QP Units reserved for persons exiting homelessness or formerly homeless but housed with temporary resources (10 points)
- B. 20% of QP Units reserved for persons exiting homelessness or formerly homeless but housed with temporary resources (5 points)

iv. All Bills Paid. Applicants will receive five (5) points based on their commitment, to be reflected in the HOME-ARP agreement, to provide all bills paid units in the Development. Bills to be paid include heating, cooking, any other electric, air conditioning, water heater, water, sewer, trash, and any other occupancy fee(s) charged to each tenant at the Development. Note that utilities are an eligible cost under COCA for the QP units. The award of these points will require that the item(s) committed are reflected in the LURA and Contract for the Development. (5 points).

c. Resident Services

Applicant will be eligible for 10 points for agreeing to provide the services reflected in 10 TAC §11.9(c)(3)(A) (relating to Resident Supportive Services) and an additional 1 point for agreeing to provide the community space and outreach reflected in 10 TAC §11.9(c)(3)(B) (relating to community space and outreach for Resident Supportive Services). Applicant will be eligible for up to eleven (11) points total under Resident Services.

(8) **Tie breaker criteria.** If more than one application is received with the same score and the Department cannot fund both applications, the Development with the lowest HOME-ARP capital cost per unit will be awarded HOME-ARP funds, subject to the application review process. If a tie exists after the first tie breaker, the Department will use a random draw to determine recommendation for funding.

(9) **Nonprofit Capacity Building and Nonprofit Operating Cost Assistance (NCO).** NCO is limited to \$50,000 if applying for either nonprofit capacity building or nonprofit operating cost assistance, or \$75,000 if applying for both. The time period for NCO is one to three years. If the HOME-ARP rental NOFA receives more funding requests than funds available, the Department reserves the right to award no NCO or to award the highest scoring eligible HOME-ARP rental award(s). NCO will be awarded based on threshold items, and not be scored.

a. Nonprofit Capacity Building Approach. A nonprofit applicant must describe their approach to implementing the Capacity Building Assistance. A narrative must answer the questions: How will funds be used? How does the use of the funds in that way build capacity specific to HOME-ARP QPs? The narrative must also describe the uses of capacity building for each of the eligible capacity building activities, as listed in HUD CPD Notice 21-10:

- i. Payroll. Salaries for new hires including wages and other employee compensation and benefits.

- ii. Training. Employee training or other staff development that enhances an employee’s skill set and expertise.
- iii. Equipment. Computer software or programs that improve organizational processes, upgrades to materials, and supplies, limited to less than \$5,000.
- iv. Technical Assistance/Consultants. Contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.

b. Nonprofit Operating Assistance Approach. The Nonprofit Operating Assistance will be available only to nonprofit Supportive Housing Developers as defined in [10 TAC §11.1\(d\)\(126\)](#) or Qualified Nonprofits, as defined in [10 TAC §11.1\(d\)\(108\)](#). An Applicant will describe the need for Operating Cost Assistance. A narrative must answer the questions: How will funds be used? How does the use of the funds in that way support the nonprofit to build the rental development? The narrative must also describe the uses of nonprofit operating cost assistance for each of the eligible activities, as listed in HUD CPD Notice 21-10.

- i. Payroll. Employee salaries, wages and other employee compensation and benefits.
- ii. Training. Employee education, training and travel.
- iii. Equipment. Equipment, materials, and supplies, limited to less than \$5,000.
- iv. Operating/overhead. Rent, utilities, communication costs, taxes, and insurance.

(10) **Loan Terms and Market Rate Units**

a. **Products.**

- i. **Construction-to-Permanent Loans.** All HOME-ARP Applicants structured as construction-to-permanent loans will reflect an interest rate of 0% during construction and as low as 0.25% for the permanent term. If the Debt Coverage Ratio is less than the minimum 1.15, staff will not make adjustments to the interest rate and financing structure in accordance with 10 TAC §11.302.
- ii. **Construction-Only Loans.** All Direct Loan requests structured as construction only loans may request an interest rate as low as 0% with the principal amount of the HOME-ARP loan due upon the end of the construction loan term.

b. Loan Structure. The term of the loan and the amortization period (not to exceed 40 years) will match any superior debt, with an interest rate as low as 0.25%. Funds may be requested as fully amortizing, or deferred forgivable, as specified below.

- i. Fully Amortizing – Available to all Applicants, Loans will be structured with regular principal and interest payments sufficient to fully repay the loan within the loan term. Interest will be as low as 0.25%.
- ii. FHA-Insured – Currently Federal Housing Administration (FHA) layered transactions are ineligible for HOME-ARP.
- iii. Deferred forgivable – Only available for Supportive Housing. The Loan is only

forgiven at the later of: (1) the end of the loan term, or (2) the end of the federal affordability period (e.g., at minimum the loan term must be 15 years and six months). If Applicant selects a deferred forgivable loan and also has Housing Tax Credits awarded to the property, a letter from the equity partner(s) is required at Application stating that the partner(s) has considered the tax implications of a deferred forgivable loan.

- c. **Ineligibility.** Developments that have been complete for greater than six months with existing HOME Units from any Participating Jurisdiction are not eligible to apply for these funds during the federal affordability period. Developments with HOME-Match Units but no HOME Units, are able to apply if otherwise eligible.

(11) **Maximum per Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.** HOME-ARP does not have a maximum per unit subsidy or maximum rehabilitation per-unit subsidy limit.

(12) **Application Submission Requirements.**

a. **Application Acceptance Period and Review.**

- i. **Applications under this NOFA will be accepted starting December 9, 2022, and the first Application Acceptance Date will be January 31, 2023 at 5:00pm Austin Local Time. Applications received on February 1, 2023, until March 1, 2023 will have the second Application Acceptance Date of March 1, 2023, at 5:00pm Austin Local Time. The second Application Acceptance period is for 2023 9% HTC Supportive Housing Applicants only.**
- ii. Applications will be processed by score and Application Acceptance Date. Applications with an Application Acceptance Date on or before January 31, 2023, will be reviewed and potentially awarded in order of high score to low score. If funds are remaining after Applications received January 31, 2023 are submitted, Applications with Application Acceptance Dates between January 31 and March 1, 2023, will be reviewed and potentially awarded in order of high score to low score. Applicants may have only one active Application per Development at a time under this NOFA or other TDHCA NOFAs.

b. **Application Submission Materials.**

- i. All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of federal rules that may apply and subsequent guidance provided by HUD.
- ii. A pro forma for the greater of 30 years or the loan term will be required for HOME-ARP.
- iii. HOME-ARP Applicants without previous Part 50 or 58 environmental clearance, must submit their completed Part 50 or Part 58 clearance 30 days after the Application Acceptance date.

- c. **Application Forms.** An Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in Uniform Multifamily Application Manual and the HOME-ARP Rental Application Manual (Manual) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Manual in effect at the time the Application is submitted.
- d. **Match Submission Requirements.** HOME-ARP has no match requirements.
- e. **Gap Funding Limitations for projects that already received TDHCA funding or credits, and need gap financing for cost increases.**
 - i. The amount of funding that may be requested is limited to a total that includes:
 - a. the documented increase in Building Costs and Site Work from the previous Application submitted to the Department for the proposed property, within the limitations of 10 TAC §13.3(e) related to Ineligible Costs;
 - b. the documented costs of compliance with regulations at 24 CFR Part 92 and the HUD CPD Notice 21-10 and Appendix.
 - ii. The amount of the Developer Fee may not increase, and the amount of the deferred Developer Fee may not decrease from the original Real Estate Analysis report.
- f. **Application Fee.** Application Fees are not required for HOME-ARP.
- g. **Application Transmittal Required Steps.** An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C), and separate email notification must be made to Tiara.Hardaway@tdhca.state.tx.us.

(13) **Post Award Requirements.** Applicants are strongly encouraged to review the applicable Post Award requirements in 10 TAC Chapter 10, Subchapter E, Post Award and Asset Management Requirements and 10 TAC Chapter 13, as well as the Compliance Monitoring requirements in 10 TAC Chapter 10, Subchapters F and G.

- a. Awarded Applicants may in accordance with Department rule be charged fees for underwriting, asset management, and ongoing monitoring.
- b. An Applicant will be required to record a Land Use Restriction Agreement (LURA) limiting residents' income and rent for the greater amount of Units required by the Direct Loan Unit Calculation Tool along, or as represented in the Application for the term of the LURA.
- c. An Applicant may be required to meet additional requirements prior to Contract, as determined by the Board, or federal or state requirements.

- d. An awarded Applicant may be required to meet additional documentation requirements in order to request funds, in accordance with its Previous Participation results.

(14) Miscellaneous.

- a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the fund sources. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations.
- b. An Applicant must have a current Unique Entity Identifier (UEI) and be registered in the federal System for Award Management prior (SAM) prior to execution of a Direct Loan contract. The General Services Administration (GSA) has provided tools to assist registering entities entity and obtaining a UEI. Visit the SAM website at <https://sam.gov/content/entity-registration> to access a number of resources related to the UEI implementation. Once Applicants have an UEI, it must [register with the SAM](#).
- c. There is an active waiver to §10.614 to allow the PHA utility allowance to be adopted for HOME-ARP Developments (as reflected in Appendix A); however, PHA utility allowance still has to be approved per 10 TAC §10.614. The proposed development may use the utility allowances for HUD-regulated buildings that is approved by TDHCA prior to application in keeping with 10 TAC §10.614, or the PHA utility allowance that is approved by TDHCA prior to application in keeping with 10 TAC §10.614. The PHA utility allowance may be requested only if there is no conflict with other funding sources (e.g. HOME, NSP, TCAP-RF, NHTF, or a property containing HOME Match Units, unless the Development is all-bills paid).
- d. All Applicants that have not previously applied for the Department's funds for the Development in the Application must comply with public notification requirements in 10 TAC §11.203. Applications that already received TDHCA funding or credits for this scope of work and already complied with 10 TAC §11.203 will not need to meet this requirement a second time.
- e. Initial lease-up reserves and replacement reserves for HOME-ARP Low Income Units are not eligible costs under this NOFA.
- f. At least 10% of the QP Units must be available to all QPs. This means that at least 10% of the QP Units cannot be layered on units restricted to 30% AMI because at least one QP has incomes up to 50% AMI.
- g. Up to 30% of the HOME-ARP Units may be low-income households (e.g., up to 80% AMI). If a Development chooses to build optional low-income Units for HOME-ARP, up to 10% of the low income Units can be High HOME 80% Units. The remaining low-income Units must be High HOME 60% units, per 24 CFR §92.216, Income Targeting.
- h. Applicants that would like to use the master lease option with a nonprofit sponsor listed in HUD CPD Notice 21-10 must request a waiver of 10 TAC §10.613(i) and 10 TAC

§13.3(d)(2)(C) regarding the requirement to lease directly to residents. This waiver is not available to Developments with HOME annual funds, Tax Credit Assistance Repayment Funds, National Housing Trust Fund, or a property with HOME Match Units.

- i.
- j. For the post year 15 affordability period (which follows the federal affordability period), at least 20% of the Units must be for households at 60% or below AMI, and all Units must be for households at 80% or below AMI. All post-year 15 rents for HOME-ARP units must be rent levels for a multifamily program that exists in the Department (e.g. HOME annual, NHTF, HTC 4% or 9%, etc.).
- k. The minimum amount for the COCA request is \$250,000. The maximum requests for COCA is dependent on the amount of net cash flow for the Development in year one. Projects with 80 or fewer Units that have net cash flow in the first year of \$250,000 or more and that are also requesting Capitalized Operating Cost Assistance (COCA) will have their COCA request reduced so that the net cash flow in year one will be no more than \$250,000. In this case, the COCA may be reduced to zero, if the net cash flow is still \$250,000 or more. Projects with 81 or more Units or Supportive Housing Developments that have net cash flow in the first year of \$500,000 or more and that are also requesting Capitalized Operating Cost Assistance (COCA) will have their COCA request reduced so that the net cash flow in year one will be no more than \$500,000. In this case, the COCA may be reduced to zero, if the net cash flow still exceeds \$500,000. Interest on Sponsor Loans will be considered net cash flow for this purpose.
- l. If the Department deems an Application to be better suited for another Department multifamily NOFA or funding opportunity, the Department will provide the Applicant a fourteen calendar day period (which may be extended another fourteen days for information required from third parties) to provide the supplemental information needed to evaluate the Application under that fund source without impact to the Application Acceptance Date. However, in this case the Applicant will not be provided an earlier Application Acceptance Date than could have achieved under the other NOFA.
- m. Waivers of any substantive or procedural provision of this NOFA, if available, will be treated in accordance with 10 TAC §13.1(c). 10 TAC §13.1(c) may not be waived.
- n. For questions regarding this NOFA, please contact Tiara Hardaway, HOME-ARP Manager, at Tiara.Hardaway@tdhca.state.tx.us.

Appendix A – Applicable Rules and Waivers
Texas Administrative Code Rental Waivers and Alternative Requirements for
HOME American Rescue Plan Rental Notice of Funding Availability

The waivers and alternative requirements listed in this document are meant to support the Texas Department of Housing and Community Affairs' (TDHCA) HOME American Rescue Plan's (ARP) Rental 2022 Notice of Funding Availability (NOFA). The additional flexibilities are needed to align state rules with the alternative waivers and alternative requirements for HOME-ARP issued in the U.S. Department of Housing and Urban Development's Community Planning and Development (CPD) Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program.

Background

The Texas Department of Housing and Community Affairs (TDHCA) was allocated approximately \$132 million in HOME American Rescue Plan (ARP) funds in a one-time allocation from the U.S. Department of Housing and Urban Development (HUD). HOME-ARP is based on HUD's HOME Investment Partnerships Program annual funding infrastructure. HOME-ARP also has significant differences compared to the HOME annual program.

TDHCA has programmed up to \$56,511,887 in HOME-ARP funding for rental development. The HOME-ARP Allocation Plan set-aside \$10,000,000 of these funds for National Housing Trust Fund (NHTF)-funded Developments that may otherwise be at risk of not financially feasible. If the set-aside is not fully utilized, the remaining balance will be available for the HOME-ARP funding for rental development.

In addition, the HOME-ARP Allocation Plan programmed \$6,648,458 in nonprofit operating and nonprofit capacity building (NCO) funds. Of this amount, \$3,324,229 is expected to be available for application within the HOME-ARP Rental NOFA.

Several chapters of Texas Administrative Code (TAC) apply to HOME-ARP, with waivers and alternate requirements to conform to the HUD CPD Notice 21-10 and the HOME-ARP Allocation Plan. These are:

- 10 TAC Chapter 1 (Administration)
- 10 TAC Chapter 2 (Enforcement)
- 10 TAC Chapter 10 (Uniform Multifamily Rules)
- 10 TAC Chapter 11 (Qualified Allocation Plan)
- 10 TAC Chapter 12 (Multifamily Housing Revenue Bond Rules)
- 10 TAC Chapter 13 (Multifamily Direct Loan Rule)

The 10 TAC above that apply to Multifamily Direct Loan or the HOME annual Program will also apply to HOME-ARP, unless specifically waived or provided alternative requirements below. This document may be updated from time to time, as HUD guidance is released and the applications are processed for HOME-ARP.

Certain waivers are not available to Developments with other funding sources, unless a waiver is received by the Department from HUD.

The items listed below are waived or have alternative requirements:

10 TAC Chapter 10

1. 10 TAC §10.614(d) and §10.614(k)(3) relating to utility allowance calculations. HOME-ARP is able to use the Public Housing Authority utility allowance. HOME-ARP will not be mandated to establish the Utility Allowance per 10 TAC §10.614(d). HOME-ARP may be able to establish the Utility Allowance per 10 TAC §10.614(k)(3). This waiver is not available to Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF, unless the Development is all utility bills paid.

10 TAC Chapter 11 for Developments that already received TDHCA funding or credits, and require gap financing

1. 10 TAC §11.101(a)(2) related to Undesirable Risk Features, waived only to the extent that the undesirable feature was already disclosed at original Application;
2. 10 TAC §11.01(a)(3)(B)(iii) related to schools, including disclosure requirements, waived only to the extent that the risk factor was already disclosed at original Application;
3. 10 TAC §11.203 regarding public notification have already been met for the scope of work for these HOME-ARP Applications.
4. 10 TAC §11.205 related to Required Third Party Reports, are waived except for environmental clearance, demonstration of current market demand for the proposed project for the HOME-ARP qualified population, and scope and cost review (if applicable). In spite of the waiver, the Department may request updates to any Report deemed necessary to evaluate an Application under this NOFA.

10 TAC Chapter 13

1. For Applications during the first Application Acceptance period, 10 TAC §13.1(c)(1) related to Waivers for Layered Developments is waived. Instead Applicants may request Waivers under 10 TAC §13.1(c)(2).
2. 10 TAC §13.3(e)(12) regarding reserve accounts (other than initial operating reserve accounts) as ineligible costs. HOME-ARP allows for a capitalized operating cost assistance reserve per HUD Notice 21-10.
3. 10 TAC §13.4 regarding set-asides, regional allocation and NOFA priorities do not apply to HOME-ARP. HOME-ARP is currently not subject to Tex. Gov't Code Section 2306.111, which requires regional allocation. HOME-ARP's set-asides priorities as outlined in the HOME-ARP Allocation Plan and in the NOFA.
4. 10 TAC §13.5(c) related to Market Analysis for Units reserved for Qualified Populations.
5. 10 TAC §13.5(h)(2) and (3)(A)-(C) related to eligibility determinations for Applicants.
6. 10 TAC §13.5(i) related to Effective Rules, waived only to the extent that the requirements of the applicable 2021 or 2022 QAP requirements for prior HTC or Multifamily Direct Loan awards will instead be utilized for 10 TAC §11.101(4) Mandatory Development Amenities, 10 TAC §11.101(5) Common Amenities, 10 TAC §11.101(6) Unit

Requirements, and 10 TAC §11.101(7) Resident Supportive Services.

7. 10 TAC §13.6, Scoring Criteria, for the Multifamily Direct Loan Rule is waived; the NOFA describes the alternative scoring criteria.
8. 10 TAC §13.7(b) and (c) regarding maximum new construction, reconstruction, rehabilitation per-unit subsidy limits will not apply for the HOME-ARP Units. The section of 10 TAC §13.7(d) regarding the per unit subsidy limits will not apply, though the required number of units determined by cost allocation analysis will apply.
9. 10 TAC §13.10(c) regarding unit match for the HOME annual program will not apply for the HOME-ARP Rental Development funding.
10. 10 TAC §13.11(c)(11), for the HOME-ARP Rental Development funding, as the requirements for marketing in HUD Notice 21-10 will also apply for the HOME-ARP Units.
11. 10 TAC §13.11(c)(12) regarding repayment of funds for Units that are not rented. HOME-ARP Units will have an alternative requirement of repayment if not rented in 12 months, instead of 18 months.

9a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
DECEMBER 8, 2022

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the *Texas Register* for adoption

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized to make awards of loans or grants to developers for the State of Texas;

WHEREAS, the Department plans to administer the varying fund sources used in making these awards of loans and grants in a specific manner that necessitates this Multifamily Direct Loan Rule;

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs; and

WHEREAS, public comment was accepted on this rule and such rulemaking is being adopted without substantive changes for publication in the *Texas Register*;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and adopting new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble presented to this meeting, is hereby ordered and approved for publication in the *Texas Register* and its adoption; 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 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including requested revisions to the preambles.

BACKGROUND

Attached to this Board Action Request is the final 10 TAC Chapter 13, Multifamily Direct Loan Rule. Changes to the Multifamily Direct Loan Rule are generally clarifications that staff identified as necessary to provide clear information to Applicants.

The Board approved the proposed repeal and replacement of 10 TAC Chapter 13, Multifamily Direct Loan Rule, at the Board meeting on October 13, 2022, as published in the *Texas Register* for public comment on October 28, 2022. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, was accepted between 8:00 a.m. Austin local time on October 28, 2022, and 5:00 p.m. Austin local time on November 17, 2022. Staff has reviewed all comments received and provided a reasoned response to these comments in the attached preamble.

Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, and 13.13. The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is

required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be increased clarity and improved access to the Multifamily Direct Loan funds. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 28 to November 17, 2022, to receive input on the proposed repealed section. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 13, Multifamily Direct Loan Rule

§13.1. Purpose.

§13.2. Definitions.

§13.3. General Loan Requirements.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

§13.5. Application and Award Process.

§13.6. Scoring Criteria.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

§13.8. Loan Structure and Underwriting Requirements.

§13.9. Construction Standards.

§13.10. Development and Unit Requirements.

§13.11. Post-Award Requirements.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

§13.13. Post-Closing Amendments to Direct Loan Terms.

Preamble, including required analysis, for adoption of new 10 TAC Chapter 13, Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the Department) adopts with changes new 10 TAC Chapter 13, Multifamily Direct Loan Rule, §§ 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.10, 13.11, 13.12, and 13.13. The purpose of the new sections is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.
2. The new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule changes do not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-

business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.111.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is \$1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the rule may provide a possible positive economic effect on local employment in association with this rule since MFDL

Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Wilkinson 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 improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because it does not have any new requirements that would cause additional costs to applicants.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from October 28, 2022, to November 17, 2022, to receive input on the proposed new sections. Comment was received from: Foundation Communities (Commenter 1) and True Casa Consulting (Commenter 2). A summary of comments pertinent to the proposed rule and the Department's response is provided.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute. The rule has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

13.1(c)(e) Waivers under Closed NOFA

COMMENT SUMMARY: Commenter 2 states there should be some kind of waiver for a NOFA

that has closed. The Commenter notes that, by the time an Application is reviewed, the NOFA may be closed with no opportunities available for a waiver remaining.

STAFF RESPONSE: 10 TAC §11.207 allows for an Applicant to request a waiver from the Board in writing at or prior to the submission of the Application or subsequent to an award. Waivers of closed NOFAs are not allowable because the Department must follow the method of distribution represented to HUD and to the public, which is the NOFA. Closing a NOFA and then allowing for waivers of its requirements alters the method of distribution in a way that is not available to all applicants, as no additional Applications are accepted once the NOFA is closed. No change is recommended based on this comment.

13.3(e) Ineligible Costs

COMMENT SUMMARY: Commenter 1 suggests current language regarding costs that have been allocated to or paid by another fund source conflicts with NHTF and HOME rules and suggests rewriting to mirror federal language.

Commenter 2 is unclear why interest on construction was added as an ineligible cost.

STAFF RESPONSE: Both NHTF and HOME federal regulations limit repayment of construction, bridge financing, or guaranteed loans. For both programs, in order for the repayment of these loans to be eligible, the loan must have been used for eligible costs under the specific program in question, and the HOME or NHTF assistance is required to have been part of the original financing for the project. For NHTF, these costs could not have occurred before the Department enters into the Contract with the Owner. In addition, repayment of these loans would require that the Department review all costs paid out of those loans to ensure that all are eligible under the relevant program. Given the Department's current workload related to these funds, staff is unable to assume the additional responsibility of these reviews. Accordingly, no change is recommended related to this comment.

13.5(d) Required Site Control Agreement Provisions

COMMENT SUMMARY: Commenter 1 and 2 propose that 13.5(d)(1) is not applicable to NHTF applications due to differing rules regarding environmental clearance. Commenter 1 requests that this provision be waived for NHTF applicants.

Commenter 2 suggests that 13.5(d)(2) should not be applicable to NHTF only applications. They state that this provision as well as 13.5(d)(1) make sellers nervous and complicates an already tumultuous timeline.

STAFF RESPONSE: These comments propose that NHTF Applications not be required to include language related to choice-limiting actions and eminent domain in the required site control documentation. It has historically been common for an Application to switch between funding sources for various administrative and programmatic reasons, and making this change could limit staff's ability to make similar funding-source changes in the future. The eminent domain language is a requirement of the Uniform Relocation Assistance and Real Property Act of 1970, and is applicable for NHTF. Accordingly, no change to the rule is recommended.

13.6 Scoring Criteria

COMMENT SUMMARY: Commenters 1 and 2 suggest removing the scoring criteria for subsidy per unit, suggesting it is unfitting in this cost environment.

STAFF RESPONSE: Development cost as a scoring item is consistent with the Department's charge to make efficient use of resources, and therefore no change is recommended.

13.7 Maximum Funding Request

COMMENT SUMMARY: Commenter 1 recommends an increase to the maximum funding request. Commenter 1 cites an environment of escalating costs and suggests more MFDL funds per unit is needed. Potential applications being conceived by Commenter 1 will need more MFDL funds than the Section 234 Condo limits and MFDL per unit limits would allow.

STAFF RESPONSE: The actual funding request limit is set in the NOFA rather than the rule. The Section 234 Condo limits are set by HUD for HOME, and approved by HUD for NHTF as published in the Department's Consolidated Planning Documents. There is no change available to make to the rule in response to these comments.

13.8 Criteria for Construction-to-Permanent Loans

COMMENT SUMMARY: Commenter 2 recommends an alternative to the required CPA letter, stating these are expensive to provide. Commenter 2 believes a bank statement proving available funds and an owner certification are an acceptable alternative.

STAFF RESPONSE: TDHCA staff is not able to evaluate an organization's true capacity to provide funds into a deal. The CPA letter is required to give the Department third-party assurance that the Applicant can provide short-term financial relief to the Development if necessary. No change is recommended.

13.8(5) and (6) 10% Equity

COMMENT SUMMARY: Commenter 1 recommends allowing 10% equity requirement to be met with additional soft sources such as local subsidy or grants. Commenter 2 suggests this requirement should be waived or eliminated.

STAFF RESPONSE: The rule currently allows Applicants to request Board approval to have an equity requirement of less than 10% without having to meet the waiver requirements of 10 TAC §11.207. If the Applicant chooses this option, then the request must specify the amount of equity to be provided and support for why this amount will allow the Development to complete construction and stabilize timely. Because an alternative to this requirement already exists in the rule, no changes are recommended.

13.11(14) Disbursement of Funds

Comment Summary: Commenter 1 and 2 recommend the removal of certain timing requirements related to the drawdown of awarded funds post-closing.

STAFF RESPONSE: Staff is currently completing a full evaluation of the draw process with the

intention of streamlining and finding any available efficiency. At this time, staff does not recommend any changes to the rules related to this process. Changes may be recommended upon completion of the evaluation of this process, which would be included in future versions of this rule.

CHAPTER 13 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 (the 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, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Parts 91, 92, 93, and 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306.

(b) General. This chapter applies to Applications submitted for, and 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 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) as applicable. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes 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, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for the Housing Tax Credit program), as applicable.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), 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. Waiver requirements are provided in paragraphs (1) through (3) of this subsection:

(1) Waivers for Layered Developments. For Direct Loan Developments layered with Competitive Housing Tax Credits, an Applicant may request, at the latest at Application submission, that the Department amend its NOFA, amend its Consolidated Plan or One Year Action Plan, or ask HUD to grant a waiver of its regulations, if such request will not impact the timing of the Application's review, nor alter the scoring or satisfaction of threshold

requirements for the Competitive Housing Tax Credits. Such requests will be presented to the Department's Board. The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD), unless those Plans are so amended by the earlier of a date the NOFA stops accepting Applications or by an earlier date that is identified by the Board;

(2) Waivers for Non-Layered Developments. For Direct Loan Developments not layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated Plan or OYAP, or ask HUD to grant a waiver of its regulations. Such requests will be presented to the Department's Board; if the Applicant's request is approved by the Department's Governing Board (Board), the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to submit a new Application, and the Direct Loan awardee (pre-closing) may be required to reapply, under a new or otherwise open NOFA; and

(3) Waivers under Closed NOFAs. The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this chapter (relating to Post-Closing Amendments to Direct Loan Terms).

(d) Eligibility and Threshold Requirements. Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

§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 Parts 91, 92, and 93; 2 CFR Part 200; and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

(1) Application Acceptance Date--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA. An Applicant will not receive an Application Acceptance Date until the Application is complete.**(2) Community Housing Development Organization (CHDO)**--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. A member of a CHDO's board cannot be a Principal of the Development beyond their 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 a paid executive).

(3) Construction Completion or Development Period--The Development Period is the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.

(4) 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.

(5) Federal Affordability Period--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

(6) HOME--the HOME Investment Partnership Program, authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act,

(7) HOME Match-Eligible Unit--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the NOFA, TCAP RF and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

(8) 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 by the Department for Direct Loan Programs administered by the Department.

(9) Land Use Restriction Agreement (LURA) Term--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

(10) Matching Contribution (Match)--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) 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;

(C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;

(D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or

(E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

(11) NHTF--National Housing Trust Fund.

(12) NOFA--Notice of Funding Availability.

(13) NSP--Neighborhood Stabilization Program.

(14) Qualifying Unit--means a Unit designated for Multifamily Direct Loan use and occupancy in compliance with State and federal regulations, as set forth in the Contract. Except if the Development is all-bills paid, Qualifying Units may not also have a Project-Based Voucher issued under 24 CFR Part 983, unless the Application contains permission from the Public and Indian Housing Division of HUD for the layered units to use a utility allowance that is not the Public Housing Utility Allowance, or the Applicant has received permission from the Community Planning and Development Division of HUD for the layered units to use the Public Housing Utility Allowance. If necessary, such permission must be submitted with the Application, and the Application will not be given an Application Acceptance Date until it is received.

(15) Relocation Plan--A residential anti-displacement and relocation assistance plan and budget in an Application that addresses residential and non-residential displacement and complies with the Uniform Relocation Assistance and Real Property Act as implemented at 49 CFR Part 24, HUD Handbook 1378, and the TDHCA Relocation Handbook. Additionally, some HOME and NSP funded Developments must comply with Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP and HOME American Rescue Plan (ARP) funds), which requires a one-for-one replacement of occupied and vacant, occupiable low- and moderate-income dwelling units demolished or converted. Guidance is on the Department's website at <https://www.tdhca.state.tx.us/multifamily/home/index.htm>. The Relocation Plan must be in form and substance consistent with requirements of the Department.

(16) Section 234 Condominium Housing Basic Mortgage Limits (Section 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. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL

Program, then confirmation of that applicability will be included in the applicable NOFA.

(17) Site and Neighborhood Standards--HUD requirements for New Construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or New Construction Developments funded by HOME (24 CFR §92.202). Proposed Developments must provide evidence that the Development will comply with these federal regulations in the Application. Guidance for successful submissions is provided on the Department website at <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. Applications that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(18) State Affordability Period--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the Chapter 2306, Texas Gov't Code which may be an additional period after the Federal Affordability Period.

(19) Surplus Cash--Except when the first lien mortgage is a federally insured HUD mortgage that is subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

(i) All sums due or currently required to be paid under the terms of any superior lien;

(ii) All amounts required to be deposited in the reserve funds for replacement;

(iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;

(iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and

(v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required to be maintained for the Development; and

(C) Excluding payment of:

(i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;

(ii) Any development fees that are deferred including those in eligible basis; and

(iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

(20) TCAP Repayment Funds--(TCAP RF) the Tax Credit Assistance Payment program funds.

§13.3. General Loan Requirements.

(a) Funding Availability. Direct Loan funds may be made available through a NOFA or other similar governing document that includes the method for applying for funds and funding requirements.

(b) Oversourced Developments. A Direct Loan request may be reduced or not recommended if the Department's Underwriting Report concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD and associated Program Income, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

(d) Eligible and Ineligible Activities.

(1) Eligible Activities. Direct Loan funds may be used for the predevelopment, acquisition, New Construction, reconstruction, Adaptive Reuse, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be awarded to a Development:

(A) Subject to the requirements of 36 CFR 67, implementing Section 47 of the Internal Revenue Code (related to Historic Tax Credits), unless Part 2 of that Application, concerning a description of the proposed rehabilitation work, has been approved by the National Park Service and is submitted with the Application;

(B) Layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units;

(C) In which the Applicant will not be directly leasing Units to residents, except as specifically described in the NOFA;

(D) Applicants applying for HOME or NSP funds may not commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance, and will be subject to termination of the Direct Loan award if such action is undertaken. For an Applicant applying for NHTF funds, choice limiting activities prior to full execution of a Contract with the Department are not prohibited, but the eligibility of costs associated with these activities will be impacted in keeping with 24 CFR §93.201(h) and all applicable federal regulations. Furthermore, certain activities which prohibit environmental mitigation may cause the Development to be ineligible and will cause the termination of the Direct Loan award.

(e) Ineligible Costs. All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Other federal funds will be included in the Final Direct Loan Eligible Costs located in Table 1 of the Direct Loan Calculator as part of the required per-unit subsidy limit calculation. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Parts 91, 92, 93, and 570, 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, such as swimming pools and decking, landscaping, playgrounds, and athletic courts;
- (4) The purchase of equipment required for construction;
- (5) Furnishings and Furniture, Fixtures and Equipment (FF&E) required for the Development;
- (6) Detached Community Buildings;
- (7) Carports and/or parking garages, unless attached as a feature of the Unit;
- (8) Commercial Space costs;
- (9) Personal Property Taxes;
- (10) TDHCA fees;
- (11) Syndication and organizational costs;
- (12) Reserve Accounts, except Initial Operating Deficit Reserve Accounts;
- (13) Delinquent fees, taxes, or charges;

(14) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;

(15) Costs that have been allocated to or paid by another fund source (except for soft costs that are attributable to the entire project as specifically identified in the applicable federal rule, or for TCAP RF if specifically allowed by the NOFA), including but not limited to, contingency, including soft cost contingency, and general partner loans and advances;

(16) Deferred Developer Fee;

(17) Texas Bond Review Board (BRB) fees;

(18) Community Facility spaces that are not for the exclusive use of tenants and their guests;

(19) The portion of soft costs that are allocated to support ineligible hard costs;

(20) Other costs limited by Award or NOFA, or as established by the Board;

(21) Interest on Construction Loans; and

(22) Acquisition that occurred before the Application Acceptance Date and environmental clearance for HOME and NSP projects. For NHTF, acquisition that occurred prior to Contract signing.

§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.

(a) Set-Asides. Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in categories called Set-Asides. The 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 (except when CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only if identified in a NOFA; flexible Set-Asides are not required to be programmed on an annual basis. The Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited 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) General / Soft Repayment Set-Aside.

(i) Applicants seeking to qualify for NHTF under this set-aside must propose Developments

in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate or 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b).

(ii) Applicants seeking to qualify for HOME under this set-aside must propose Developments in which all Units assisted with MFDL funds are available to households earning no more than 80% AMI and have rents no higher than the rent limits 24 CFR §92.2.

(iii) A portion of the General / Soft Repayment Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the CHDO Set-Aside.

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(2) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

(2) Flexible Set-Asides:

(A) 4% HTC and Bond Layered Set-Aside. The 4% and Bond Layered Set-Aside is reserved for Applications layered with 4% Housing Tax Credits and Tax-Exempt Bond funds where the Development Owner does not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

(B) Persons with Disabilities (PWD) Set-Aside. The PWD Set-Aside is reserved for Developments restricting Units for residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2) while not exceeding the number of Units limited by 10 TAC §1.15 of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only if sufficient funds are available to award at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) Competitive HTC Layered Set-Aside. The Competitive HTC Layered Set-Aside is reserved for Applications that are layered with Competitive Housing Tax Credits that do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this Set-aside are dependent on the concurrent award of a Competitive HTC allocation; however, an allocation of Competitive HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

(b) Regional Allocation and Collapse. All funds subject to Tex. Gov't Code §2306.111 or as described to HUD in planning documents will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). 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 and Application Acceptance Date for the regionally allocated funds will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After funds have been made available regionally and the period for regional allocation has expired, remaining funds within each respective Set-Aside may collapse and be pooled together on a date identified in the NOFA. All Applications received prior to these collapse dates will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be collapsed and pooled together to be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(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, and reflected in the NOFA.

(c) Notice of Funding Availability (NOFA). MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

(d) Priorities for the Annual NOFA. Complete Applications received during the period that funds are regionally made available (if a RAF is used in the Annual NOFA) will be prioritized for review and recommendation to the Board, if funds are available in the region or subregion (as applicable) and in the Set-Aside under which the Application is received. If insufficient funds are available in a region or subregion to fund all Applications then the scoring criteria in §13.6 of this Chapter will be applied if necessary and the Applications whose requests are in excess of the available funds will be evaluated only after the regional and/or Set-Aside collapse and in accordance with the additional priority levels in this

subsection, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region, subregion, 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 if funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

(1) Priority 1. Applications not layered with current year Competitive Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

(2) Priority 2. Applications layered with current year Competitive HTC will be prioritized based on their recommendation status and score for their HTC allocation under the provisions of Chapter 11 of this title, the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date identified in Chapter 11 of this title, relating to the QAP. Priority 2 applications, if recommended, will be recommended for approval of the MFDL award at the same meeting when the Board approves the Competitive HTC allocations. Applications for Competitive HTC allocations are not guaranteed the availability of MFDL funds, as further provided in §13.5(e) of this chapter.

(3) Priority 3. Applications that are received after the Market Analysis Delivery Date identified in the QAP will be evaluated on a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe additional prioritization periods for certain populations, or for certain geographical areas. Applications layered with Competitive HTC that are on the Competitive HTC waitlist after the Department's Board meeting at which final Competitive HTC awards are made will be considered Priority 3 Applications; if the Applicant receives an allocation of Competitive HTC later in the year, the MFDL Application Acceptance date will be the date the HTC Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

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

§13.5. Application and Award Process.

(a) Applications. MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11, Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) and the Notice of Funding Availability for which the Application is submitted.

(b) Application Acceptance Date. Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an

Application is received after 5:00 p.m., 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 Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Scoring Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with Competitive HTC, will be used to determine the Application's rank.

(c) Market Analysis. Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all Units.

(d) Required Site Control Agreement Provisions. All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "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: (A) 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, (i) the purchase may proceed, or (ii) 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 (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

(e) Oversubscribed Funds for Competitive HTC-Layered Applications. Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting Competitive HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapters 11 and 13 of this title, if such changes do not impact scoring under 10 TAC §11.9 (relating to Competitive HTC Selection Criteria). The Department will

provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline by which the Applicant must respond to the Department. Multiple Applications from a single or affiliated Applicants do not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this subsection. If MFDL funds become available between the Market Analysis Delivery Date, and the date of the Department's Board meeting at which final Competitive HTC awards are made, the MFDL funds will not be reserved for Competitive HTC-layered Applications, unless the reservation is described in the NOFA.

(f) Availability of funds for Non-Competitive HTC-layered Applications. If an Application requesting layered Non-Competitive HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E) (relating to Withdrawal of Certificate of Reservation), the Application will receive a new Application Acceptance Date for purposes of Direct Loan funds upon submission to the Department of the new Certificate of Reservation. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

(g) Source of Direct Loan Funds. To the extent that an Application is submitted under a Set-Aside where multiple sources of Direct Loan funds are available, the Department will select sources of funds for recommended Applications, as provided in paragraphs (1) - (4) of this subsection:

(1) The Department will generally select the recommended source of MFDL funds to award to an Application in the order described in subparagraphs (A) - (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines will be selected first;

(B) Federal funds that do not have commitment and expenditure deadlines will be selected next; and

(C) Nonfederal funds that do not have commitment and expenditure deadlines will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to be recommended for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

(h) Eligibility Criteria and Determinations. The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate

the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application not being recommended for an award or being ranked below another Application received prior to the subject Application.

(1) Applicants requesting MFDL as the only source of Department funds must meet the Experience Requirement as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in 10 TAC §11.204(6) of this title (relating to Experience Requirement); or

(B) Alternatively by providing the acceptable documentation listed in §11.204(6) of this title evidencing the successful development, and at least five years of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

(2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds or resources for the Development from the Department within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction, and are not proposing acquisition or rehabilitation.

(3) An Application that requires an eligibility determination in accordance with paragraph (2) of this subsection must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title (both relating to Appeals), as applicable. A finding of eligibility under this paragraph does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME or NSP funds, unless a 24 CFR Part 58 review was done by another fund source.

(A) Requests under this paragraph will not be considered more than 60 calendar days prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence; or

(ii) Force Majeure events (not including weather events); and

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

(C) Criteria for consideration shall not include typical weather events, typical construction, or financing delays.

(D) Applications for Developments that previously received an award from the Department within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee underwritten the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of whether the increase is allowed under other Department rules.

(1) Proposed Developments must provide evidence that the Development will comply with Site and Neighborhood Standards, which can be in the form of narrative with supporting documentation, accompanied by required census data found in American Community Survey Table DP-05.

(i) Request for Preliminary Determination. Applicants considering a request for Direct Loan layered with a Competitive HTC Application may submit a Request for Preliminary Determination with the HTC Pre-Application. The results of evaluation of the request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(f)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application. The Preliminary Determination is based solely on the information provided in the request, and does not indicate that the full Application will be accepted. It is not a guarantee that Direct Loan funds will be available or awarded to the full Application.

(j) Effective rules and contractual terms. The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. Changes to Applications where scoring is utilized under Chapter 13 will not be allowed between submission and award. The scoring items used to calculate the score for a Competitive HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title (relating to the Qualified Allocation Plan) will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting Competitive HTC.

(1) Opportunity Index. Applicants eligible for points under 10 TAC §11.9(c)(5) (relating to the Opportunity Index) (up to 7 points).

(2) Resident Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to Resident Supportive Services) (10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to community space and outreach for Resident Supportive Services) (1 point).

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

(4) Subsidy per Unit. An Application that caps the MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) \$100,000 per MFDL eligible cost per Unit (4 points).

(B) \$80,000 per MFDL eligible cost per Unit (8 points).

(C) \$60,000 per MFDL eligible cost per Unit (10 points).

(5) Rent Levels of Residents. Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the Federal and State Affordability Periods. These Units must not be restricted to 30% or less of AMI by another fund source; however, layering on other HTC Units may be considered for scoring purposes. Scoring options include:

(A) At least 20% of all low-income Units at 30% or less of AMI (13 points);

(B) At least 10% of all low-income Units at 30% or less of AMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMI (12 points); or

(C) At least 5% of all low-income Units at 30% or less of AMI (7 points).

(6) Tiebreaker. In the event that two or more Applications receive 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% AMI MFDL Units within the Development that would convert to households at 15% AMI in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.

(a) Maximum Funding Request. The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits. While more restrictive per-Unit subsidy caps are allowable and encouraged as point scoring items in 10 TAC §13.6 of this chapter (relating to Scoring Criteria), the per-Unit subsidy limit for a Development

will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

(c) Maximum Rehabilitation Per-Unit Subsidy Limits. The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA.

(d) Minimum Number of MFDL Units. The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure that the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs. Applicants may be able to estimate the minimum number of MFDL Units by entering Application information into the Direct Loan Unit Calculator Tool available on the Department's website, but this tool may not cover the specific requirements of every Application. A larger number of MFDL Units may also be required if scoring is utilized.

§13.8 Loan Structure and Underwriting Requirements

(a) Loan Structures. Loan structures must meet the criteria described in this section and as further described in a NOFA. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans, for which the interest rate will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or is the superior construction loan, the construction term shall be 24 months with one available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) No interest will accrue during the construction term;

(3) The loan term shall be no less than 15 years and no greater than 40 years and six months, and the amortization period shall be between 30 to 40 years and six months. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years and six months. The loan term commences following the end of the construction term;

4) 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 in an amount less

than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with federal loan funds from USDA Rural Development;

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

(A) A letter from a Third Party Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% 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 in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities;

(6) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

(A) Equity in an amount not less than 10% of Total Housing Development Costs; however,

(i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title (relating to Waiver of Rules. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and

(ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

(B) Evidence submitted with the Application must show the Direct Loan amount is not greater than 80% of the Total Housing Development Costs; and

(7) In general, up to 50% of the MFDL loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount; however, this amount may be proportionally exceeded for a Development being awarded additional MFDL funds, if the Development is past 50% at loan closing, so long as the required Mid-Construction Inspection has been completed. In all cases, at least 10% of the funds will be reserved for the final Draw.

(c) Criteria for Construction Only Loans. MFDL Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

(1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the MFDL loan is the only construction loan or is the superior construction loan, the term may not exceed 24 months with available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) The interest rate may be as low as 0%; and

(3) Up to 50% of the loan may be advanced at loan closing, should there be sufficient costs to reimburse that amount.

(d) Criteria for Permanent Refinance Loans. If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing; 90% of the loan may be advanced at loan closing, unless the Board approves another date.

(e) Evaluations. All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(f)(1) of this title (relating to Competitive HTC Selection Criteria). 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.

(f) Pass-Through Loans. Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

§13.9. Construction Standards.

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2021 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in paragraphs (1) - (5) of this section:

(1) **Third-Party Recommendations.** Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) 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;

(2) **Lead and Asbestos Testing.** For properties originally constructed prior to 1978, the Scope of Work and Cost Review must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

(3) Broadband Infrastructure. The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

(4) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4012 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After April 1, 2020); and

(5) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD. Rehabilitation Developments funded by the national Housing Trust Fund are required to meet the Multifamily Minimum Rehabilitation Standards approved by HUD, as posted on the Department's website at <https://www.tdhca.state.tx.us/multifamily/home/index.htm>, in addition to the Department's rules and NOFA requirements.

§13.10. Development and Unit Requirements.

(a) Proportionality. 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 as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with HUD CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

(b) Floating Units. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.

(1) For HOME, NSP, and TCAP RF, 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.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203, concerning public housing units.

(c) Unit Match Requirements.

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

(d) Minimum Affordability Period. 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. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

(e) Restricted Units. If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

(f) Income Levels Committed at Time of Application. If the Direct Loan funds are used in a Competitive or non-Competitive HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

(g) Mandatory Development Features. Development features described under 10 TAC §11.101(b)(4) (relating to Mandatory Development Amenities) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

§13.11. Post-Award Requirements.

(a) Direct Loan awardees must satisfactorily complete the Post-Award Requirements identified in this section after the Board approval date.

(b) If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

(c) Benchmarks. Extensions to the benchmarks in paragraphs (1) - (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter (relating to Pre-Closing and Post-Closing Amendments), as applicable.

(1) Award Letter. If provided, Direct Loan awardees must execute and return to the Department an Award Letter, provided by the Department, within 15 calendar days after

receipt. The Award Letter will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

(2) Environmental Clearance. In order to obtain environmental clearance required by the National Environmental Policy Act (NEPA) and other related Federal and state environmental laws (if applicable), Direct Loan Applicants, including those previously awarded HTC, must submit a fully completed environmental review, including any applicable reports to the Department, within 30 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is within 14 calendar days of the Board approval date. If the awardee receives an allocation of 9% HTC from the waitlist after the July Board meeting, the fully completed environmental review must be submitted within 30 calendar days of receipt of the Carryover Allocation Agreement. (3) Contract Execution. After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

(4) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin on or before the dates described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

(5) Loan Closing. In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

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

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law 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 as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not

limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application;

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

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

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

(i) Environmental clearance from the Department or HUD, as applicable;

(ii) Site and Neighborhood clearance from the Department;

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

(iv) Title Insurance Commitment or Policy showing the Department as Lender, with copies of all Schedule B documents; and

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

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

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

Division.

(A) 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 Underwriting Report 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. Additional loan terms and conditions may be imposed by the loan closing documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

(7) Quarterly Construction Status Reports. The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.401(e) of this title (relating to Construction Status Report).

(8) Mid-Construction Development Inspection Letter. In addition to any other obligations required 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 at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for disbursement in accordance with the percentage of Construction Completion.

(9) Construction Completion. Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exists.

(10) Closed Final Development Inspection Letter. The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Closed 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 required by this subsection.

(11) Initial Occupancy. Initial occupancy of all MFDL assisted Units by eligible households shall occur within six 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 by the MFDL fund source.

(12) Per Unit Repayment. Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

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

(14) Disbursement of Funds. The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph 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 is required with a request for disbursement:

(A) 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;

(B) 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/ G703 or HUD equivalent form;

(C) 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 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing at least 30 calendar days prior to the

anticipated closing date, and will not be considered unless the Direct Loan Contract has been executed and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(E) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;

(G) Up to 75% 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% of funds;

(H) Developer Fee disbursement shall be limited by subparagraph (I) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

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

(ii) 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, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably 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;

(I) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. 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;

(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (viii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) 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) or Form HUD-92485;

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

(iv) For NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract, commonly known as a cost certification;

(v) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the Department's Notice to Proceed that serves to lock in the Department of Labor's worker prevailing wage mandates at the development and authorizes start of construction was sent and final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(vi) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

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

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

(K) No disbursement of funds will be approved without receipt of all closing documents in the form and substance required by the Department's Legal Division;

(L) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable; and

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).

(A) Annual Audits under 24 CFR §93.406(b). Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

(B) Cost Certifications under 24 CFR §93.406(b).

(i) Non-HTC-Layered Developments. Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

(ii) HTC-Layered Developments. With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

§13.12. Pre-Closing Amendments to Direct Loan Terms.

(a) Closing Memo to Underwriting Report. Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial

Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment amounts of any superior loans that cause the total Debt Coverage Ratio (DCR) to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination. The Department may require the Closing Memo to be completed before providing a Contract to the Development Owner.

(b) Executive Approval Required Pre-Closing. The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

(i) The process of finalizing all equity and debt financing;

(ii) The environmental clearance process; or

(iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without at least 45 days to complete the review.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions

under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a waiver or change in scoring items, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(c) Board Approval Required Pre-Closing. Board approval is necessary for any other changes prior to closing.

§13.13. Post-Closing Amendments to Direct Loan Terms.

(a) Good Cause Extensions. The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(c)(7) - (8) or (14)(L) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

(b) Amendments to MFDL Awards. Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

(c) Executive Amendments. The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

(1) Changes in Terms. Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens. Re-subordination of the

Direct Loan in conjunction with refinancing may be approved post-closing, provided the conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request;

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis; and

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

(3) Workout Arrangements. Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

(d) Contract Assignments and Assumptions of MFDL Liens. The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) - (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including person, or affiliate, as those terms are defined in 2 CFR Part 180 and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.



3000 S IH 35, Ste 300
Austin, TX 78704

tel: 512-447-2026
fax: 512-447-0288

foundcom.org



November 17, 2022

Cody Campbell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments for the 2023 Draft MFDL Rule

Dear Cody,

Thank you for the opportunity to comment on next year's MFDL rule. See attached for Foundation Communities' comments. We would also like to echo the creative solutions for the MFDL program proposed by TAAHP in a recent letter submitted to the Executive Director. Thank you for all your hard work and we look forward to working with TDHCA in 2023.

Sincerely,

Tillie Croxdale

Tillie Croxdale
Housing Finance Manager
Foundation Communities



a Partner Agency of



Timelines – The time between application and closing is growing and becoming very problematic for projects. We are sympathetic to the MFDL Department’s exponentially increased workload and staff shortage over the last few years. We are all in this together and the last few years have been very hard. However, as housing developers, we need to have an expectation of timing when we apply for MFDL funds. As an example, we applied for critically needed MFDL funds on 2 project in August and September of 2021 and have not yet closed. It would be incredibly helpful if TDHCA could provide realistic timeline goals from award, to contract, to closing – and to update developers with revised timelines if staffing shortages or other issues cause unexpected delays.

Draw Process - The following are some suggestions to improve the efficiency of the Draw process. The MFDL draw process is complex, cumbersome, and exhausting. The amount of back and forth with staff required for each draw is excessive. During the MFDL roundtable, several developers shared their frustration with the process and staff asked for our ideas to improve the process.

- **Staffing** – There is only one staff person processing draws. More staff and help with draws is critically needed.
- **Timing Requirements** - Where allowed by federal rules, we recommend removing the following timing requirements and restrictions around draws. In an effort to simplify and streamline the process, we request that 90% of the funding award be available to draw at any time between closing and end of the construction term, and 10% be retained until the final draw requirements are met. We recommend striking all the following requirements.
 - (F) The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;*
 - (G) Up to 75% 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% of funds.*
 - (J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually.*
 - (M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.*
- **Housing Contract System** - HCS is clunky and a frequent cause of delay and frustration. We spend a lot of time with staff just working through system lock outs, error messages, failed uploads, saving info to the wrong pages, etc. Our recommendation would be to simplify the process and allow email submittal of draw packages to staff.
- **Draw Workbook**– The draw workbook itself is a frequent cause of confusion and delay. The following are some recommendations to simplify.
 - Remove the required retainage column from the disbursement request tab. This is a constant cause of confusion. AIA pay apps already include retainage and TDHCA can retain 10% of their funds without removing 10% retainage from each cost.
 - Remove the Vendor list tab altogether. Developers can enter the vendor name in the Disbursement Request tab. Including the address, phone number, and tax id for each vendor seems unnecessary.

- Staff frequently requests very detailed information on invoices, which is above and beyond what is necessary to complete a draw.
- Do not require breakout of each AIA division to be specified in the workbook. The full AIA pay app is an eligible use of funds.
- Simplify the budget categories to a few. i.e. hard costs, soft costs, developer fee, and operating reserve.
- Do not require an up-front allocation of amounts to be drawn from each budget line item. i.e. \$100K from soft costs and \$1.9M from direct hard costs. Allow borrowers to specify eligible costs from each category with each draw.
- **Match**
 - Staff is requiring an unreasonable amount of back up for Match. As an example, we provided a grant as match a few years ago and in addition to the signed grant agreement, staff requested checks and a letter from the grantor that confirmed funds were received. The grant agreement should be sufficient
 - A deferred forgivable loan is a grant and should count as Match. Staff has pushed back on allowing this to count as Match.
 - The fee waiver documentation submitted with application, should be accepted for match documentation during draw process. They are fees waived, so they are not charged.

13.7 Maximum Funding Request – We recommend increasing the maximum funding request. Foundation Communities’ past NHTF funded developments committed the maximum number of 30% units for the maximum amount of MFDL funds while meeting the Section 234 Condo Limits. In the past, this generally worked well. However, in this environment of escalating land costs, construction costs, and interest rate, more MFDL funds per unit is needed. Many of our contemplated projects in the conceptual or predevelopment stage will need more MFDL funds than the Section 234 Condo limits and MFDL per unit limits would allow. We ask that new metrics are developed to better address the current environment and need for subsidy.

13.6 Scoring Criteria - We recommend removing scoring criteria for subsidy per unit. In this environment, the Section 234 Condo Limits is already too low.

13.8(5) and (6) 10% Equity – We recommend allowing the 10% equity requirement to be met with additional soft sources such as local subsidy or grants.

13.3(e) Ineligible Costs (15) Costs that have been allocated to or paid by another fund source – We recommend clarifying this section to mirror federal language. This ineligible cost appears to conflict with federal NHTF and HOME rules which allow repayment of a bridge loans.

13.5(d) Required Site Control Agreement Provisions. 13.5(d)(1) is not applicable for NHTF applications because environmental clearance is not required prior to acquisition. We request that this provisions be waived for NHTF applicants.

TRUE CASA CONSULTING, LLC

November 17, 2022

Re: Comments to the 2023 Draft of the Multifamily Direct Loan Rule

Thank you for the opportunity to comment on the DRAFT 2023 Multifamily Direct Loan Rule. First of all, I want to commend the TDHCA MFDL program staff. I feel they always work so hard to push projects through a very complicated web of guidelines. They are responsive and as nimble as they are able to be within a very rigid framework. With that said, the program and funding process is deeply flawed and these comments are provided in an effort to help make this program more efficient and effective both for TDHCA staff and the developers utilizing the funding. I know I am very grateful for this funding program that has enabled so many deeply supportive and extremely affordable units to be added to the State's housing pipeline.

You will find that a large number of my comments mimic those of Foundation Communities. This is an intentional effort to utilize a team approach to provide the most meaningful comment for TDHCA staff. I also fully support the comments submitted by TAAHP.

Application to Closing Process and Timeline – There needs to be more communication from staff after an application is submitted if the application is going to sit for a while and not be reviewed. I submitted one project application in October 2021 and was told in August 2022 that it was not eligible. Now TDHCA staff did make it right and allowed the project to apply under a HOME ARP set-aside, but if HOME ARP didn't exist this project would have imploded. I submitted another application in May 2022 and still have not been informed if or when it might get funded. I understand there has been staff turnover and Federal funding delays, but communication on status and reasons why allow consultants and developers to communicate more clearly to lenders, architects, general contractors and other funders on the MFDL funding process.

Draw Process - The MFDL draw process is complex, cumbersome, and exhausting. I have literally broken down in tears several times from the process. It should not be this difficult. The amount of back and forth with staff required for each draw is excessive and unnecessary. I have multiple emails asking the same question that never gets answered. The following are some suggestions to improve the efficiency of this process.

- **Timing Requirements** - Where allowed by federal rules, we recommend removing the following timing requirements and restrictions around draws. We request that 90% of the funding award be available to draw at any time between closing and end of the construction term, and 10% be retained until the final draw requirements are met.
 - (F) *The initial draw request for the Development (excluding Table Funding) must be entered into the Department's Housing Contract System no later than 180 days after loan closing, and may not be submitted prior to submission of all architectural drawings;*
 - (G) *Up to 75% 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% of funds.*

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(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually.

(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

- **Housing Contract System** - HCS is clunky and a frequent cause of delay and frustration. My clients and myself have spent a lot of time with staff just working through system lock outs, error messages, failed uploads, saving info to the wrong pages, etc. I have one client who has completed construction over 1.5 years ago and still has not received a penny of reimbursement due to being locked out of the system. Please either vastly simplify the process or allow email submittal of draw packages to staff.
- **Draw Workbook**– The draw workbook itself is the frequent cause of confusion and delay. The workbook makes a lot of references to HOME when HOME rules do not apply to a funding source (for example, NHTF.) The following are some recommendations to simplify.
 - Remove the required retainage column from the disbursement request tab. This is a constant cause of confusion. AIA pay apps already include retainage and TDHCA can retain 10% of their funds without removing 10% retainage from each cost. This is very unusual and atypical of all other lender draws.
 - Remove the Vendor list tab altogether. Developers can enter the vendor name in the Disbursement Request tab. Including the address, phone number, and tax id for each vendor seems unnecessary.
 - Staff frequently requests very detailed information on invoices, which is above and beyond what is necessary to complete a draw.
 - Do not require each breakout of each AIA division to be specified in the workbook. The full AIA pay app is an eligible use of funds.
 - Simplify the budget categories to hard costs, soft costs, developer fee, and operating reserve.
 - When you apply for MFDL funds, you do not have to designate how you will use those funds – acquisition, soft costs, or hard costs. Do not require an up-front allocation of amounts to be drawn from each budget line item. i.e. \$100K from soft costs and \$1.9M from direct hard costs. Allow borrowers to specify eligible costs from each category with each draw as long as they are eligible draws.
 - Draw staff need to understand the rules. There have been many instances where I was told “no” to something only for me to spend time researching and finding out the rule does allow.
- **Match**

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- Draw staff is requiring an unreasonable amount of back up for Match. The documentation of the source and documentation that is has been drawn down should suffice.
- If TDHCA staff approves a match source during application, that same draw source should be able to be used at close-out. Period.
- A deferred forgivable loan is a grant and should count as Match. This source of funds is acceptable at application and have been told it is not acceptable at draw. This makes no sense!
- The fee waiver documentation submitted with application, should be accepted for match documentation during draw process. They are fees waived, so they are not charged. For example, the City of Austin does not charge the fees to a SMART Housing eligible project so there are no costs incurred and no record of those costs.
- **Number of Draws** – The number of draws should not be limited to four per year if a construction timeline is 12 months or longer. Maybe limit to one every 30 days.
(M) Annually, Borrowers must submit at least one draw, and may not submit more than four draws, unless previously approved by the Executive Director or designee.

13.6 Scoring Criteria - We recommend removing scoring criteria for subsidy per unit. In this environment, the Section 234 Condo Limits is already too low.

13.5(d) Required Site Control Agreement Provisions. Staff needs to be clear which funding source the below provision for which the below provision is required. If an application is only seeking NHTF and only eligible for NHTF, they should not be required to provide this provision in the contract. It makes potential sellers a bit nervous and no need to complicate the already tumultuous affordable housing property search and required site control timelines with another reason for a seller to say No.

(1) "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: (A) 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, (i) the purchase may proceed, or (ii) 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 (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

- **Ineligible Costs** – I am not clear why interest on construction loans was added as an ineligible cost? This was not an ineligible cost prior.

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- **Closed NOFA/Lack of Waiver** - There needs to be some sort of waiver of a NOFA that closed, but due to circumstances beyond the Applicant's control there have been no awards made. By the time staff begins their review of the application (sometimes 6 plus months after submission), the NOFA has already closed with no chance for a waiver.
- **Third Party CPA letter** – This letter is expensive to get and, quite frankly, most CPA's do not like giving them. A bank statement proving the funds available and an owner certification should suffice.
- **10% Owner Equity if MFDL is only Department Funding** – Almost every MFDL-funded transaction that I have worked on has asked for a waiver of this requirement. If MFDL is the only Department funding and the balance of funding is soft funding – governmental or foundation – then this should count as owner equity. Why take cash from a nonprofit that pulls from their servicing program, if the project is able to raise those funds with non-TDHCA soft funding?
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Thank you so very much on the opportunity to comment on this year's DRAFT QAP and Rules.

My Best,

Jenn Hicks

9b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
DECEMBER 8, 2022

Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2023-1 Multifamily Direct Loan Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, the Department has \$42,637,605 available in national Housing Trust Fund from its 2022 grant;

WHEREAS, from the available HOME funds, the Department has reserved \$6,116,029 in Community Housing Development Organization (CHDO) funds for multifamily activities; and

WHEREAS, staff recommends prioritizing all of these available funds in this 2023-1 Notice of Funding Availability (NOFA) in a manner that will allow the Department to meet various priorities, commitment and expenditure deadlines;

NOW, therefore, it is hereby

RESOLVED, that \$6,116,029 in HOME funds, and \$42,637,605 in NHTF will be available for Applicants through this 2023-1 NOFA;

FURTHER RESOLVED, that funds made available through this 2023-1 NOFA will ensure that the Department awards an appropriate amount of HOME funds to CHDOs, and serve other Department priorities as described in 10 TAC Chapter 13 and the 2023-1 NOFA; and

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

The 2023-1 NOFA announces the availability of Multifamily Direct Loan funds for Applications received between January 2, 2023, and October 31, 2023 (if sufficient funds remain). The funds in the NOFA are inclusive of the amount of funds awarded by the 2022 NHTF grant and sufficient HOME funds that have previously been made available through the required Regional Allocation Formula (RAF) in order to meet the Department's CHDO requirement. The CHDO Set-Aside

includes **\$6,116,029** in HOME funds, and the General Set-Aside makes available **\$42,637,605** in NHTF.

If there are more requests for funding than funding available, staff is requesting the authority to suspend the NOFA or suspend Application Acceptance Dates for one or more set-asides within the NOFA and not accept any more applications by amending the NOFA, without further Board approval. Staff may again begin awarding Application Acceptance Dates if the applications under review are withdrawn, terminated, or recommended for less than the original request so that there is additional funding available.

All Applications awarded under this NOFA will be subject to the requirements of 10 TAC Chapters 1, 2, and 13 – the Multifamily Direct Loan rule – and applicable sections of 10 TAC Chapter 11, the Qualified Allocation Plan. Applications layered with 9% Housing Tax Credits will be further required to meet Competitive HTC criteria set forth in 10 TAC Chapter 11. Applications layered with Private Activity Bond financing will also be subject to provisions of Chapter 12.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2023-1 NOTICE OF FUNDING AVAILABILITY (NOFA)
ANNUAL NOFA

(1) Summary. The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$6,116,029 in HOME Investment Partnerships Program (HOME)¹ and \$42,637,605 of national Housing Trust Fund (NHTF)² funding for the development of affordable multifamily rental housing for low-income Texans. Applicants under the 2023-1 NOFA will be accepted from **January 2, 2023**, through **October 31, 2023** (if sufficient funds remain). Applicants applying for 2023 9% Housing Tax Credits are not eligible to apply under this NOFA until August 1, 2023, although this prohibition does not apply to Applicants for 2023 Supplemental Tax Credits. The availability and use of these funds are subject to the following rules, as applicable:

a. Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

b. Texas Government Code

Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

¹ HOME funds under this NOFA may only be awarded to Applications with Development sites in non-Participating Jurisdictions.

² NHTF funds under this NOFA are subject to federal Commitment deadlines, and the Board may require a Contract Execution Deadline to enable the Department to meet these federal Commitments regardless of any other time period listed in the Texas Administrative Code. Failure to meet that Contract Execution Deadline could result in the Applicant having the award reduced in whole or in part.

- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations
24 CFR Part 92 ([HOME Investment Partnerships Program Final Rule](#))
24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))
- d. Fair Housing
Federal Fair Housing Act, 42 U.S.C. 3601-19.
<https://www.tdhca.state.tx.us/fair-housing/index.htm>
- e. Other Federal laws and regulations may that apply depending on funding source:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

<https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Labor Standards

HOME funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

<https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm>

Employment Opportunities

HOME, and NHTF require compliance with 24 CFR Part 75 (Section 3).

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

- (2) **Set-Asides.** NHTF funds will be subject to the Regional Allocation Formula (RAF, located in Attachment A) from January 2, 2023, until **January 31, 2023**. Those who apply during the Regional Distribution period must request at a minimum \$1,500,000, unless such an amount exceeds the applicable Region's allocation, in which case the Applicant must request the maximum amount available in the Region.

Applicants in the General Set-Aside that did not apply during the Regional Distribution period must request, at a minimum, \$4,000,000. An Applicant in the General set-aside may request no more than \$8,000,000. Applicants in the CHDO set-aside may request no more than \$6,116,029.

Applications must choose a set-aside based on the restrictions set forth below. In addition to the RAF, the funds made available under this NOFA are offered under the following Set-Asides:

- a. **Community Housing Development Organization (CHDO) Set-Aside.** \$6,116,029 in HOME funds are reserved for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).
- b. **General Set-Aside.** This set-aside consists of NHTF in the amount of \$42,637,605. For Applications within another HOME Participating Jurisdiction, Applicants may only select NHTF funds and restrict rent and income for all Direct Loan-assisted units to 30% AMI as defined in 24 CFR Part 93. Other Participating Jurisdictions in Texas are listed in **Attachment B**.

A list of HOME Participating Jurisdictions in Texas are attached to this NOFA and may be found at: https://www.tdhca.state.tx.us/home-division/docs/HUD_PJs_Full_List.pdf.

Set-Aside	Eligible Activities and Geographic Scope	Fund Source and Amount Available		Maximum Request ³
CHDO	NC, A/R, R, outside Participating Jurisdiction	HOME	\$6,116,029	\$6,116,029
General	NC, A/R	NHTF	\$42,637,605	\$8,000,000

Key:

NC – New Construction (For the General Set-Aside, New Construction includes Reconstruction, as defined in 24 CFR Part 93)

A/R – Acquisition/Rehabilitation

R – Rehabilitation

(3) Application Acceptance Dates and Priorities. Applicants may submit during one of several Application acceptance periods. Within those windows, applications will be reviewed in accordance with the listed priorities.

³ This total includes any other Multifamily Direct Loan Funds previously awarded to the Applicant by the Department for the Development, including any outstanding loan balances that will remain after the Direct Loan closing.

a. **General Set-Aside Application Periods:** NHTF funding will be distributed in accordance with the following timelines. Each application period has certain conditions that must be met for staff to assign an Application Acceptance Date. Dates and relevant restrictions are listed below.

i. **Regional Distribution:** NHTF funds will be subject to the Regional Distribution from **January 2, 2023 to January 31, 2023, at 5:00 pm Austin Local Time.** All eligible Applications submitted during this period will be given an Application Acceptance Date **of January 31, 2023.** The only eligible Application during the Regional Distribution period is one that received an Application Acceptance Date under the 2022-1 Annual NOFA Covid Impact Set-Aside, where the 2022-1 application was not withdrawn or terminated, and where the amount requested under the 2023-1 Annual NOFA is at or below the Regional Distribution amount for the Region.

ii. **Unfunded 2022-1 Applications:** From January 2, 2023 to **February 2, 2023, at 5:00 pm Austin Local Time,** All eligible Applications submitted during this period and applications submitted during the Regional Distribution period but not recommended for an award due to lack of funding in the Region will have an Application Acceptance Date of February 2, 2023. The only eligible Applicant during this Application Acceptance Period is one that received an Application Acceptance Date under the 2022-1 Annual NOFA, where the 2022-1 application was not withdrawn or terminated, and where the amount requested under the 2023-1 Annual NOFA is at or above \$4,000,000, or an amount requested but not recommended for an Award under the Regional Distribution period. If an Applicant applies under the Regional Distribution amount and withdraws that Application or is terminated then that Applicant is not eligible to have an Application Acceptance Date under this Application acceptance period.

iii. **First Lien:** From February 6, 2023 to February 28, 2023, at 5:00 pm Austin Local Time. All eligible Applications submitted during this period will have an Application Acceptance Date of February 28, 2023, conditional upon being listed as first lien during the permanent period on the Sources and Uses tab. Any application submitted with their funding request listed in another position will not be accepted as this time.

iv. **Open Applications: Starting on March 1, 2023,** all eligible Applications will have an Application Acceptance Date on the business date of receipt ending at 5:00 pm Austin Local Time

b. CHDO/ HOME Application Period: The first application period for Community Housing Development Organizations requesting HOME funds is January 2, 2023 until January 31, 2023 at 5:00 pm Austin Local Time. All

eligible Applications submitted during this period will have an Application Acceptance Date of January 31, 2023. Applications after this date will have an Application Acceptance Date on the business day of receipt ending at 5:00 pm Austin Local Time.

- b. **Priorities:** Within each of the above Application acceptance periods, except the Regional Distribution period, staff will determine application priority based upon three clearly delineated criteria. The order of reviews and eventual funding will first be based upon Priority 1. Staff will move on to Priorities 2 and 3 only if a tie occurs and each Application cannot be funded. During the Regional Distribution Application Acceptance Period, Priorities 2 and 3 will be used.
 - i. **Priority 1:** Staff will first prioritize applications with the same Application Acceptance Date based upon the amount of HOME or NHTF funds requested. Staff will give precedence to applications requesting larger amounts.
 - ii. **Priority 2:** If multiple applications with the same Application Acceptance Date cannot be funded, staff will score each in accordance with **10 TAC §13.6** and give precedence to the higher scoring application, including the listed tie-breaker.
 - iii. **Priority 3:** If a tie persists, staff will fund the application that provides a higher match percentage of the Direct Loan funds requested.

(4) Loan Terms

- a. **Product: Construction-to-Permanent Loans.** All Direct Loan Applications will be structured as construction-to-permanent loans. All products will reflect the interest rate listed in the table below. If the Debt Coverage Ratio is less than the minimum 1.15, staff may make adjustments to the interest and financing structure in accordance with **10 TAC §11.302**

b. Interest Rates

Set-Aside or Priority	Interest Rate
CHDO	2%
General	2%

- c. **Loan Structure.**
 - i. Except for Applicants proposing a Federal Housing Administration (FHA) loan, funds must be requested as **Fully Amortizing Loans**. Loans will be structured with

regular principal and interest payments sufficient to fully repay the loan within the loan term.

ii. For Applicants proposing an FHA-insured senior loan subject to the MAP Guide, loan payments will be calculated using 75% of Surplus Cash, as defined by FHA. Any portion of the loan not repaid will be due the earlier of the end of the Loan Term or upon sale, refinance, or transfer of the Property.

d. Underwriting Limitations. If an Application features a Debt Cost Ratio below the stated minimum the underwriter **will not** make adjustments to the financing structure in accordance with **10 TAC §11.302(d)(4)(D)(i)**.

(5) Maximum Per-Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.

The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the 2023 Maximum Per-Unit Subsidy Limits table provided in this Section 5:

2023 Maximum Per Unit Subsidy Limits⁴		
Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	\$170,777	\$179,722
1 bedroom	\$196,911	\$206,023
2 bedroom	\$237,481	\$250,530
3 bedroom	\$303,987	\$324,105
4 bedroom or more	\$338,652	\$355,765

2023 Maximum Per Unit Rehabilitation Subsidy Limits⁵		
Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	\$63,251	\$66,564
1 bedroom	\$72,930	\$76,305
2 bedroom	\$87,956	\$92,789
3 bedroom	\$112,588	\$120,039
4 bedroom or more	\$125,427	\$131,765

⁴ If these limits are updated prior to expiration of this NOFA, the Department will provide notice via its website and revise the NOFA accordingly, and then will accept Applications based on the updated limits. Applications pending at the time of such revision will be given opportunity to revise their Application without impact to Application Acceptance Date. These limits are inclusive of any federal fund sources in the Development, as applicable.

⁵ If these limits are updated prior to expiration of this NOFA, the Department will provide notice via its website and revise the NOFA accordingly, and then will accept Applications based on the updated limits. Applications pending at the time of such revision will be given opportunity to revise their Application without impact to Application Acceptance Date. These limits are inclusive of any federal fund sources in the Development, as applicable.

Smaller per unit subsidies are allowable and incented as point scoring items in **10 TAC §13.6**. Once the Applicant commits a number of Direct-Loan Units in the Application, the number may be raised or lowered only in the Department's sole discretion and provided that it would not have impacted the award of an application, to account for a change in Development costs or to account for other federal funding.

(6) Accommodations for Unique Circumstances

If the Department deems an Application to be better suited for another fund source in this NOFA or other Department multifamily NOFA, the Department will provide the Applicant a fourteen calendar day period (which may be extended another fourteen days for information required from third parties) to provide the supplemental information needed to evaluate the Application under that fund source without impact to the Application Acceptance Date.⁶

(7) Application Submission Requirements

- a. Application Acceptance Period.** Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 2, 2023, through October 31, 2023 at 5:00 p.m. Austin local time (if sufficient funds remain). An Applicant may have only one active Application per Development at a time under this or any other Department NOFA, and may only have that Development apply under one Set-Aside at a time.
- b. Application Submission Materials.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of federal rules that may apply and subsequent guidance provided by HUD.
- c. Application Forms.** An Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (Manual) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Manual in effect at the time the Application is submitted.
- d. Match Submission Requirements.**

⁶ However, the Applicant will not be given an Application Acceptance Date earlier than what could have been applied for under this NOFA or other Department NOFA.

- i. All Applicants must provide Match in the amount of **at least 7.5%** of the Direct Loan funds requested. Except for Match in the form of the net present value of a below market interest rate loan or a property tax exemption under Sections 11.111, 11.18, 11.181, 11.182, 11.1825, or 11.1827 of Texas Property Tax Code, Match 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 Direct Loan funds.
 - ii. All Applicants will be required to provide HOME Match-Eligible Unit(s) in accordance with **10 TAC §13.2(a)(6) and §13.10(c)** and federal guidance at <https://www.hudexchange.info/resource/2676/notice-cpd-97-03-home-programmatch-guidance/>
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NHTF Regional Distribution under the General Set-Aside

NHTF

Region	Region Distribution Amount
1	\$1,253,394
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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2023-1 NOTICE OF FUNDING AVAILABILITY (NOFA)
ANNUAL NOFA

(1) Summary. The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$6,116,029 in HOME Investment Partnerships Program (HOME)¹ and \$42,637,605 of national Housing Trust Fund (NHTF)² funding for the development of affordable multifamily rental housing for low-income Texans. Applicants under the 2023-1 NOFA will be accepted from **January 2, 2023**, through **October 31, 2023** (if sufficient funds remain). Applicants applying for 2023 9% Housing Tax Credits are not eligible to apply under this NOFA until August 1, 2023, although this prohibition does not apply to Applicants for 2023 Supplemental Tax Credits. The availability and use of these funds are subject to the following rules, as applicable:

a. Texas Administrative Code

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 10 (Uniform Multifamily Rules)

10 TAC Chapter 11 (Qualified Allocation Plan)

10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

b. Texas Government Code

Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

¹ HOME funds under this NOFA may only be awarded to Applications with Development sites in non-Participating Jurisdictions.

² NHTF funds under this NOFA are subject to federal Commitment deadlines, and the Board may require a Contract Execution Deadline to enable the Department to meet these federal Commitments regardless of any other time period listed in the Texas Administrative Code. Failure to meet that Contract Execution Deadline could result in the Applicant having the award reduced in whole or in part.

- c. U.S. Department of Housing and Urban Development (HUD) Program Regulations
24 CFR Part 92 ([HOME Investment Partnerships Program Final Rule](#))
24 CFR Part 93 ([Housing Trust Fund Interim Rule](#))
- d. Fair Housing
Federal Fair Housing Act, 42 U.S.C. 3601-19.
<https://www.tdhca.state.tx.us/fair-housing/index.htm>
- e. Other Federal laws and regulations may that apply depending on funding source:

Environmental Compliance

All federal sources must have some type of environmental review in accordance with 24 CFR Part 93 or 24 CFR Part 58 as applicable.

<https://www.tdhca.state.tx.us/program-services/environmental/index.htm>

Minimizing Resident Displacement

All federal sources must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; HOME must follow Section 104(d) of Housing and Community Development Act of 1974; and all federal sources must follow the HUD Handbook 1378.

<https://www.tdhca.state.tx.us/program-services/ura/index.htm>

Labor Standards

HOME funds are regulated by Davis-Bacon and Related Labor Acts (40 U.S.C. §3141-3144 and 3146-3148, 24 CFR §92.354, and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs).

<https://www.tdhca.state.tx.us/program-services/davis-bacon/index.htm>

Employment Opportunities

HOME, and NHTF require compliance with 24 CFR Part 75 (Section 3).

<https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm>

- (2) **Set-Asides.** NHTF funds will be subject to the Regional Allocation Formula (RAF, located in Attachment A) from January 2, 2023, until **January 31, 2023**. Those who apply during the Regional Distribution period must request at a minimum \$1,500,000, unless such an amount exceeds the applicable Region's allocation, in which case the Applicant must request the maximum amount available in the Region.

Applicants in the General Set-Aside that did not apply during the Regional Distribution period must request, at a minimum, \$4,000,000. An Applicant in the General set-aside may request no more than \$8,000,000. Applicants in the CHDO set-aside may request no more than \$6,116,029.

Applications must choose a set-aside based on the restrictions set forth below. In addition to the RAF, the funds made available under this NOFA are offered under the following Set-Asides:

- a. **Community Housing Development Organization (CHDO) Set-Aside.** \$6,116,029 in HOME funds are reserved for nonprofit organizations that can be certified as Community Housing Development Organizations (CHDOs).
- b. **General Set-Aside.** This set-aside consists of NHTF in the amount of \$42,637,605. For Applications within another HOME Participating Jurisdiction, Applicants may only select NHTF funds and restrict rent and income for all Direct Loan-assisted units to 30% AMI as defined in 24 CFR Part 93. Other Participating Jurisdictions in Texas are listed in **Attachment B**.

A list of HOME Participating Jurisdictions in Texas are attached to this NOFA and may be found at: https://www.tdhca.state.tx.us/home-division/docs/HUD_PJs_Full_List.pdf.

Set-Aside	Eligible Activities and Geographic Scope	Fund Source and Amount Available		Maximum Request ³
CHDO	NC, A/R, R, outside Participating Jurisdiction	HOME	\$6,116,029	\$6,116,029
General	NC, A/R	NHTF	\$42,637,605	\$8,000,000

Key:

NC – New Construction (For the General Set-Aside, New Construction includes Reconstruction, as defined in 24 CFR Part 93)

A/R – Acquisition/Rehabilitation

R – Rehabilitation

(3) Application Acceptance Dates and Priorities. Applicants may submit during one of several Application acceptance periods. Within those windows, applications will be reviewed in accordance with the listed priorities.

³ This total includes any other Multifamily Direct Loan Funds previously awarded to the Applicant by the Department for the Development, including any outstanding loan balances that will remain after the Direct Loan closing.

a. **General Set-Aside Application Periods:** NHTF funding will be distributed in accordance with the following timelines. Each application period has certain conditions that must be met for staff to assign an Application Acceptance Date. Dates and relevant restrictions are listed below.

i. **Regional Distribution:** NHTF funds will be subject to the Regional Distribution from **January 2, 2023 to January 31, 2023, at 5:00 pm Austin Local Time.** All eligible Applications submitted during this period will be given an Application Acceptance Date **of January 31, 2023.** The only eligible Application during the Regional Distribution period is one that received an Application Acceptance Date under the 2022-1 Annual NOFA Covid Impact Set-Aside, where the 2022-1 application was not withdrawn or terminated, and where the amount requested under the 2023-1 Annual NOFA is at or below the Regional Distribution amount for the Region.

ii. **Unfunded 2022-1 Applications:** From January 2, 2023 to **February 2, 2023, at 5:00 pm Austin Local Time,** All eligible Applications submitted during this period and applications submitted during the Regional Distribution period but not recommended for an award due to lack of funding in the Region will have an Application Acceptance Date of February 2, 2023. The only eligible Applicant during this Application Acceptance Period is one that received an Application Acceptance Date under the 2022-1 Annual NOFA, where the 2022-1 application was not withdrawn or terminated, and where the amount requested under the 2023-1 Annual NOFA is at or above \$4,000,000, or an amount requested but not recommended for an Award under the Regional Distribution period. If an Applicant applies under the Regional Distribution amount and withdraws that Application or is terminated then that Applicant is not eligible to have an Application Acceptance Date under this Application acceptance period.

iii. **First Lien:** From February 6, 2023 to February 28, 2023, at 5:00 pm Austin Local Time. All eligible Applications submitted during this period will have an Application Acceptance Date of February 28, 2023, conditional upon being listed as first lien during the permanent period on the Sources and Uses tab. Any application submitted with their funding request listed in another position will not be accepted as this time.

iv. **Open Applications: Starting on March 1, 2023,** all eligible Applications will have an Application Acceptance Date on the business date of receipt ending at 5:00 pm Austin Local Time

b. CHDO/ HOME Application Period: The first application period for Community Housing Development Organizations requesting HOME funds is January 2, 2023 until January 31, 2023 at 5:00 pm Austin Local Time. All

eligible Applications submitted during this period will have an Application Acceptance Date of January 31, 2023. Applications after this date will have an Application Acceptance Date on the business day of receipt ending at 5:00 pm Austin Local Time.

- b. **Priorities:** Within each of the above Application acceptance periods, except the Regional Distribution period, staff will determine application priority based upon three clearly delineated criteria. The order of reviews and eventual funding will first be based upon Priority 1. Staff will move on to Priorities 2 and 3 only if a tie occurs and each Application cannot be funded. During the Regional Distribution Application Acceptance Period, Priorities 2 and 3 will be used.
 - i. **Priority 1:** Staff will first prioritize applications with the same Application Acceptance Date based upon the amount of HOME or NHTF funds requested. Staff will give precedence to applications requesting larger amounts.
 - ii. **Priority 2:** If multiple applications with the same Application Acceptance Date cannot be funded, staff will score each in accordance with **10 TAC §13.6** and give precedence to the higher scoring application, including the listed tie-breaker.
 - iii. **Priority 3:** If a tie persists, staff will fund the application that provides a higher match percentage of the Direct Loan funds requested.

(4) Loan Terms

- a. **Product: Construction-to-Permanent Loans.** All Direct Loan Applications will be structured as construction-to-permanent loans. All products will reflect the interest rate listed in the table below. If the Debt Coverage Ratio is less than the minimum 1.15, staff may make adjustments to the interest and financing structure in accordance with **10 TAC §11.302**

b. Interest Rates

Set-Aside or Priority	Interest Rate
CHDO	2%
General	2%

- c. **Loan Structure.**
 - i. Except for Applicants proposing a Federal Housing Administration (FHA) loan, funds must be requested as **Fully Amortizing Loans**. Loans will be structured with

regular principal and interest payments sufficient to fully repay the loan within the loan term.

ii. For Applicants proposing an FHA-insured senior loan subject to the MAP Guide, loan payments will be calculated using 75% of Surplus Cash, as defined by FHA. Any portion of the loan not repaid will be due the earlier of the end of the Loan Term or upon sale, refinance, or transfer of the Property.

d. Underwriting Limitations. If an Application features a Debt Cost Ratio below the stated minimum the underwriter **will not** make adjustments to the financing structure in accordance with **10 TAC §11.302(d)(4)(D)(i)**.

(5) Maximum Per-Unit Subsidy Limits and Maximum Rehabilitation Per-Unit Subsidy Limits.

The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the 2023 Maximum Per-Unit Subsidy Limits table provided in this Section 5:

2023 Maximum Per Unit Subsidy Limits⁴		
Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	\$170,777	\$179,722
1 bedroom	\$196,911	\$206,023
2 bedroom	\$237,481	\$250,530
3 bedroom	\$303,987	\$324,105
4 bedroom or more	\$338,652	\$355,765

2023 Maximum Per Unit Rehabilitation Subsidy Limits⁵		
Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	\$63,251	\$66,564
1 bedroom	\$72,930	\$76,305
2 bedroom	\$87,956	\$92,789
3 bedroom	\$112,588	\$120,039
4 bedroom or more	\$125,427	\$131,765

⁴ If these limits are updated prior to expiration of this NOFA, the Department will provide notice via its website and revise the NOFA accordingly, and then will accept Applications based on the updated limits. Applications pending at the time of such revision will be given opportunity to revise their Application without impact to Application Acceptance Date. These limits are inclusive of any federal fund sources in the Development, as applicable.

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Smaller per unit subsidies are allowable and incented as point scoring items in **10 TAC §13.6**. Once the Applicant commits a number of Direct-Loan Units in the Application, the number may be raised or lowered only in the Department's sole discretion and provided that it would not have impacted the award of an application, to account for a change in Development costs or to account for other federal funding.

(6) Accommodations for Unique Circumstances

If the Department deems an Application to be better suited for another fund source in this NOFA or other Department multifamily NOFA, the Department will provide the Applicant a fourteen calendar day period (which may be extended another fourteen days for information required from third parties) to provide the supplemental information needed to evaluate the Application under that fund source without impact to the Application Acceptance Date.⁶

(7) Application Submission Requirements

- a. Application Acceptance Period.** Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on January 2, 2023, through October 31, 2023 at 5:00 p.m. Austin local time (if sufficient funds remain). An Applicant may have only one active Application per Development at a time under this or any other Department NOFA, and may only have that Development apply under one Set-Aside at a time.
- b. Application Submission Materials.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application submission including any requirements of federal rules that may apply and subsequent guidance provided by HUD.
- c. Application Forms.** An Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (Manual) in effect at the time the Application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Manual in effect at the time the Application is submitted.
- d. Match Submission Requirements.**

⁶ However, the Applicant will not be given an Application Acceptance Date earlier than what could have been applied for under this NOFA or other Department NOFA.

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9c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
DECEMBER 8, 2022

Presentation, discussion, and possible action on the adoption of the 2023 Multifamily Programs Application Procedures Manual

RECOMMENDED ACTION

WHEREAS, the rules relating to multifamily program funding are contained in the Administration Rules, Housing Tax Credit Qualified Allocation Plan, Multifamily Housing Revenue Bond Rules, and the Multifamily Direct Loan Program Rules;

WHEREAS, pursuant to Tex. Gov't Code §2306.67022, the Board shall adopt a manual to provide information regarding the administration of and eligibility for participation in the housing tax credit program; and

WHEREAS, the Department has created the Multifamily Programs Application Procedures Manual (Manual) as a resource guide for applicants, and the Manual and its contents are not rules;

NOW, therefore, it is hereby

RESOLVED, the 2023 Multifamily Programs Application Procedures Manual is hereby approved as is the publication of the Manual on the Department's website; and

FURTHER RESOLVED, the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to make such changes and conforming technical corrections as they may deem necessary to effectuate the foregoing, to revise the Manual as required based on the final approved rules and NOFAs, and amend the Manual from time to time as it deems necessary to provide guidance on the filing of multifamily related documents.

BACKGROUND

In concert with the annual rule-making process for multifamily-related programs, the Multifamily Finance Division revises the Multifamily Programs Application Procedures Manual. The Manual is not a rule; rather, the purpose of the Manual is to provide guidance on the filing of a multifamily application and other multifamily program-related documents. Staff has created this Manual as a resource guide which includes references to the rules and examples of acceptable documentation or development plans based on the program rules and requirements.

The Board's action in approving the adoption of this Manual allows staff the flexibility to provide more detailed instructions and amend the Manual as necessary in order to implement the Department's multifamily program rules effectively once such rules have been adopted and approved by the Governor. Additionally, from time to time, staff may update the Manual based on additional information that may become available or to correct inconsistencies or to clarify information contained therein.

The Manual will be posted to the Department's website, and an email announcement will be sent out when it is available.



2023 Multifamily Programs Application Procedures Manual

Texas Department of Housing and Community Affairs

221 East 11th Street Austin, Texas 78701

December 2022

This manual is not a rule. The manual is a resource made available to help Applicants prepare and submit accurate information for complete and compliant Applications. Applicants should understand that this type of guidance is limited by its nature and that staff will apply the Qualified Allocation Plan (QAP), Multifamily Housing Revenue Bond (MRB) Rules, Multifamily Direct Loan (MFDL) Rule, and any other applicable rules to each specific situation as it is presented. The Multifamily Programs Application Procedures Manual and the Application webinar are provided as good faith guidance and assistance, but in all respects the statutes, rules, and NOFAs governing multifamily programs supersede these guidelines and are controlling. Furthermore, any staff guidance is subject to the Governing Board's right to be the final interpreter of its rules.

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Using this Manual

The purpose of this manual is to provide a brief and general description of each tab in the Application, high level guidance as to the Department's submission requirements and what staff would generally view as acceptable supporting documentation. Guidance is also provided regarding actions that may be necessary in the course of Application review, such as waiver requests or appeals. While this guide cannot and will not contemplate all situations, we hope that the information provides a foundation upon which you may build your Application in accordance with the Rules. This manual provides limited examples of documentation that could be submitted to comply with a particular rule or requirement. In some instances the rule may allow for alternative documentation not specifically contemplated in this manual, and in those instances staff will review the documentation for compliance with and fulfillment of the substantive requirements articulated in the applicable rule.

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 all 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.

All American Community Survey data must be 5-year estimates as published in the Site Demographics report posted to the Department's website, unless otherwise specified. The availability of more current data will be disregarded. Where other data sources are specifically required, such as Neighborhood Scout or OnTheMap, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The Application must include a copy of the reports including the report date.

Any Application that staff identifies as having insufficient supporting information may be directed to cure the matter via Administrative Deficiency as described in 10 TAC §11.1(d)(2). The sole purpose of the deficiency process will, in accordance with Tex. Gov't Code §2306.6708(b), be to substantiate, correct, or clarify one or more aspects of the Application to enable an efficient and effective review by staff.

The Department will offer limited direct assistance (subject to the strictures imposed by Tex. Gov't Code §2306.1113 including, without limitation, the provisions of §2306.113(a-2)(1)) to any individual that requires this service in the preparation of the multifamily Application. However, the Department staff cannot and will not take responsibility for completing an Application package or any portion thereof, including issuing deficiency notices that ultimately serve as instructions to complete a materially incomplete and deficient Application. Applicants should refer to 10 TAC §11.1(b) Due Diligence and Applicant Responsibility regarding guidance received from staff.

Introduction to the 2023 Multifamily Uniform Application

Programs

All multifamily funding programs are subject to the Qualified Allocation Plan (QAP). Specific Applications may be subject to the Multifamily Direct Loan Program (MFDL) or Multifamily Housing Revenue Bond (MRB) rules. The programs administered by the Multifamily Finance Division include:

- 9% Competitive Housing Tax Credits (9% HTC)
- Multifamily Direct Loan Program (MFDL or Direct Loan), which may include but are not limited to:
 - HOME Investments Partnerships Program (HOME)
 - Tax Credit Assistance Program Repayment Funds (TCAP RF)
 - National Housing Trust Fund (NHTF)
 - HOME American Rescue Plan (HOME-ARP)¹

The programs administered by the Multifamily Bond Division include:

- 4% Housing Tax Credits (4% HTC)
- Private Activity Bonds (TDHCA as Bond Issuer)

Consistent with the Department's rules that govern the aforementioned programs, staff has updated the Multifamily Uniform Application and this Manual for 2023.

Pre-Application Requirements

An Applicant for Tax Exempt Bonds **where TDHCA is the bond issuer** must submit a pre-application. Prior to submitting a pre-application, the Department will require the submission of the Pre-Inducement Questionnaire, properly and fully completed, which will give the Department a preliminary understanding of the proposed Development. The Pre-Inducement Questionnaire, the Multifamily Bond Pre-application Submission Procedures Manual, the Uniform Multifamily Application (parts of which constitute the Bond pre-application) and the Multifamily Bond Pre-Application Supplement can be found on the Department's website at: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

Applicants for 9% HTC **may** submit a pre-application to be eligible for six (6) points on the Application self-score. The pre-application collects limited information and is divided into five parts, listed below, each of which will be fully explained later in this Manual.

- Applicant Contact Information
- Development Information
- Notifications
- Self-Score
- Attachments and Certifications

The Multifamily Direct Loan Program (MFDL) does not have a pre-application requirement. If MFDL is paired with either the 4% or 9% program, the pre-application requirements of those programs must be

¹ HOME ARP Activities are administered by the HOME American Rescue Plan Division

met.

General Organization of the Application

The 2023 Multifamily Uniform Application has incorporated each of the Multifamily Programs in one Application that is divided into nine parts. Certain parts of the Application are applicable to a specific Program, and will be explained throughout this Manual:

- Administrative;
- Development Site;
- Development Activities;
- Finance;
- Organization;
- Community Input (9% HTC only);
- Third Party Reports;
- Tie-Breakers (9% HTC only); and
- Review Tabs (for Department use only).

The **Administrative** section of the Application collects certain high level information about the proposed Development and the Applicant's contact information. In this section the Applicant must identify the program(s) for which the Application is being submitted and provide the completed Applicant and Developer Certifications.

The **Development Site** section of the Application requires information related to the physical location of the proposed Development Site, such as the development address, census tract number, and flood zone designation, as well as information about the schools that will serve the Development and elected officials in the community who must receive notifications.

The **Development Activities** section of the Application requires information about the proposed Development, including construction and services provided to the tenants. This section also includes the architectural drawings and information regarding existing structures on the Development Site.

The **Finance** section of the Application requires the identification of all sources and terms of financing, the development cost schedule, *pro forma* annual operating expenses, and the proposed rent schedule.

The **Organization** section of the Application requires certain information about the Development Owner, Developer, Guarantor, Affiliates, Development Team and Nonprofit entities involved with the Application, along with their Owners, managers, and members. It includes the organizational charts and evidence of experience as well as credit limit documentation. The information in this section is used for, among other things, conducting Previous Participation Reviews under 10 TAC §1.301.

The **Community Input** applies to scoring for the 9% HTC only. The section may include Local Government Support in the form of a resolution(s), State Representative letters, and letters and supporting documentation from Community Organizations.

The **Third Party Reports** section briefly identifies who performed the Environmental Site Assessment, Market Study, and Property Condition Assessment, as well as any other required reports.

The **Tie-Breakers** section collects information relevant to the tie-breakers for the 9% HTC program.

The **Review Tabs** section is used by Department staff to place Application review documents in the posted Application. This section will not be used by the Applicant but must be included in the submitted PDF Application.

Instructions for Completing the 9% HTC Electronic Pre-Application

Applicants for programs other than the 9% HTC may skip these instructions and this section. The 9% HTC pre-application will be submitted via an online form, a link to which will be posted on the Department's website on Monday, January 2, 2023. A courtesy PDF of the pre-application form, and a webinar showing how to complete the form, are available on the Department's website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. **The courtesy PDF is for planning purposes only and will not be accepted as the submitted pre-application.**

The Pre-application Final Delivery Date is Friday, January 6, 2023, at 5:00 p.m. (Austin local time).

What you will learn in this section:

- ✓ Pre-application Documentation and Assembly
- ✓ Pre-application Delivery

Pre-Application Documentation and Assembly

The 9% HTC pre-application is not mandatory; however, Applicants that provide a pre-application are eligible for six (6) points in the full Application (assuming all applicable requirements are met), and Applicants that do not submit a pre-application will not be eligible for those points.

For each pre-application, the Applicant will follow a link on the Department's webpage to initiate submission. Once opened, the link will require the Applicant to enter an email address and the name of the Development. This information will be used to create a unique URL to access the pre-application form. An email including a link to the form will be sent to the email address entered, so ensure that the address is one that the person that will complete the pre-application can access. The Applicant will use this link to initiate the pre-application.

The online pre-application is divided into the pages described below. There are certain fields marked with an asterisk, which are all required to be completed. The form will not allow the Applicant to move to the next page without completing these fields.

Page 1: Contact Information

- This page identifies the persons responsible for responding to questions and deficiencies issued by staff regarding the pre-application. The information entered for the primary and secondary contacts is included on the pre-application Log.
- This form must be completed and saved before an Application number can be assigned. Once the form is saved, an email including the assigned Application number and a link to the form will be sent to the email address entered. The Applicant will use this link to complete and edit the pre-application prior to submission.
- To avoid having to re-enter information, applicants are encouraged to "save" the document regularly. Depending on the next action desired, use the "Save", or "Save and Continue" button.

Page 2: Development Information

- Enter the Proposed Entity Name and Development Name.
- Choose the appropriate Development Type from the drop down list, then the Secondary Development Type if applicable. Note that Applications proposing adaptive reuse must select “New Construction” as the construction type and select “Adaptive Reuse” as the secondary type. If applicable, enter the Previous TDHCA #. If the Development did not previously receive an award, you do not need to enter a number.
 - If Acquisition/Rehab, Adaptive Reuse, or Rehab Only is selected, enter Initial construction year.
 - If Reconstruction is selected, enter Units Demolished and Units Reconstructed.
- Enter a number (even if zero) for Number of Noncontiguous Sites.
- Enter Number of Census Tracts.
- Choose the applicable Target Population from the drop down list.
- Enter the Development’s Address, City, ZIP Code, ETJ, County, Region and Rural/Urban designation.
- Enter the 11-digit Census Tract number; the field will not allow less than 11 digits. If the Development Site is located within multiple census tracts, click “Add” for additional fields. If you add a row, you must complete it or delete it.
 - Note: Double check that the census tract number is correct, as a change in census tract between pre-application and full Application may result in a loss of Pre-application Participation points!
- Enter the Total Low Income (LI) Units, as well as the Total Market Rate (MR) Units (enter 0 if none). The form will calculate the Total Units.
- Enter the Annual Housing Tax Credit Request. Note that pursuant to 10 TAC §11.4(b), related to Maximum Request Limit, an Applicant may not request more than 150 percent of the credit amount available in the subregion based on estimates released by the Department, or \$2,000,000, whichever is less, or \$2,000,000 for Applications under the At-Risk Set-Aside. The amount entered should not exceed the maximum funding request/award limits posted in the “2023 HTC Award Limits and Estimated Regional Allocation”.
 - The form will calculate the pre-application fee due. This fee is calculated without consideration for discounts related to Applications with a private nonprofit sponsor, so the actual fee may be less than what appears on this form. When submitting fees, ensure that each check is accompanied by a completed Multifamily Payment Receipt, which is available on the Apply for Funds webpage at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. If the nonprofit discount applies, upload documentation of nonprofit status at the end of the form. The Applicant is responsible for calculating the correct amount of the fee due if requesting the nonprofit sponsor discount. Fees are refundable only if the pre-application is withdrawn. **In order to protect your financial information, do not include a copy of the check in your pre-application.**
- If payment has already been submitted to the Department select “Yes” from the drop-down menu, and a box will appear where the Check Name and Check # can be entered.
- Check the boxes for the appropriate Set-Aside Elections.
- Depending on the next action desired, use the “Save and Go Back”, “Save”, or “Save and Continue” button.

Page 3: Notifications

- Enter the U.S. Representative. The Department staff will notify the U.S. Representative. The

Applicant is responsible for all other notifications.

- Enter the State Senator and State Representative and the appropriate Districts.
- Enter the School District officers.
- Enter ALL of the Local Elected Officials. As with the Census Tract fields, click “Add” for additional fields. If you add a row, you must complete it or delete it.
- Answer the question, “Are there Neighborhood Organizations whose boundaries contain the Development Site?”
 - If the answer is no, read the certification. When you submit the pre-application you are certifying to an understanding of the program requirements and the accuracy of the submission. Depending on the next action desired, use the “Save and Go Back”, “Save”, or Save and Continue” button.
 - If yes, then a space will appear allowing you to list the name of the organization and its address. As with previous items, click “Add” for additional fields. If you add a row, you must complete it or delete it.
- Depending on the next action desired, use the “Save and Go Back”, “Save”, or Save and Continue” button.
- **It is the applicant's responsibility to identify all neighborhood organizations that must be notified.** You should retain records of the due diligence you performed to identify all of the organizations.

Page 4: Self-Score

- Select points for each scoring item from the drop-down boxes. Subtotals and the total self-score will auto-populate. Note that this score cannot change by more than four (4) points between pre-application and full Application in order to qualify for Pre-application Participation points.
- The Readiness to Proceed, Local Government Support, Quantifiable Community Participation, Support from State Representative, Input from Community Organizations, and Concerted Revitalization Plan sections are not available for Applicants to Self-Score. While these scoring items will not be included in the calculation to determine eligibility for Pre-application Participation points in the full Application, **you MUST indicate points you intend to claim for these items.**
- There is a point adjustment field prior to the Final Self Score. This can be used to adjust a self-score based on a staff determination. For example, a scattered site Development may have an Opportunity Index score calculated to be six (6) points, which is not an option on the drop-down menu for that scoring item. In this case, an Applicant may need to adjust the final self-score. Enter negative numbers to reduce the score. This field must not be used for manipulation of the self-score in order to increase chances of being eligible for Pre-application Participation points and Applicants entering information in this field must also upload their staff determination or request for such determination under the “Other Pertinent Information” section on the next page of the pre-application.
- Depending on the next action desired, use the “Save and Go Back”, “Save”, or Save and Continue” button.

Page 5: Attachments and Certifications

- Read the certifications regarding the Electronic Filing Agreement. Multiple documents may be attached under each section as needed. Select the type of file to be uploaded from the drop-down menu and click the “Choose File” button to navigate to the document you wish to upload. The pre-application uploads should show up as hyperlinks. Make sure the documents open and

that they are complete.

- To ensure that the correct documents are uploaded, staff recommends applicants establish a “Final Documents” folder that includes ONLY the final documents to be uploaded, named to specify the type of document.
- Attach Site Control Documentation. By attaching the document(s), the Applicant is certifying that the site control conforms to all applicable rules. Files should not be larger than 7 MB total.
- Attach a Census Tract Map(s). You can find census tract maps here: https://www.huduser.gov/portal/sadda/sadda_qct.html. Make sure the map shows the entire census tract and the full tract number, and identifies the Development Site. If an information box showing the tract demographics and full tract number does not appear, take a screen shot that shows the full tract number entered in the box above the map (“ctrl, PrtScn” on the keyboard, then paste to a blank document, format as needed, then PDF). The census tract map(s) will be verified against the census tract(s) entered on the Development Information Page. Files should not be larger than 5 MB total.
- Attach Proximity to Jobs (if Applicant plans to request points during Full Application Review). Please follow the instructions on pages 20-25 & 27 for submitting all required attachments for this scoring item. During pre-application review, Proximity to Jobs will not impact eligibility for receiving pre-application points.
- Attach Underserved Area (if Applicant plans to request points during Full Application Review). Please follow the instructions on pages 20 & 26-27 for submitting all required attachments for this scoring item. During pre-application review, Underserved Area will not impact eligibility for receiving pre-application points.
- Other Pertinent Information: For prospective developments that do not fit neatly within the pre-application, there is an attachment field that can be used to provide further information. Files should not be larger than 5 MB total.
- Read the notes related to uploads. Text is included below each upload section.
- The pre-application uploads should show up as hyperlinks. Make sure the documents open properly and that they are complete. If they will not open for you, they will not open for us.
- Depending on the next action desired, use the “Back” or “Continue” button.

Pre-Application Delivery

The Electronic Filing Agreement is incorporated into the pre-application form and does not need to be submitted separately. No hard copies of signed certifications are required, but by submitting the pre-application, Applicants are certifying to an understanding of the program requirements and the accuracy and completeness of the submission. It is strongly recommended that the Applicant use the “Back” button to review the entire pre-application before submission.

The browser will display a submission confirmation page, which includes a link to a printer-friendly version of the submitted pre-application. You can save a PDF copy if you wish. In the event that an error is identified after submission, the Applicant can revoke the submission, edit the form, and then resubmit prior to the submission deadline. Review the posted pre-application webinar for more information.

Applicants are encouraged to submit the pre-application well before the deadline as **the ability to edit submissions will be disabled at 5:00 p.m. (Austin local time) on Friday, January 6, 2023**. If the complete pre-application is not submitted by the deadline, the Applicant will be deemed to have not made a pre-application submission.

Applicants will not be able to access, edit or submit a pre-application after the deadline.

Instructions for Completing the Electronic Application

What you will learn in this section:

- ✓ How to download the Electronic Application Materials
- ✓ How to complete the Excel Application
- ✓ How to convert the Excel Application to PDF
- ✓ How to insert documents into the PDF
- ✓ How to set Bookmarks
- ✓ How to submit the Application

Key deadlines:

- The Full Application Delivery Date for 9% HTC Applications is Wednesday, March 1, 2023, at 5:00 p.m., Austin local time.
- 4% HTC Applications may be submitted on the 5th of every month, or as required under the Certificate of Reservation, pursuant to 10 TAC §11.201(2).
- For Direct Loan and HOME-ARP Applications, the Application Acceptance periods are listed in NOFAs.

Application Download

All Applicants are required to use the 2023 Multifamily Uniform Application, along with the applicable supplemental files provided by TDHCA located at the following link:

<http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>

To download any of the electronic Application files, right-click on the link at the website provided above, select “Save Target As” and choose the storage location on your computer. The Excel file should be named in the following format -- <Application #_Development Name>.xls (e.g. 19001_Austin_Crossing.xls). If an application number has not been previously assigned then the file should be named as follows -- <Development Name>.xls (e.g. Austin_Crossing.xls).

Please do not transfer tabs from one Excel file to another, even if it is for the same Application. If you plan to submit more than one Application, please make additional copies of the 2023 Multifamily Uniform Application file after completing portions of the Application that are common to all of your Applications and before completing any portions that are not common to all of your Applications.

Any cell that is highlighted yellow is available to be manipulated by the applicant. All other cells (unless specifically stated) are for Department use only, have been pre-formatted to automatically calculate information provided, and are locked. Applicants may view any formulas within the cells. Applicants may not add additional columns or rows to the spreadsheets, unless otherwise stated.

All questions are intended to elicit a response, so do not leave out any requested information. If references are made by the Applicant to external spreadsheets those references must be removed prior to submission to TDHCA as this may hamper the proper functioning of internal evaluation tools and

make pertinent information unavailable to TDHCA.

The electronic Application has been designed so that many of the calculations regarding development cost, eligible basis, and eligible point items will automatically compute once enough information has been entered. If you see a “#VALUE” or “DIV/0” in a cell these values should disappear upon data entry in other tabs.

If you have difficulty downloading files from the website, contact Jason Burr at (512) 475-3986, or Jason.burr@tdhca.state.tx.us.

Completing Required Forms and Exhibits

For 9% HTC, if a pre-application was not submitted, the Applicant must separately submit the Electronic Filing Agreement form. For 9% HTC Applications submitted by the March 1, 2023 deadline, the Electronic Filing Agreement form is due by **February 15, 2023**.

For 4% Housing Tax Credit Applications, the Electronic Filing Agreement should be submitted **3-5 business days prior to the anticipated Application submission date**.

For Multifamily Direct Loans, if the Application is submitted as part of a 4% or 9% HTC Application, no additional Electronic Filing Agreement is required. Otherwise, the form should be submitted **3-5 business days prior to the anticipated Application submission date**.

The 2023 Multifamily Uniform Application consists of eight (8) parts for the Applicant to complete. Complete all applicable parts. Any portion of the Application that the Applicant considers not applicable must be included in the Application with an indication that the Applicant believes that section to be “not applicable.” Those cells that require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Where applicable, Applicants should mark boxes with an “x.” The use of a different symbol may result in misinformation in another part of the Application. Please review and ensure all information is accurate.

The Application **must** include any supporting documentation needed to evidence that the Application meets the specific requirements of the rules. Where supportive information has been published by the Department, e.g., information included in the Site Demographic Characteristics Report, the Application may refer to that information.

Applicants are cautioned that some parts of the Application are specific to certain fund sources and programs. For instance, parts of the Application are labeled “Direct Loan Only” and should only be completed if requesting that funding source. However, where a specific funding source is not stated, Applicants must complete all other parts of the Application.

Administrative Tabs

Tab 1a: Application Certification

- Enter data in yellow highlighted cells.
- The certification can be found in the 2023 Multifamily Uniform Application Certifications document posted at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. The

Application Certification must be signed by the Applicant or person with authority to execute documents on the Applicant's behalf and must be dated and notarized. No hard copy is required, only a LEGIBLE scanned copy within the PDF file. The Applicant must, however, retain the originals and provide them to the Department on request.

Tab 1b: 4% HTC-Bond Filing

The 4% HTC/Bond Application Filing form is required for 4% HTC Applications only. Select the yellow boxes associated with the Application type (i.e. Lottery or Non-Lottery), select the targeted board meeting/Determination Notice date and note the due date for the complete Application. **A 4% HTC Application will not be accepted by the Department unless evidence of a Certificate of Reservation is attached to the payment receipt or Bond Review Board (BRB) has issued notice that the Application is next in line for a reservation.** The Department will require at least 90 days to review an Application. Applicants are cautioned that while the Department will make its best efforts to present the Application at the requested meeting or issue the Determination Notice by the requested date, as applicable, delays with reviewing and underwriting along with peak volume of Applications being processed may result in the Application being presented at a subsequent board meeting or issuance of a Determination Notice at a later date.

Tab 2: Development Owner Certification

- Complete the yellow boxes on Tab 2 of the Application regarding disclosure of 10 TAC §§11.101(a)(2), §11.101(a)(3), §11.202(1)(M), §11.202(1)(N), and §11.901(15), if applicable.
- The certification can be found in the 2023 Multifamily Uniform Application Certifications document posted at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm> and must be executed by the Development Owner. This certification addresses the specific requirements associated with the Development, and the Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification.
- Applicants are encouraged to read the certification carefully as it contains certain construction and Development specifications that each Development must meet.
- Note that the certification includes the Applicant's understanding that all third party reports will be posted on the Department's website.
- Note that the certification includes the Applicant's understanding of the penalty ramifications if they do not perform under readiness to proceed for 9% HTC Applications.
- Check the appropriate boxes for any disclosures pursuant to the QAP regarding Undesirable Site Features (§11.101(a)(2)), Neighborhood Risk Factors (§11.101(a)(3)), termination of a relationship in an affordable housing transaction (§11.202(1)(M)), voluntary compliance agreements (§11.202(1)(N)), and Unused Credit Fee (§11.901(15)).
- Submit any relevant documentation behind the tab based on the disclosure made. If there is disclosure for relating to Neighborhood Risk Factors or Undesirable Site Features, submit the Neighborhood Risk Factors Report or Undesirable Site Features Report behind this tab.
- The form must be signed, dated, and notarized. No hard copy is required, only a LEGIBLE scanned copy within the PDF file. The Applicant must, however, retain the originals and provide them to the Department on request.

Tab 3: Applicant Eligibility Certification

- Complete the yellow boxes.
- The certification identifies the various criteria relating to eligibility requirements associated with multifamily funding from the Department and can be found in the 2023 Multifamily Uniform

Application Certifications document posted at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

- The form must be executed by all individuals included on the organizational chart who are identified pursuant to 10 TAC §11.204(2) and who have the ability to exercise control over the Development.
- The submission may include one copy of the certification along with a copy of each signature page. A signed, dated, and notarized signature page for each individual described above must be included. No hard copy is required, only a LEGIBLE scanned copy within the PDF file. The Applicant must, however, retain the originals and provide them to the Department on request.
- The requirement for individuals that must execute Certifications ties directly to the definition of Control at 10 TAC §11.1(d)(30). If a board member is not able to exercise control over actions of the organization other than as a voting member, they may not have control that fits within the definition. If a Board member is able to execute contracts or take other actions on behalf of the organization, they likely will meet the definition of Control and should provide execution of the Certifications. If there is a question, the Applicant will be best served by having all parties sign the Certification.

Tab 4: Multifamily Direct Loan Certification (if applying for Multifamily Direct Loan funds)

- Complete the yellow boxes.
- The certification can be found in the 2023 Multifamily Uniform Application Certifications document posted at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm> and must be executed by the Development Owner. It addresses the specific requirements associated with the Development, and the Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification. Applicants are encouraged to read the certification carefully as it contains certain statements regarding lead based paint, Section 3 requirements, environmental requirements, relocation requirements, and a general threshold certification.
- Initial all the boxes on the Certification or it will be deemed incomplete and may result in termination of the Application. The form must be signed, dated, and notarized. No hard copy is required, only a LEGIBLE scanned copy within the final PDF file. The Applicant must, however, retain the originals and provide them to the Department upon request.
- URA Applicability to MFDL. Select the box and provide additional information as applicable.
- Complete the certification.
- Residential Anti-Displacement and Relocation Assistance Plan (RARAP) Certification (MFDL Only). If any yellow highlighted box is marked, then the RARAP Certification must be submitted.

Tab 5: Applicant Information Page

Section 1 must include contact information for the person responsible for responding to Administrative Deficiencies. Note that this may not necessarily be the Development Owner or Applicant. The person listed here will be required to submit requested documentation within a relatively short time period, and should be generally available throughout the review process. The person listed here is also expected to be available primarily via email. Contact may include the persons listed in sections 2 and 3 as well.

Tabs 6a (Competitive HTC Only) and 6b (MFDL Only or MFDL Layered with HTC): Self-Score

- These forms completely auto-populate from information entered throughout the Application. As noted in the introduction, the Application has been divided into sections that more closely follow the development process than the selection criteria in the QAP. Near the beginning of

each section of the Application is a form that reflects information related to a particular aspect of Development (e.g. site, finance, ownership), and that form may include statements or selections that result in the Application being eligible for points.

- The self-score form contains hyperlinks that allow the Applicant to skip to the part of the Application that is relevant to that particular scoring item. For example, clicking on “Financial Feasibility” takes you to the Finance Scoring tab, where the Applicant can manipulate cells. As revisions are made to scoring items within the Application, the self-score will auto-populate and also produces a real-time self-score in the top right corner of the relevant tab. The Applicant can then click on “Self Score Total” at a number of different places in the Application and return to the self-score form. These internal links are designed to allow an Applicant is quickly toggle back and forth between the self-score form and the location in the Application where support documentation for that scoring item is required.
- If the Self Score does not reflect points that the Applicant expects to receive, changes must be made on the appropriate linked tab; not on the self-score form.
- Tab 6b will not apply for HOME-ARP awards.

Development Site

The blue colored Development Site tabs (7-16) collect all information specific to the physical location of the Development Site.

Tab 7: Site Information Form Part I

Complete the yellow highlighted cells in each part as applicable. Some portions of this form will make reference to supporting documents, which are listed and collected in Tab 8.

- Part 1: Development Address
 - Enter the information in this section as indicated by the label for each of the boxes present. If there is no mailing address for the site, please only indicate direction from an intersection. Also, avoid the use of all capital letters. Use the drop-down menu to indicate whether the site is within city boundaries, in the ETJ, etc.
- Part 2: Census Tract Information: Enter the 11-digit 2020 census tract number with no dashes, commas, decimals, or spaces. Indicate whether or not the tract is a Qualified Census Tract (QCT). Each of the subsequent highlighted cells further describing the demographics of the census tract will auto-populate. Applicants should exercise caution in identifying the correct census tract. It is the Applicant’s responsibility to identify the correct census tract.
 - Applicants may need to provide Census tract information based on the 2020 boundaries as well as the ones defined by 2010 boundaries, if data based on 2020 tract boundaries are not available as of October 1, 2022 for the specific item in question.
 - Remember: If the poverty rate in a census tract is greater than 40% for individuals (or 55% for Regions 11 and 13), mitigation may include a resolution submitted in lieu of a Neighborhood Risk Factors Report, as described in 10 TAC §11.101(a)(3)(D)(i).
 - Applicants can double-check this information using the US Census Bureau’s tool at data.census.gov.
 - Any clarifying notes about the address or census tract(s) can be entered in the space provided.
- Part 3: Resolutions
 - Mark the appropriate box indicating whether or not a resolution is required in order to satisfy a requirement under §11.3 related to Housing De-concentration factors or 10

- TAC §11.101(a)(3)(D).
 - For Competitive HTC Applications pursuant to 10 TAC §11.3, these are due with the Application and must be included behind this tab.
 - For Tax-Exempt Bond Applications, these resolutions should be included behind this tab if available at the time of Application submission. Otherwise, they must be submitted no later than the Resolutions Delivery Date described in 10 TAC §11.2(b).
 - If no resolution is required, this section can be marked “Not Applicable”.
- Per 10 TAC §11.3, Development Sites related to Applications for 2023 Supplemental Allocations are included in the tests for Two Mile Same Year and One Mile Three Year, and the 2023 Supplemental Allocation will be the one considered eligible.
- Part 4: Two Mile Same Year Rule (9% HTC Only)
 - Per 10 TAC §11.3(b)(2), the Two Mile Same Year rule exempts certain municipalities with a population of two million or more where a federal disaster has been declared and the municipality is authorized to administer disaster recovery funds as a subgrant recipient for the disaster that has been declared, if the Development has been authorized by resolution.
- Part 5: Proximity of Development Sites
 - This section has been added to collect information about the proposed Development Site and the proximity of any other Development Sites
- Part 6: One Award per Census Tract Limitation
 - Per 10 TAC §11.3(g), if two or more Competitive HTC Applications are proposing Developments in the same census tract in an Urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This rule does not apply to Applications submitted under the USDA or the At-Risk Set-Aside.
- Part 7: Zoning and Flood Zone Designation
 - For the Zoning Designation, enter the code or descriptive name of the Site’s current zoning exactly as it is stated in the local zoning code. For Flood Zone Designation, enter the FEMA description exactly as it appears on the FEMA floodplain map that is included in the ESA. Determine if the Site is inside or outside the 100-year floodplain according to the FEMA description corresponding to the FEMA code for the Development Site that appears on the map. Requirements regarding the floodplain are specified in detail in 10 TAC §11.101(a)(1).
 - Farmland Designation: to be completed if requesting Direct Loan funds.
- Part 8: Site and Neighborhood Standards (New Construction (HOME, HOME-ARP, or NHTF) or Reconstruction (NHTF only))
 - Both boxes in this part must be checked if requesting Direct Loan funds and proposing new construction/reconstruction.
- Part 9: School Rating
 - Complete the form by listing each type of school and their respective TEA Accountability Rating. If an Applicant lists a school that received a TEA Accountability Rating of “Not Rated: Senate Bill 1365”, the Applicant must check the appropriate boxes on the Certification of Development Owner and provide the school letter pursuant to 10 TAC §11.101(a)(3)(D) behind this tab.
 - Note: Elderly Developments, Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units, and Applications in the

USDA Set-Aside for Rehabilitation of existing properties are exempt and are not required to provide mitigation, **but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.**

Tab 8: Supporting Documentation for the Site Information Form

Each of the applicable exhibits listed on this form must be included behind it. Some of the boxes on the Supporting Documentation page will auto-populate. Supporting documents must be included for any that auto-populate or the response that originated the automatically marked box must be corrected.

- Street Map should indicate the location and approximate shape of the Development Site outlined on the map.
- Census Tract Map: must bear the full 11-digit number and indicate the location of the Development Site.
- Resolutions: sample resolutions are provided in the 2023 Multifamily Uniform Application Template file on the Department’s website. If using a prior year resolution, be sure to check the 2023 templates to see if an applicable resolution was revised.
- Evidence of Zoning or Re-zoning in process: must exactly match the representation made in the Site Information Form. Applicants should refer to 10 TAC §11.204(11) for acceptable evidence.
 - Note: 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.
- Flood Zone Designation: must be the FEMA flood map submitted in the Environmental Site Assessment that contains the development area or documentation that substantiates sufficient mitigation efforts the local government has undertaken. Refer to 10 TAC §§11.101(a)(1) and 11.305(b)(3).
 - Note: The Certification of Development Owner includes stipulations regarding the conformity of the Site with the Department’s rules regarding the floodplain.
- Farmland Designation: to be completed only if requesting Direct Loan funds.
- Site and Neighborhood Standards: A statement from the Applicant regarding how the Development will promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons AND DP-5 demographic Census data must be submitted behind this tab if the Applicant for Direct Loan funds is proposing a New Construction or Reconstruction Development.
- School Rating:
 - The table allows you to identify up to five public schools, the grade levels served at those schools, and their TEA Accountability Ratings.
 - Complete the yellow box if the school district has no attendance zones.

Tab 9: Site Information Form Part II

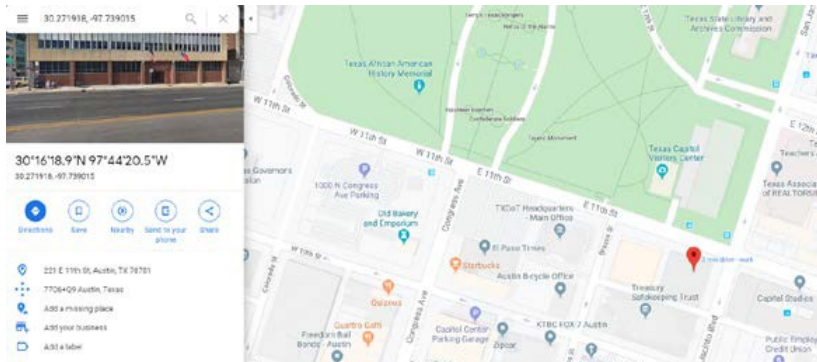
This form should be completed for Competitive HTC and Direct Loan Applications. For HOME-ARP, only Part 1 needs to be completed: Part 2 does not have to be completed unless required for another Department funding source. All items on this form are related to scoring criteria and the selections made here will populate the self-score form. **The Concerted Revitalization Plan (CRP) packet should be included in the Application behind Tab 10.** The packet is posted at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

- Part 1 – Opportunity Index:
 - Applications must meet one of the threshold requirements in order to score points for amenities.

- Use the drop-down boxes to indicate items selected for points; distance from a federally insured bank has been added to the lists.
- 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. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held.
- Include backup documentation for ALL selections.
- Certify that no members of the Applicant or Affiliates 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.
- Select the Total Points Claimed from the drop-down box.
- Part 2 – Underserved Area: Select from the seven options available if requesting points for this item, and select the Total Points Claimed from the drop-down box.
 - Years are measured in whole years, and are calculated by deducting the year of the award from the “Board Approval” column of the property inventory of the Site Demographic Characteristics Report from the current year.
 - If §11.9(c)(5)(E) is selected and there are more than six contiguous tracts, include a separate page in the PDF Application listing those tracts.
 - If an Application qualifies for points under Opportunity Index (§11.9(c)(4)), then the Application is not eligible for points under the Colonia or Economically Distressed Area items (§11.9(c)(6)).
- Part 3: Proximity to Job Areas
 - Applicants can score under only one option.
 - Complete the applicable section based on the population of the municipality/unincorporated area if the Development Site is located within the required distance of the corresponding number of jobs.
 - Select the Total Points Claimed from the drop-down box.
- Part 4: Concerted Revitalization
 - If claiming points, be sure that no points are being claimed under the Opportunity Index. Complete the appropriate boxes and select amenities in the Urban or Rural section of Opportunity Index. The CRP Packet is required for Urban and Rural Applications requesting these points, and must be included behind Tab 10. Make sure supporting documentation is included in the CRP packet. The CRP packet must include evidence that the CRP is current at the time of Application Select the Total Points Claimed from the drop-down box.
- Part 5: Declared Disaster Area
 - If claiming points, simply mark the yellow box and select the Total Points Claimed from the drop-down box. The 2023 list of eligible counties is posted on the TDHCA website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

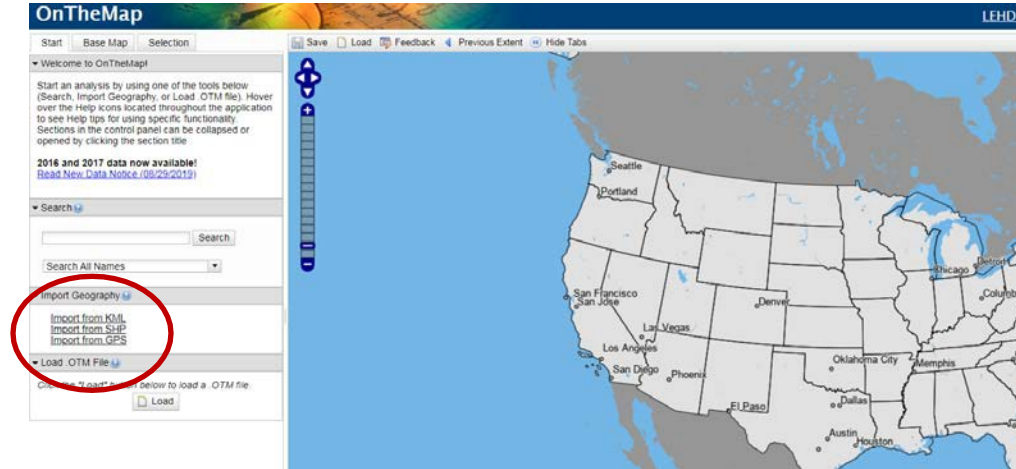
Instructions for using the OnTheMap tool for Proximity to Jobs

Step 1: Provide the GPS coordinates that clearly fall within the boundaries of the Development Site. An Application may have coordinates on the survey provided to meet the requirements of 10 TAC §11.204(15)(D), however this is not required. Staff will accept Applicant verification of GPS coordinates through an online map like Google Maps or Google Earth, **but it must be clear to staff that the GPS coordinates are tied to a spatial point that unequivocally falls within the boundaries of the Development Site.**

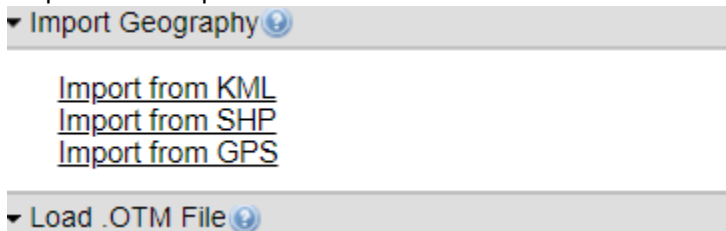


If using Google Maps or Google Earth or a similar mapping program/software, evidence similar to what is seen above must be placed in the Application.

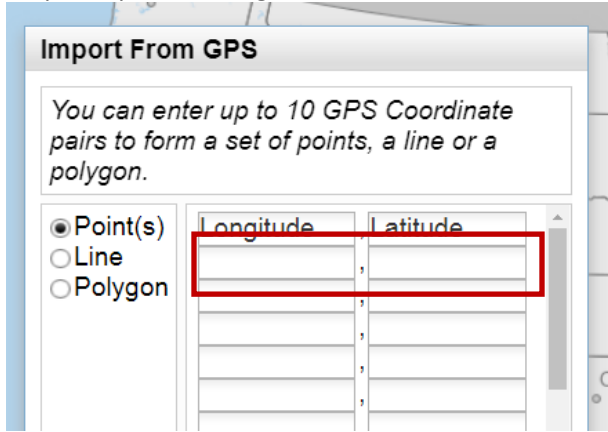
Step 2: Input the Coordinates into the OnTheMap website using their GPS Import function.



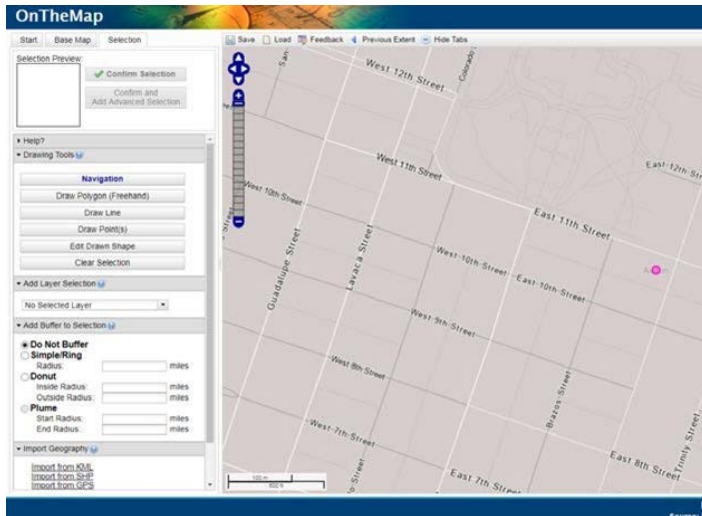
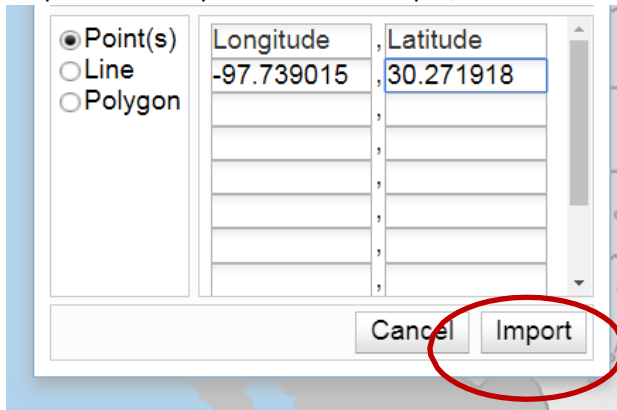
Step 3: Click “Import from GPS” in the area circled above.



Step 4: Input the Longitude and Latitude coordinates.



Step 5: Click "Import." As an example, here are coordinates for the TDHCA headquarters.



Step 6: After clicking "Import," you will see a screen similar to above, with your GPS coordinates now represented as a spatial point. In the area circled above, you now specify that you will look at jobs within a 2 mile radius of the spatial point.

▼ Add Buffer to Selection ⓘ

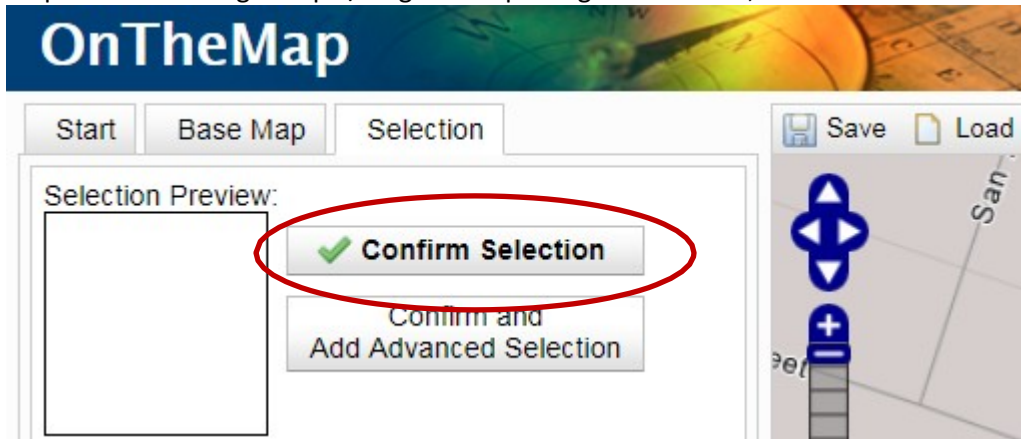
Do Not Buffer

Simple/Ring
 Radius: miles

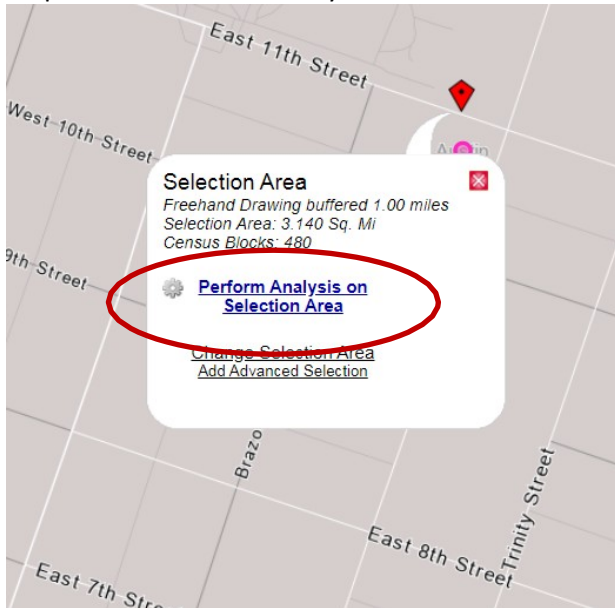
Donut
 Inside Radius: miles
 Outside Radius: miles

Plume
 Start Radius: miles
 End Radius: miles

Step 7: After clicking “Simple/Ring” and inputting “2” for miles, click “Confirm Selection.”



Step 8: Click “Perform Analysis on Selection Area”



Step 9: Check the following boxes for certain categories: “Work” in column 1; “Area Profile” and “All Workers” in column 2; “2019” in column 3; and “Primary Jobs” in column 4. The latest data set posted to

the US Census website on or before October 1, 2022 will be used as required by the QAP.

Analysis Settings

Area Profile Analysis in 2019 by Private Primary Jobs

Home/Work Area

Determines whether the selection area is analyzed on where workers live ("Home") or where workers are employed ("Work").

Home

Work

Analysis Type

Determines the type of results that will be generated for the selected area.

Area Profile

Labor Market Segment:

Area Comparison

Areas to Compare:

Labor Market Segment:

Distance/Direction

Destination

Destination Type:

Inflow/Outflow

Note: Home/Work choice does not affect results

Year

Determines the year(s) of data that will be processed in the analysis.

2019

2018

2017

2016

2015

2014

2013

2012

2011

2010

2009

2008

2007

2006

2005

2004

Job Type

Determines the scope of jobs that will be processed in the analysis.

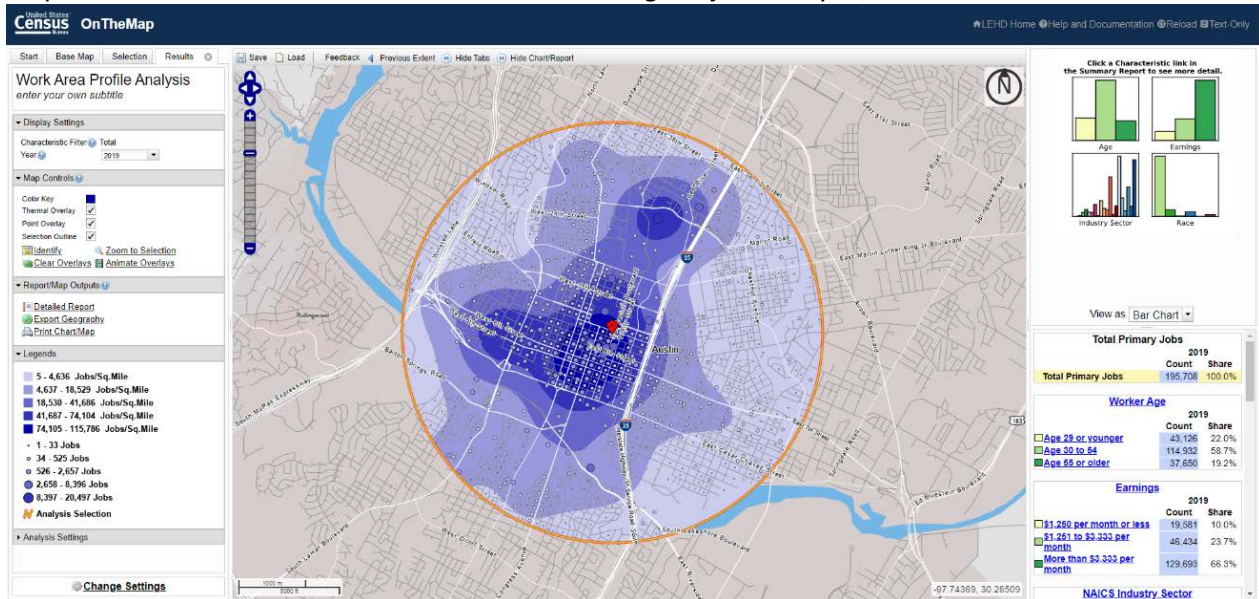
All Jobs

Primary Jobs

All Private Jobs

Private Primary Jobs

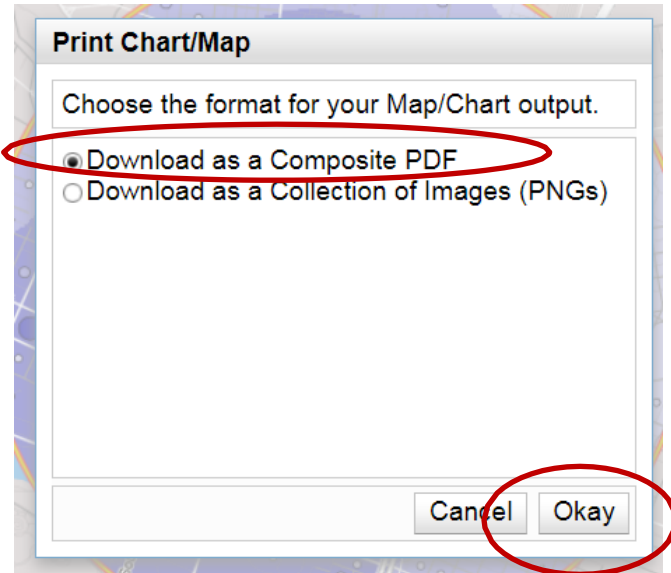
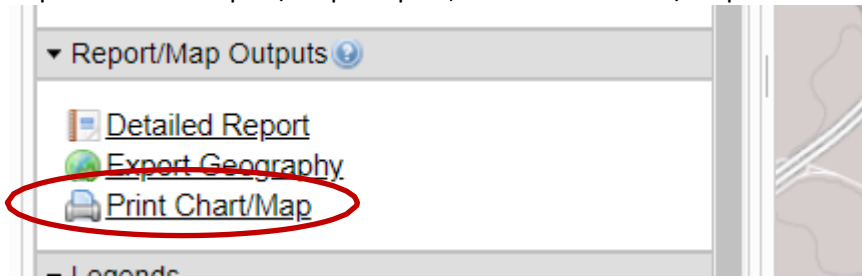
Step 10: Click "Go." You will then see a screen showing the jobs analysis, similar to this:



Be sure to zoom out, using the zoom tools circled above, so that the entire 2 mile radius can be seen around the spatial point.

IMPORTANT: take a screen shot at this point to show evidence of the coordinates ("ctrl, PrtScn" on the keyboard, then paste to a blank document, format as needed, then PDF). Include the screenshot behind Tab 2 in the PDF Application.

Step 11: Under “Report/Map Outputs,” click “Print Chart/Map.”



Select “Download as a Composite PDF” and then click “Okay.” This produces a PDF report, with the map and the total job count. This report also has a time stamp so that staff can confirm that the report was generated on or after October 1, 2022 but before the Pre-Application Final Delivery Date. **Include this report and the screen shot in the PDF Application.**

Tab 10: Supporting Documentation for the Site Information Form Part II

- Opportunity Index information:
 - The map(s) should indicate the location of the Development Site and include an accurate radius appropriate for the asset. Refer to §11.9(c)(4)(B) for details regarding the radius.
 - Supporting documentation for each amenity selected should be included behind this tab. The documentation must provide evidence that the amenity meets each requirement of the QAP.
 - Written statements that the amenity meets the rules are not sufficient; evidence of how the amenity meets the rule is required.
 - Where applicable, Applicant must include a print-out of an online form showing that the entity is included in the applicable database:
 1. Evidence of the licenses held by child care centers can be found by searching for the child care center on the Department of Family and Protective Services (DFPS) website at: http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/ppFacilitySearchDayCare.asp.
 2. Evidence of university of community college accreditation can be found by downloading the list of universities or community colleges on the Texas Higher Education Coordination Board (THECB) website. If the institution is listed, it is properly accredited: <http://www.txhighereddata.org/Interactive/Institutions.cfm>.
- Evidence of Underserved Area (§11.9(c)(6)):
 - For sites located within a colonia, provide a letter from the appropriate local government official or other evidence that the colonia lacks water, wastewater, or electricity at a level commensurate with the quality and quantity expected of a municipality and that the Development will make available any such missing water, wastewater, and electricity for current dwellings within the colonia to connect to such infrastructure (refer to §11.9(c)(6)(A) for further details). Evidence of the boundaries of the colonia from the Office of the Attorney General and a map showing the colonia is located within 150 miles of the Rio Grande river border is also required. Information regarding colonias can be found by using the Border Colonia Geography Online tool on the Attorney General’s website at: <https://www.texasattorneygeneral.gov/cpd/colonias>.
 - For sites in an economically distressed area, the Application must include evidence that the site is located in both of the following:
 1. A census tract that has a median household income that is less than 75 percent of the statewide median household income.
 2. A municipality or county that has been awarded EDAP funds administered by the Texas Water Development Board (TWDB) within the five (5) years ending at the beginning of the Application Acceptance Period This information can be found by clicking on “EDAP status report” on the right side of the page of the TWDB website at: <http://www.twdb.texas.gov/financial/programs/EDAP/index.asp>.
 - For sites located in areas covered in items (C), (D), (E) or (F), the year count will be based on January 1 of the year of award. A Development that was awarded 30 or fewer years ago would be one that was awarded in the year 1993 or later, and a Development that was awarded 15 or fewer years ago would be one that was awarded in the year 2008 or later. **Use the year indicated in the “Board Approval Year” column of the Property**

Inventory tab of the Site Demographic Characteristics Report to find this information.

- For item (G), the dataset used for this scoring item is called the “Affordable Housing Needs Indicator” and is available in the Site Demographic Characteristics Report for your convenience.
- For item (H), include evidence of the date the Development was placed in service, evidence that the Development is still occupied, and evidence of the source(s) of funds for any rehabilitation that has been performed on the Development.
- Proximity to Job Areas:
 - Provide the Composite PDF report showing the date the report was run. **Only the 2019 data set will be used, unless a newer data set is posted to the US Census website on or before October 1, 2022.**
- Concerted Revitalization Plan:
 - **If requesting points for a concerted revitalization plan, the CRP packet must be submitted behind this tab.** The packet may include either the entire plan or a link to the plan. In general, the CRP packet must include a description of where specific information can be found in the plan including evidence of adoption and any delegation of parts of the plan. Identify where each component of §11.9(d)(7)(A) for Urban and §11.9(d)(7)(B) for Rural have been met within the plan itself or using third party evidence. No more than two (2) plans may be submitted for each Application.
- Declared Disaster Area:
 - If the county in which the Development Site is located is listed on the 2023 List of Declared Disaster Areas, no further documentation is required.
 - If the Applicant believes the county in which the Development Site is located was omitted from the list and should be listed, include evidence that 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 the Full Application Delivery Date, or at any time within the two-year period preceding the Full Application Delivery Date (on or after March 1, 2023).
- Readiness to Proceed:
 - If claiming points, the Application must include a certification from the Applicant stating that the Applicant will be able to close all financing and fully execute the construction contract on or before November 30, 2023. The Application must include evidence that appropriate zoning will be in place by the time of award. The Application must also include acknowledgement from all lenders and the syndicator of the required closing date.
 - On or before November 30, 2023, the Applicant must provide a final settlement statement from the title company indicating that financing has closed and a fully executed construction contract.

Tab 11: Site Information Form Part III

- This form is divided into 5 parts. All Applicants must complete the first four parts, and part five is relevant for tax credit (9% and 4%) Applications only.
 - Part 1: Site Acreage
 - Identify the acreage listed on each of the four Application exhibits. The site acreage in each of the four spaces should agree. If there are discrepancies, the acreage of the site plan should at least be contained within the acreage of each of the other exhibits.
 - The site control document (e.g. purchase contract, lease and/or deed) often reflects more land than the site plan but may never indicate less (unless the site

control documents include multiple documents, each relating to a portion of the site, all of which encompass the entirety of the site).

- The entry for the site plan is the most important of the four entries. It must be the actual size of the final Development Site, taking into account any reductions for any circumstances (easements, dedications, etc.) that require land to be taken away from the final Site as it will be defined in the LURA.
 - The size of the Site that is reflected by the appraisal, if applicable, should match the size indicated by the site plan in that it should never be less than the size in the site plan. However, under certain circumstances, more land might be appraised than the final Site.
 - The ESA, like the site control document, often encompasses more land than the area of the final Development Site, but it may never be a lesser amount.
 - Added are the survey and the engineer’s Site Plan that are found in the Feasibility Report.
 - Note: Any differences in the sizes of the land stated in any of the four responses should be explained in the space provided, e.g., more land was purchased and studied in the ESA than is projected to be used for the Development Site. **We need to know any and all factors that may make the size of the final Development Site different from that presented in Application documents.**
 - Part 2: Site Control
 - Complete the yellow highlighted cells identifying the seller, date of sale and any relationship between the seller and the Applicant and/or any member of the Development Team. Explain any relevant affiliations.
 - Identify all sellers of the property or any interest therein for the 36 months prior to January 2, 2023, and their relationship to the Applicant.
 - Be sure to include the date of last sale.
 - Indicate the document being presented as evidence of site control by marking the appropriate box and fill in the expiration date and estimated closing date of the contract for lease, purchase, or other form of conveyance as applicable.
 - If the Applicant will not have fee simple ownership of the property upon closing on the financing, please indicate the type of interest the Applicant will have in the property in the text box at the bottom of Part 2.
 - For Tax-exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer, the Applicant must select one of the two boxes indicating whether the Site Control submitted to the BRB for the Certificate of Reservation to be issued is still valid OR that there have been changes to the Site Control since reviewed by BRB. If there have been changes the Applicant should include a description of the changes in the box provided.
 - Part 3: Ingress/Egress and Easements
 - If land for ingress and/or egress and any easements is held separately from the property described in the site control documents, describe how the land is held. Documentation of rights of ingress/egress must be included within site control.
 - Part 4: Re-platting or Vacating Requirement
 - If control of the entire proposed Development Site requires that a plat or right of way be vacated, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment, or Contract, as

- applicable.
- Part 5: 30% Increase in Eligible Basis (“Basis Boost”)
 - The “boost” may be granted to tax credit Developments in certain locations and/or for certain types of Developments. If the Development is in an eligible QCT, Rural, Supportive Housing, or in a high opportunity area, these boxes will auto-populate. If claiming the boost under §11.4(c)(2) or §11.4(c)(3)(D) or (E) or (F), mark the appropriate box.
 - If claiming eligibility for the boost for a Development located in a Small Area Difficult Development Area (SADDA), or for Rural areas located in a Difficult Development Area (non-metro DDA), a SADDA or non-metro DDA map must be submitted that clearly shows the proposed Development is located within the boundaries of a SADDA or non-metro DDA, as applicable.
https://www.huduser.gov/portal/sadda/sadda_qct.html
 - If claiming eligibility for the boost by restricting additional units for households below 30% AMGI, note that the Application does not make this calculation and that applicants should reference 10 TAC §11.4(c)(3)(D) as well as 10 TAC §11.9(c)(1) and (2) to ensure that enough units are set aside to meet these requirements.
 - For Competitive HTC Applications submitted in 2023, the 2023 lists of Qualified Census Tracts (QCTs) and DDAs are effective. For 4% HTC Applications, refer to 10 TAC §11.4(c)(4) regarding how the boost will be considered based on effective dates and other factors relating to QCTs and DDAs.
 - If claiming eligibility for the boost for a Development located in a Qualified Opportunity Zone, a Qualified Opportunity Zone map must be submitted that clearly shows the proposed Development is located within the boundaries of an eligible census tract.
 - [Opportunity Zones - Map | opportunityzones.hud.gov](https://www.hud.gov/opportunityzones)
 - Note: Per IRS Announcement 2021-10, the boundaries of opportunity zones are unaffected by 2020 census changes.

Tab 12 – Supporting Documentation from Site Information Part III

Provide the site control document, title commitment or policy, and each MFDL exhibit as applicable according to the list provided in the Application. Note: **For Applications involving scattered sites, please group all applicable items below**, identifying the Site by the line number in the Multiple Site Information Form (e.g. if there are five different scattered sites, provide the site control, zoning, etc. for Site #1 in a group, and the same for Site #2, etc.).

- Evidence of Site Control: See 10 TAC §11.204(10) for details regarding site control. Be aware that for Competitive HTC Applications the rules for scoring the submission of a pre-application are affected by site control.
 - If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have site control that does not expressly preclude an ability to assign the Site Control to the Development Owner or another party.
 - If in the form of a lease or contract for lease, the existing lease must have 45 years remaining, or the contract must be for a minimum 45-year term.
 - For identity of interest transactions, refer to 10 TAC §11.302(e)(1) regarding how the acquisition cost will be underwritten.
 - For scattered sites, if submitting multiple contracts, deeds, etc. each one must meet all of the requirements of 10 TAC §11.204(10). Each must clearly have the address

- identified and be consistent with the Scattered Site Information Form (e.g. If the Development consists of 3 parcels of Property, 3 contracts/deeds, etc. must be provided or one form of site control must clearly identify and cover all 3 parcels).
 - If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement.
- Title Commitment or Title Policy: See 10 TAC §11.204(12) for detailed requirements regarding title documents.
 - Tax-Exempt Bond Developments that do not include a request for Direct Loan or include the Department as the bond issuer are exempt from this requirement.
 - The title commitment or policy should be in the name of the Development Owner. In addition, the current owner reflected on any title commitment or policy should match the current owner listed on any purchase or lease agreements.
 - If documentation is more than six months old prior to the beginning of the Application Acceptance Period a letter from the title company/Bureau of Indian Affairs indicating that nothing further has transpired on the policy, commitment, or status report must be provided.
 - For scattered sites, a title for each separate Site must be submitted. Each must have the Site clearly identified. It must be consistent with the site control document submitted for the same piece of Property as well as the Scattered Site Information Form (e.g. if the Development consists of 3 parcels of Property, 3 separate labeled titles must be provided).
- Increase in Eligible Basis (For 9% or 4% HTC)
 - If claiming eligibility for the boost for a Development located in a QCT, a QCT map must be submitted that clearly shows the proposed Development is located within the boundaries of a QCT. In addition, New Construction or Adaptive Reuse Developments must include a resolution if claiming eligibility for the boost for a Development located in a QCT with greater than 20% HTC Units per total households, pursuant to 10 TAC §11.4(c)(1).
 - If claiming eligibility for the boost for a Development located in a SADDA or non-metro DDA, a SADDA or non-metro DDA map must be submitted that clearly shows the proposed Development is located within the boundaries of a SADDA or non-metro DDA.
 - 30% Units used for the boost cannot be used to meet any scoring criteria or to meet any MFDL program requirement.

Tab 13: Multiple Site Information Form

The Multiple Site Information Form was created as an aid to determining how lots and tracts that have separate descriptions fit together to form the Development.

- If a Development proposal requires the submission of more than one purchase contract, lease contract or deed to evidence Site Control, the Applicant must complete one block of the Multiple Site Information Form for each Property that will be aggregated into the Development.
- In general, the Application must sufficiently describe the properties in the contracts and deeds so that each Property can be identified within the survey(s) of the Development Site(s).
- Evidence must show that the Property determined by the survey of the Development Site is entirely under the Applicant’s Control and any land that is purchased in excess of the Development Site must be described in a way that makes the excess area apparent in both quantity and location.

- In all cases, the Application must include a survey that indicates the legal description of each lot, alley, roadway and tract as described in the documents evidencing the Applicant’s Control. If more than one survey is necessary to depict the land under control, the relative locations of the land should be clear and the fit of each part into the whole should be apparent. If a contract includes land that is only described by metes and bounds, a survey showing the boundaries corresponding to these same metes and bounds and labeled with the corresponding bearings and distances should be provided.
- **In all cases, the Application must include an overlay plat of the Development Site, including any accessible pedestrian routes or private roads that the Development Owner controls, and any public road or similar barrier where the Development Owner has a written agreement with the public entity stating that the accessible route will remain for at least the term of the LURA.**
- The desired result of these descriptions and drawings is a clear depiction of the land under the Applicant’s Control and the relationship of this land to the Property that will be the Development Site(s). A further explanation of the information requested for multiple site development proposals is provided by the instructions for filling out the Multiple Site Information Form in the Application itself.
 - Note: Lines 163-437 are hidden and available should additional spaces be needed.

Tab 14: Elected Officials

- If a pre-application was submitted that correctly identified all the elected officials, and no re-notifications or corrections are required (e.g., no information has changed), check the first box and leave the rest of the form blank.
- If a pre-application was submitted and additional notification or re-notification was required for any reason, check the second box. Complete the entire form, indicating the elected official(s) that were notified or re-notified prior to submission of the full Application.
- If no pre-application was submitted, check the third box and complete the entire form.
- Please note that this form becomes part of the Certification of Notifications. For details regarding the notification requirements, refer to 10 TAC §11.203.

Tab 15: Neighborhood Organizations

- If a pre-application was submitted that correctly identified all the Neighborhood Organizations, and no re-notifications or corrections are required (e.g., no information has changed), check the first box and leave the rest of the form blank.
- If a pre-application was submitted and additional notification or re-notification was required for any reason (whether changes to the Application or to the Neighborhood Organization), check the second box. Complete the entire form, indicating the Neighborhood Organization(s) that were notified or re-notified prior to submission of the full Application.
- If no pre-application was submitted, check the third box and complete the entire form.
- **This includes all Neighborhood Organizations on record with the state or county 30 days prior to the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site.**

Development Activities

Tab 17: Development Narrative

The Development Activities tabs are colored red, and contain all information regarding the planned

construction on the Site. This includes physical features, such as architectural drawings, Development amenities, and Target Population.

- Part 1: Construction Type
 - Choose one construction type from the drop-down menu and answer all appropriate questions. Note that Applications proposing adaptive reuse must select “New Construction” as the construction type and select “Adaptive Reuse” as the secondary type (adaptive reuse for new construction or rehab for MFDL). If questions are not relevant, answer with N/A, leaving no yellow highlighted cells blank.
 - If Application is proposing to be an additional phase to an existing, previously awarded Development, indicate the name of the existing Development and the Application ID associated with that Development.
- Part 2: Target Population
 - Identify the Target Population from the drop-down menu provided.
 - Refer to 10 TAC §11.1(d)(47) for more information on how Elderly Development is defined. **If selecting Elderly because the proposed Development receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children, complete the statement in this section by choosing the funding source from the drop-down menu in the space provided and submit supporting documentation for that financing behind the tab.** To the extent that the Development will receive other funding that has a requirement for a preference or limitation with regard to population(s) served, a text box is available for Applicants to indicate the type of funding and the preference or limitation imposed by that type of funding.
 - For HOME-ARP, include QP requirements under “Development will receive other funding that has a requirement for a preference or limitation with regard to the population(s) served. If so, please explain in the box below. “If including a preference for HOME-ARP on Tab 49 HARP Specific, make sure preferences is also listed in Tab 17.
 - If the Development is also a Supportive Housing Development, include HOME-ARP in the Certification for Supportive Housing under “Other target populations that are served by a federal or state housing program (provide documentation behind this tab.)”
 - **Note: Supplemental Allocations made from the 2023 ceiling to Elderly Developments in such tracts will be included in calculating the allocated Elderly credits in that region, thereby reducing the available credits for Elderly Developments in that region for 2023 Competitive HTC Applications.**
- Part 3: Staff Determinations
 - If a staff determination was made pursuant to §11.1(l), mark the box with an “x” and submit a copy of the determination behind this tab. If a waiver was previously approved by the Board, mark the box with an “x” and submit a copy of the Board write-up behind this tab. If no determination or waiver was required, simply leave the box blank.
- Part 4: Narrative
 - Applicants are required to provide a brief development narrative and should also use this space as an opportunity to explain any unique circumstances surrounding the proposed Development. The narrative must describe unusual aspects including, but not limited to, the following:
 - Unusual or complex Site Control arrangements and/or relationships between buyer and seller or landlord and tenant, e.g., condominium, leasehold, leased fee, Related Parties, etc.;
 - Unusual building types, e.g., mid-rise, high-rise, modular construction, historic

- structure;
 - Uses other than residential rental units, e.g., structured parking garage, commercial space (retail, office, etc.), community center, etc.;
 - Rental subsidies and/or operating subsidies (summary in Development Narrative with detail in Financing Narrative);
 - Age or population restrictions(if including HOME-ARP, make sure to include QP restrictions here);
 - Considerations regarding general public use requirements and the Integrated Housing Rule;
 - Descriptions of unusual tenant services; e.g., if space will be provided for medical services/exams, state clearly who will provide those services to ensure no violation of 10 TAC §11.101(b)(1)(A)(iii);
 - Unit configuration changes on Rehabilitation Developments; and
 - Any and all issues that would require approval or clearance by staff or the Board.
 - Please double-check that any specific information about the Development that is also provided elsewhere in the Application is consistent. For example, if the narrative describes 4 residential buildings, then the architectural plans and Building/Unit Configuration form should reflect the same.
- Part 5: Funding Request
 - Applicants should carefully fill in all relevant cells highlighted in yellow. This form is used to auto-populate other parts of the Application, including the scoring item related to Leveraging of Private, State and Federal Resources. Applicants are encouraged to review this form carefully for errors.
 - There is no verification of funding amounts built into the Application, so Applicants should also be aware of any funding limit requirements before completing this form.
 - HOME-ARP Applicants applying for option nonprofit capacity building or nonprofit operating assistance will have the amount auto populate in Tab 17 from calculations on Tab 49 HARP Specific.
 - HOME-ARP Applicants applying for optional Capitalized Operating Cost Assistance (COCA) will have the amount for the COCA.
- Part 6: Set-Aside
 - This section is applicable to Multifamily Direct Loan and Competitive HTC Applications only.
 - Applicants will be asked to submit the appropriate supporting documentation for the set-aside at different parts of the Application. **Selections for At-Risk and USDA are independent of each other. Only select both if both apply. An Application can be At-Risk without being USDA, and the opposite is true. Only select what is true for your Application.**
 - HOME-ARP does not have set asides as listed in Part 6, so this Part does not apply for HOME-ARP, unless required by other Departmental funding sources.
 - For the MFDL selections, indicate which NOFA applies and which Set-Aside applies.
 - **For Competitive HTC Applications seeking Pre-application Participation points, Set-Asides may not be changed from pre-application to Application.**
 - Note: The Supplemental Allocation amount for any Application participating in a set-aside receiving a Supplemental Allocation from the 2023 ceiling will be attributed to the relevant 2023 set-aside.
- Part 7: Previously Awarded State and Federal Funding

- All cells highlighted in yellow require data entry or selection by the Applicant. If a particular question is not applicable to the Application, type in “N/A.”
- Part 8: Qualified Low Income Housing Development Election
 - This applies only to HTC (9% and 4%) Applications. Applicants should understand that once an election is made it is irrevocable. Applicants are also encouraged to check this election against the Rent Schedule to ensure that there are enough 50% or 60% Units (whichever is applicable) to be consistent with the election, or that the average does not exceed 60% AMFI if electing Average Income, and, for competitive HTC Applications, that the average does not exceed the percentage pursued through competitive scoring in §11.9(c)(1)(C) or (D).
- Part 9: Scope of Work Narrative
 - For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review is not required. However, the Application must include a Scope of Work Narrative, as described in 10 TAC §11.306(k), behind this tab.
 - **Remember: 20/50 requires ALL Units in the set-aside to be 50% or less and they can NEVER rise to 60%. 40/60 allows for Units to be at 50% and they can rise to 60% in the future.**

Tab 18 – Development Activities Part I

This tab is divided into 4 parts, all of which need to be completed for all Applications. The selections made here serve to certify that the Development will meet various requirements under 10 TAC §11.101.

- Part 1: Common Amenities
 - The number of units and points will auto-populate. Applicants proposing scattered site Developments should review this rule carefully in order to determine the appropriate number of points.
- Part 2: Unit Requirements
 - Mark the one appropriate highlighted cell each from Part A and Part B.
- Part 3: Resident Supportive Services
 - Mark the highlighted cell that is applicable.
- Part 4 – Development Accessibility Requirements - Mark the appropriate cells. Applicants should pay special attention to ensure that the design of the Development is in compliance with 10 TAC §11.101(b)(8).

Tab 19 – Development Activities Part II

This tab is divided into 12 parts. All items on this form relate to scoring criteria and are not applicable to 4% HTC. Except for Parts 2 and 3 that relate to MFDL, the selections made here will populate the self-score form. For HOME-ARP, only Part 6 applies, unless the other Parts are required for another Departmental funding source. HOME-ARP only Applicants do not need to complete Part 2 or Part 4 or the Income and Rent Levels worksheet in Tab 19a.

- Part 1: Size and Quality of the Units
 - Mark the appropriate highlighted cell. Points claimed will auto-populate.
- Part 2: Rent Levels/Tie Breaker for Direct Loan Program
 - Only Applicants applying for MFDL need to complete this part. Applicants electing to restrict Units at 30% AMGI for Competitive HTC or Average Income purposes may not count those HTC-layered Units for point scoring under 10 TAC §13.6(5). However, 40%

AMGI, 50% AMGI, and 60% AMGI Units that are layered with 30% AMGI Units for Direct Loan purposes may count for point scoring under §13.6(5). **Points claimed here do not affect the 9% HTC self-score and will only appear on the MFDL Self Score tab (6b).** Additionally, MFDL Applicants can indicate the percentage of 30% AMGI Units that they would restrict to 15% AMGI in the event of a tie with another Application or Applications.

- Part 3 – Subsidy Per Unit for Direct Loan Program
 - Only Applicants applying for MFDL need to complete this part. MFDL Applicants can indicate one of three lower per unit subsidy limits that they would like to voluntarily use to determine the number of Direct Loan required. MFDL Applicants should use the 2023 Direct Loan Unit Calculator Tool to confirm that all necessary cost allocation and subsidy layering requirements are met.
- Part 4: Income Levels of the Residents
 - For Applications electing 20% at 50% or 40% at 60%:
 - The Rent Schedule must be completed before a score can be calculated.
 - The Total Number of Low-Income Units at 50% or less of AMGI will auto-populate from the Rent Schedule.
 - You must enter (in the second box) the number of 30% Units from the above number that will be used for points under 10 TAC §11.9(c)(2).
 - **Note: This number cannot be greater than but can be less than or equal to the total number of 30% Units indicated in the Rent Schedule.**
 - You must enter (in the third box) the number of 30% Units that will be used to satisfy the requirements of §11.4(c)(3)(D) related to the Increase in Eligible Basis (30% boost). **Applicants not requesting the boost or achieving the boost under another provision (QCT, Rural, etc.) should leave this box blank.**
 - The fourth box will subtract all of the 30% Units used for either points or the boost from the total number of Units at 50% or less of AMGI.
 - The fifth box will calculate the percentage of Units at or below 50% of AMGI available for points under 10 TAC §11.9(c)(1).
 - The boxes to the right of the scoring items will populate based on the information entered. This is to allow the Applicant to see the score supported by the entries. These scores do not populate the Self Score form. Select your score in the yellow box at the end of the scoring item.
 - For Applications electing Average Income:
 - See the average income calculation worksheet added under Tab 24a. Based on data entered in the Tab 24 worksheet, the average income percentage calculation will populate. Changes must be made on the calculation worksheet if the average is not what the Applicant intended. Include this worksheet in both the Excel and PDF versions of the Application.
 - Select requested points in the yellow highlighted cell (if requesting points).
- Part 5: Rent Levels of the Residents
 - Select the highlighted cell that is applicable. The Rent Schedule must be complete before a score can be calculated, and the Total Points claimed will not auto-populate if more than one box is marked.
 - Note: There is no calculation to determine eligibility for points. Applicants need to double check that points claimed here are consistent with the number of Units represented in Part 3, cell B36, “Number of Units used to score points under §11.9(c)(2).”

Income & Rent Levels of Residents Worksheet The worksheet does not apply for those Applications electing average income. Except for the income averaging portion, Parts 3 and 4 above both relate to income targeting and are similar in many ways. However, it is important to note that the Income Levels of Residents awards points for the number of Units at or below 50% AMGI, which may include 30% Units. The Rent Levels of Residents awards points solely on the number of Units at 30% AMGI. **It is important that the same 30% Units are not counted for both scoring items.** Staff created a table located outside of the print area of the Development Activities exhibit (Tab 19a) to assist Applicants in determining their eligibility for points. The worksheet should be submitted in the PDF Application. The worksheet is a tool for use by Applicants to determine their eligibility for points under 10 TAC §§11.9(c)(1)(A) or (B) and 11.9(c)(2) depending on how many total LI Units are proposed.

- Column (a) contains a highlighted yellow cell that represents the total number of LI Units. Applicants can manipulate this cell to determine the number of Units at or below 50% AMGI needed for points under §11.9(c)(1) and the number of LI Units left over to qualify for points under §11.9(c)(2).
- Once the Rent Schedule has been completed, the top right-hand corner of the worksheet pulls from it the total number of low-income (LI) Units as well as the total number of 30% Units. These two numbers cannot be manipulated.
- Above column (a), there is a cell for Applicants to input the number of 30% Units being used to satisfy the boost provision under §11.4(c)(2)(D); Applicants not requesting the boost or achieving the boost under another provision (QCT, Rural, etc.) should not enter anything into this cell in order to effectively use the worksheet. TIP: In order to double-check the final Application submission and eligibility for points, this number should equal the red bolded number that auto-populates in the right-hand corner.

Applicants should always independently verify that the calculations are correct and that the spreadsheet is not rounding. Staff attempts to include calculations in certain areas as a courtesy but it is the Applicant's responsibility to verify that their Application meets the underlying rules.

- Part 6: Resident Supportive Services
 - This is a scoring item for all 9% HTC and MFDL Applications.
 - Select a highlighted cell if applicable.
- Part 7: Resident Populations with Special Housing Needs
 - This is a three-part scoring item for 9% HTC Applications worth up to three (3) points. Refer to the rule for all of the requirements for the scoring items:
 - In Part A, the Applicant elects to commit at least 5% of the total Units for Persons with Special Housing Needs. Units identified for this scoring item may not be the same Units identified previously for the Section 811 Program. Part A is worth two (2) points.
 - One (1) point can be scored in Part B only if points were elected in Part A. In Part B, the Applicant elects to commit at least an additional 2% of the total Units to Persons referred from the Continuum of Care or local homeless service providers to be made available for those experiencing homelessness.
 - In Part C, the Applicant elects to provide a preference for leasing units to low income veterans. The Development must be located in a county with a population of 1 million or more, but less than 4 million, and must be located not more than two miles from a veteran's hospital, veteran's affairs medical center, or veteran's affairs health care center (which include all providers listed under the Veteran's Health Administration categories, excluding Benefits

Administration offices, listed at this link

https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=TX&dnum=AL
L). Part C is worth one (1) point.

- Part 8: Pre-application Participation
 - Mark the highlighted cell if claiming points.
- Part 9: Extended Affordability
 - Mark the highlighted cell of the applicable election if claiming points.
- Part 10: Historic Preservation
 - If claiming points for Historic Preservation, all yellow boxes must be marked for the appropriate score box to populate. Documentation must be submitted behind this tab. A letter from the Texas Historical Commission stating that the property is already a Certified Historic Structure OR that the Commission has established preliminary eligibility for the structure are acceptable for points.
- Part 11: Right of First Refusal
 - Mark the highlighted cells if claiming points.
- Part 12: Funding Request Amount
 - Mark the highlighted cell if claiming points.

Tab 20: Existing Development Information

This form is divided into three sections, which are all relevant to specific types of Applications. See the headings for each part to determine if it is applicable.

- Part 1: At-Risk Set-Aside (Competitive HTC Developments applying under the At-Risk Set-Aside Only)
 - Section A: Mark the highlighted cell next to all applicable subsidies or benefits. Mark each condition that is applicable.
 - Section B: If the At-Risk units are owned by a Public Housing Authority, mark each box that is applicable. Be sure to include all applicable information for RAD Developments. The Application should indicate the PHA under which the RAD Units proposed for the Development have been reserved.
 - All boxes that apply to a Development applying under the At-Risk Set-Aside under Sections C, D, and E should be marked.
- Part 2: Existing Development Assistance (All Applications)
 - Section A. Indicate the type of assistance the Development is expected to have or continue from the drop down box and include a brief description of the restrictions or subsidies in the space provided. Fill in the remaining highlighted cells based on the information in the contract, which should be included behind Tab 35.
 - Section B. If claiming acquisition credits in an HTC Application, fill in all applicable highlighted cells.
 - Note: If the Development does not meet the requirements under Section 42 relating to the 10-year hold period and the Applicant believes it qualifies for the exemptions under Section 42 then a justification of the exemption is provided behind this tab.
- Part 3: Lead Based Paint (Multifamily Direct Loan Applications Only)
 - If the Development was constructed before January 1, 1978, mark each of the highlighted cells that apply

Tab 21 – Occupied Developments

- If any structure on the Development Site is occupied at any time after the beginning of the

Application Acceptance Period, even if demolition is proposed, or if a federal subsidy is being transferred from another site and the costs of relocation will be part of the Total Development Costs one of the following items must be provided (Mark the appropriate box):

- Historical monthly operating statements for 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period; or
- The two most recent consecutive annual operating statement summaries; or
- The most recent consecutive six months of operating statements and the most recent available annual operating summary; or
- All monthly or annual operating summaries available.
- Each of the following items, as applicable, must be provided:
 - A rent roll not more than six months old as of the first day of the Application Acceptance Period that discloses the terms and rates of leases, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;
 - The rent roll should not be included in the Application, submit it as a separate document to protect resident information. Ensure rent rolls do not include unnecessary information, such as identifying who lives in mobility accessible units.
 - A written explanation of the process used to notify and consult with the tenants in preparing the Application;
 - A relocation plan outlining relocation requirements and a budget with an identified funding source;
 - 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
 - Evidence that a relocation plan has been submitted to the appropriate legal or governmental agency.
- If one or more of the above is not applicable, based upon the type of occupied structures on the Development Site, provide an explanation in the highlighted box.

Tab 22 – Architectural Drawings

Please ensure all drawings are legible. Do not submit drawings above and beyond those required under the rules. Anything submitted beyond what is required must be reviewed by staff and will slow down the review process. **Do not submit layered plans.** If when you open your plans the document loads a little bit at a time, the document is layered and we cannot accept it. In order to reduce the file size and speed review of drawings, Applicants are encouraged to submit plans as 300dpi images. Following these steps in Adobe Acrobat will convert most plans:

File > Print > Printer: Adobe PDF > Advanced > Settings: Custom > [v] Print As Image 300dpi > OK
Properties > Adobe PDF Settings > Default Settings: High Quality Print

To mitigate against inconsistencies in the Application, if accessible units are of the same floor plan/unit type as other units, Applicants are not required to specially denote such accessible units within the architect’s table or Building/Unit Type Configuration exhibit as long as these units are specified in the site plan or building floor plans.

- Site Plan
 - Be sure that your architect follows the list closely.
- Building Floor Plans
 - These plans be submitted for each building 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. These must also include the exterior dimensions (exterior stud face to exterior stud face) of each building type.

- If average income is elected, Application must provide assurance that 20%, 30%, 40%, 50%, 60%, 70% and 80% Unit designations are/will be dispersed across all Unit Types in a manner that does not violate fair housing laws. (10 TAC §10.605).
- Unit Floor Plans:
 - These plans must be submitted for each Unit type and must include the square footage for each type of Unit. Applications for Adaptive Reuse are only required to submit Unit floor plans for each typical Unit type and for all Unit types that vary in NRA by more than 10% from the typical Unit of each type. Unit floor plans must be submitted for the accessible Units for all Developments and must include the exterior dimensions (exterior stud face to exterior stud face) of each Unit Type
- Building Elevations
 - This information be submitted for each side of each building type (or include a statement that all other sides are of similar composition to the front) and must include percentage estimates of exterior composition of each elevation, roofing material and proposed roof pitch. Rehabilitation and Adaptive Reuse Developments 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.

Applicants are encouraged to submit architectural plans grouped by type of plans (e.g., building floor plans for all buildings, followed by unit plans for all units, followed by elevations for all buildings) as opposed to building by building (e.g., all plan sheets for building one, all plan sheets for building two).

Tab 23: Specifications and Building/Unit Configuration

- Specifications and Amenities
 - Required for all Development types (i.e. New Construction, Rehabilitation, etc.); no exceptions. Complete all yellow highlighted cells as applicable. Under parking requirements, indicate number of spaces of each parking type that will be free of charge and number of spaces that will be available to tenants for a fee.
- Building/Unit Configuration
 - Information on this chart should be consistent with the Rent Schedule and the architectural drawings. For Supportive Housing Applications Only: The breakdown of common area square footage at the bottom of the page must agree with the architectural plans.
 - This form includes worksheets 23a, 23b, and 23c. These worksheets will help you determine the distribution of mobility and hearing/visual accessible Units and accessible parking spaces. Include these worksheets in the Application.
 - Parking:
 - Basic requirement: The number of parking spaces must be adequate and consistent with local code, unless there is no local code, in which case the requirement is 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.
 - ADA Chapter 2 Section 208 standards always apply to all parking in every

development. In some instances, Fair Housing Accessibility (FHA) requirements will also apply. Below are links to both standards.

<https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf>

<https://www.huduser.gov/publications/pdf/fairhousing/fairch2.pdf>

- **Do not use the information at the bottom of the form unless your Application proposes supportive housing.**
 - Per 10 TAC §11.9(e)(2) related to Cost of Development per Square Feet: If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 23d: Engineer/Architect Certification

- This certification must be executed by the Development engineer or accredited architect can be found on the Department’s website at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.
- New Construction Direct Loan Applicants must have the architect certify Development Site is sufficient in size, exposure, and contour to accommodate the number of Units proposed.
- If the Architect has not signed the accessibility forms in Tab 23 of the Application, the certification requires a separate statement be submitted that describes how the accessibility requirements for the physically accessible/hearing and visual impaired Units will be met, along with related parking requirements. Be sure this statement is attached to this certification.
- The form must be signed, and dated. **No hard copy with original signature/stamp is required, only a scanned copy within the final PDF file. However, a signed and stamped original must be retained and provided on request.**

Development Financing

Tab 24: Rent Schedule

- Submit the final Rent Schedule after deleting any rows that indicate zero (0) as the unit count. The Rent Schedule has been intentionally placed immediately following the Building/Unit Configuration exhibit in an effort to reduce the number of inconsistencies.
- Gross Rent cannot exceed the HUD maximum rent limits unless documentation of project-based rental assistance is provided.
- The unit mix and net rentable square footages must be consistent with the site plan and architectural drawings.
- If any non-rental income is included, describe the source(s) of the income. “Misc” or “Etc.” in the income description is not acceptable.
- If the Development includes loft/efficiency Units, label these Units as “0” bedrooms as provided in the drop-down list.
- **New: New Construction, Reconstruction or Adaptive Reuse Developments (excluding Elderly Developments and Supportive Housing Developments), there cannot be more than 30% efficiency and/or one-Bedroom Units.**
- If applying for HOME funds, the column titled “MFDL-HOME Units” also includes the Income level required for each MFDL Unit designation.
- If applying for NHTF funds, please use the NHTF Units column to indicate Direct Loan units
- If applying for HOME-ARP, the column titled HOME-ARP Units Applicant will have three

categories in the rent schedule; the qualified population (QP) units and the low income units (HH/80% or HH/60%). Applicants would select QP or HH/80%, or HH/60%. The HH/80% and HH/60% would only be for the HOME-ARP low income units.

- Reminders for HOME-ARP: at least 70% of the HOME-ARP units need to be QP. “Rent Collected” for the QP units should be zero. The Program Rent Limit for low-income units should be high HOME rents. Only up to 10% of the low-income units for HOME-ARP may be HH/80%; the remainder of the low-income units must be HH/60%.
- **For Tax-Exempt Bond Developments Only:**
 - Choose the applicable Private Activity Bond Priority from the drop-down list.
 - Priority must be designated, as submitted to the Bond Review Board, regardless of Bond Issuer. The income and rent restrictions pursuant to the Applicant’s election under Tex. Gov’t Code §1372.0321 must be identified in the “HTC Units” column. The priority designations include the following:
 - Priority 1(a): Set-aside 50% of the Units at 50% AMGI and 50% at 60% AMGI.
 - Priority 1(b): Set-aside 15% of the Units at 30% AMGI and 85% at 60% AMGI.
 - Priority 1(c): Set-aside 100% of the Units at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.
 - Priority 2: Set-aside 80% of the Units at 60% AMGI; up to 20% of the Units can be at market rate.
 - Priority 3: Includes any qualified residential rental Development. Market rate Units can be included under this priority.
 - Carryforward: in lieu of a Certification of Reservation, a Carryforward Designation was issued.
 - Cost of Development per Square Foot. These cells will calculate automatically when both the Rent Schedule and Development Cost Schedule are completed.
 - Points for this item will be selected at the end of the Development Cost Schedule.

Tab 24a: Average Income Calculator

Average Income Distribution Tool must be included in the Excel and PDF Application if proposing Average Income.

- Enter information in the yellow boxes as applicable. Other boxes will auto-populate.
- A number, even if it is zero, must be entered in the box for “Number of 30% Units used for 30% boost.”
- The average will not calculate unless a number is entered for the boost Units and the table is completed.
- If this does not apply to you, skip this section.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 25: Utility Allowances

- Where the Applicant uses any method that requires Department review, including Applications for Direct Loan, such review must have been requested prior to submission of the Application.
- Drop down lists are provided to identify “Who Pays” for the utility service and what type of “Energy Source” will be used.
- If Development is all bills paid, utilities and energy source is still required.
- The “Total paid by tenant” calculates only those energy sources for which it is indicated the

tenant pays.

- HOME-ARP Developments will be HUD-regulated buildings, but may also adopt the PHA utility allowance if there is no conflict with other funding sources. Applicants with HOME annual or HOME matching units may be prohibited from using the PHA schedule per HUD regulations.
- Remember to include your support documentation:
 - Current PHA utility allowances sheet
 - USDA Rural Housing Services utility schedule (for RHS-regulated buildings)
 - HUD utility schedule (for HUD-regulated buildings)
 - TDHCA pre-approval of the following is required prior to Application submission (10 TAC §10.614(k)):
 - HUD Utility Schedule Model
 - Written Local Estimate
 - Energy Consumption Model
 - Actual Use Method/Agency Estimate
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.
- More information can be found at: <https://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>.

Tab 26: Annual Operating Expenses

- Fill in all yellow highlighted cells.
- You must describe any “Other” cost included in any of the expense categories. “Misc” and “Etc.” are not acceptable descriptions. The cells state “describe” in red to remind you to enter a description.
- Annual Debt Service should be consistent with information provided in the Summary of Sources and Uses of Funds form as well as the 15 Year Pro Forma.
- Expense per Unit, Expense to Income ratio, and Debt Service Ratio will be calculated automatically. Applicants should familiarize themselves with the underwriting rules (Subchapter D of the QAP) regarding thresholds for these items.
- Bond Trustee Fees and Issuer Ongoing Compliances Fees require an entry or an explanation must be provided. If Issuer Compliance Fee is a one-time, up-front fee and not an ongoing fee, Applicant’s must provide an explanation of where this fee is located in the Application.
- Annual Issuer Fees (Local Issuer or TDHCA Issuer) should be included under Annual Debt Service.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 27: 15 Year Pro Forma

- Refer to 10 TAC §11.302(d) regarding the underwriting analysis for a discussion that encompasses the items in the pro forma.
- Any deferred developer’s fee must be shown to be fully repaid by year 15.
- Enter rental concessions as a negative value.
- You must describe any “Other” debt service included in the pro forma.
- The form includes an optional certification, signature, and contact information for the lender for Competitive HTC Applications claiming points under 10 TAC §11.9(e)(1).
- A signature is required for all Tax-Exempt Bond Applications.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 28: Offsite Costs Breakdown

- This form must be completed if there are any offsite costs associated with the Development, whether or not they are included in the Development Cost Schedule. For example, if offsite costs are embedded in the acquisition costs, this form must be completed. If there are any unusual circumstances surrounding the costs and/or payment of off-site costs, please include an explanation behind this tab.
- The form must be completed, signed and sealed by a professional engineer. See 10 TAC §11.204(8)(E)(ii).
- If any Off-site Costs are included in Eligible Basis:
 - A letter from a certified public accountant must be submitted allocating which portions of those costs should be included in Eligible Basis; and
 - If off-site costs are based on PLR 200916007 the certified public accountant must provide a statement of findings describing the facts relevant to the Development and that the fact pattern matches the PLR 200916007.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 29: Site Work Costs Breakdown

- This form is applicable to all Developments, regardless of the amount of Site Work cost attributed to the Development.
- If the Site Work cost is above \$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.
- The total Site Work costs entered in this exhibit should match the amount reflected in the Development Cost Schedule.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 30: Development Cost Schedule

- All applicable yellow highlighted cells under the Total Development Summary (columns C, D, and E) should be completed. A section for notes regarding the costs is provided as well; this should be used to add any information that could be helpful for the underwriting review, to explain line items that may be particularly low or high costs.
- This form separates contingency from general requirements, overhead and profit. “Voluntary Eligible Building/Hard Costs” allows the Applicant to list the **actual** building and hard costs in the schedule, then indicate only the amount of the actual costs to be used to score points under §11.9(e)(2) Cost per Square Foot. The Applicant should adjust the voluntary number until the desired percentage is reached. The score will be entered at the end of the form.
- Supportive Housing Developments should review the “Specifications and Building/Unit Type Configuration” form to ensure that information required for such developments is entered at the bottom of that form. Per 10 TAC §11.9(e)(2) related to Cost of Development per Square Feet: If the proposed Development is a Supportive Housing Development, the NRA will include Common Area up to 75 square feet per Unit, **of which at least 50 square feet will be conditioned.**
- Where development costs are reduced by contributions by local government entities for the purpose of scoring points under §11.9(d)(2) Commitment of Development Funding by Local

Political Subdivision, those reductions should be indicated in the “Notes” column next to the cost.

- No syndication costs should be included in the Eligible Basis.
- The “Credits Supported by Eligible Basis” cell is automatically calculated. This figure should be equal to or greater than the annual Housing Tax Credit Funding Request.
- You must describe any “Other” costs reflected in the Cost Schedule. The cells will prompt you when an amount is inserted to “please specify” under a footnote.
- **Request points for §11.9(e)(2) Development Cost per Square Foot for Competitive HTC Applications.**
- The 50% Test for 4% HTC Applications box at the bottom of this form applies to **all 4% HTC Applications**. Pursuant to §1372.0321(b) Applications must reflect at least 51% financed by Tax-Exempt Private Activity Bonds.
- Include the contact name and phone number in the space provided of the person providing the cost estimate for the Hard Costs.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 31 – Financing Narrative and Schedule of Sources:

- For Tax-Exempt Bond Applications, the name of the Bond Issuer and the Certificate of Reservation Amount must be entered at the top of this form.
- Identify the name of each Financing Participant in the left-hand column.
- Where there are financial contributions by local government entities for the purpose of scoring points under §11.9(d)(2) Commitment of Development Funding by Local Political Subdivision, those contributions should be entered as debt, a grant, or “Other”, as applicable.
- Match (MF Direct Loan only) is included as “Other”.
- Note that the Funding Description column under “Deferred Developer Fee” and “Other” do not have drop-down menus. Applicants should write in a funding description.
- For each source identified you are required to include the interest rate, amortization, term and syndication rate, where applicable. **The information included here must be consistent with the financing narrative, term sheets, and Development Cost Schedule.**
- The priority of lien must be indicated in the “Lien Position” column for interim and permanent financing.
- Total sources of funds in the “Permanent Period” portion of the form must equal the total uses of funds reflected in the Development Cost Schedule.
- Complete the financing narrative, **ensuring that any information entered here is consistent with the other exhibits in the Application**. The narrative should identify any non-traditional financing arrangements; use of funds with respect to the Development; funding sources including construction, permanent, bridge loans, rents, operating subsidies, and replacement reserves; and commitment status of funding sources for the Development. For Tax-Exempt Bond Applications, the narrative should mention the amount of bonds to be issued, if different from the Certificate of Reservation Amount.
- This form must be signed by the Construction Lender, Permanent Lender and Syndicator.
- If a revised form is submitted during the Application review process, indicate the date of submission at the bottom of the form.

Tab 32: Financial Capacity and Construction Oversight (MFDL Applications only)

This tab is applicable for the Department’s Direct Loan Applications if: (1) the Direct Loan amount to more than 50% of the Total Housing Development Cost, except for Developments also financed

through the USDA-515 program, or (2) the Direct Loan is the only source of Department funding (no HTCs are being requested) for the Development. Place the documentation described in the tab behind the tab.

Tab 33 – Matching Funds (Direct Loan Applications only)

This form is applicable for Multifamily Direct Loan Applications, only. Detail the type of Match, amount, and source in the appropriate columns. See the Match Guidance section of the tab page as well as 10 TAC §13.2(6) and the NOFA for information and requirements about Match. Match in the amount of at least the minimum percentage of the MFDL funds requested, pursuant to the applicable NOFA, must be documented.

Regarding HOME-ARP, Tab 33 is one of the exceptions in which MFDL Applications requirements do not match HOME-ARP. There is no matching requirement on the HOME-ARP Units, and Tab 33 does not need to take into account the HOME-ARP Units.

Tab 34 – Finance Scoring (Competitive HTC Applications only)

This form is divided into 3 parts and is only applicable to Competitive HTC Applications.

- Part 1: Commitment of Development Funding by Local Political Subdivision (LPS) (10 TAC §11.9(d)(2))
 - To request the point, enter the name of the Local Political Subdivision providing the funding in the highlighted box at the top of this part. Indicate in the following three check boxes that the letter meets each of these criteria. **The letter must indicate the dollar value of the contribution and the dollar value of the contribution must be reflected in the Application.** If the contribution reduces costs, it must be noted on the Development Cost Schedule. If the contribution is in the form of a loan, grant or similar instrument, it must be included with the development sources and uses. Contributions must equal \$500 or more if the Application is Urban and \$250 if the Application is Rural or USDA. The letter committing the funding and naming the same Local Political Subdivision named in the top box of this scoring item must be present in the “Tab 35. Supporting Docs.” The total points claimed will auto-populate the score box only if the boxes above it have entries.
- Part 2: Financial Feasibility (10 TAC §11.9(e)(1))
 - Make only one selection from the options listed on the form in this section. The Total Points Claimed will auto-populate based on your selection. **As support for these points, submit both a 15-year pro forma itemizing all projected income and expenses, signed or otherwise acknowledged by the permanent or construction lender and a lender letter indicating financial feasibility and/or acceptable Principals.** A template exists for an acceptable letter but an alternative letter may be used, as long as it contains the same information as the template.
- Part 3: Leveraging of Private, State, and Federal Resources (10 TAC §11.9(e)(4))
 - At least 5% of the total Units must be restricted to 30% AMGI. The form will calculate the percentage based on the information reflected in the Rent Schedule.
 - If the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding, mark the appropriate box.
 - The form will calculate Housing Tax Credit funding request as a percent of Total Housing Development Cost based on information reflected in the Development Narrative and the Development Cost Schedule. **Please note that the rule calls for the funding request to be less a certain percentage without rounding.**

- No more than 50% of the developer fee can be deferred to be eligible. **This form does not perform this calculation.**
- No supporting documentation is necessary unless claiming points based on a commitment of CDBG-DR, HOPE VI, RAD or Choice Neighborhood Funding.
- Remember to select the points being requested from the drop-down in the “Total Points Claimed” field. Although the form will calculate eligible points based on the information provided, **the points requested WILL not auto-populate.**

Tab 35 – Supporting Documentation

- Evidence must be consistent with the Summary Sources and Uses of Funds and Financing Narrative. If changes occur, update the form to match the new information.
- Executed Pro Forma from a Permanent or Construction Lender (if requesting points for financial feasibility and for Tax-Exempt Bond Developments). The pro forma must include:
 - The first 5 years and every fifth year thereafter for a 15 year period;
 - All projected income, operating expenses, and debt service;
 - The general growth factor applied to income and expense;
 - A minimum 1.15 DCR throughout the 15-year HTC Compliance Period and/or Multifamily Direct Loan Federal Affordability Period for all Third Party lenders that require scheduled repayment; and
 - Signature and contact information of an authorized representative of the lender.
- Letter from lender regarding approval of Principals.
- Include term sheets for all interim and permanent financing that are consistent with other parts of the Application, and provided in one or more of the forms identified and include the requirements set forth in 10 TAC §11.204(7)(A)-(B).
 - Term sheet must include an acknowledgment of the amounts and terms of all other anticipated sources of funds or the Sources and Uses must be signed or otherwise acknowledged by an authorized representative from each funding source.
- For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming the outstanding loan balance on a specified date and confirming the Preliminary Assessment Tool has been submitted by the Applicant to USDA. **The loan amount that is reported on the Schedule of Sources (Tab 31) and that is used to determine the acquisition cost must be the Applicant’s estimate of the projected outstanding loan balance at the time of closing as calculated on the Department’s USDA Principal Balance Amortization exhibit to be submitted with the application.**
- For Direct Loan Applications or Tax Exempt Bond Applications with TDHCA as the issuer utilizing FHA financing, the Application shall include applicable pages from the *HUD Application for Multifamily Housing Project*. If the HUD application has not yet been submitted then a statement to that effect should be included in the Application along with an estimated date for submission.
- Any federal, state or local gap financing, whether soft or hard debt must be identified at the time of Application and a term sheet reflective of an available fund source must be provided for each.
- If the Development is financed through more than 5% Development Owner contributions provide the required documentation described in §11.204(7)(C) in the full Application.
- Include term sheets for syndication of tax credits that include the requirements set forth in 10 TAC §11.204(7)(D).
- Letter from the Texas Historical Commission as applicable to historic tax credit financing

- under §11.9(e)(6) or otherwise.
- Include evidence of rental assistance or other subsidies if applicable.

Development Organization

The Development Organization tabs are colored green, and include all information regarding the Development Team members. The Organizational Charts, Previous Participation exhibits, and Credit Limit documents are all located in this section.

Tab 36 – Sponsor Characteristics

This form is only applicable for Competitive HTC Applications, and is divided into two Parts. Applications may qualify for two (2) points for having a Certified HUB or Qualified Nonprofit in the ownership structure, or for one point for having a Certified HUB or nonprofit organization involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. For HUD 202 Rehabilitation projects that prohibit for-profit ownership, ownership will not be required for a HUB or nonprofit, only for Cash Flow or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories. To be eligible for the two (2) points using a Qualified Nonprofit, the Application must be applying in the Nonprofit Set-Aside (a selection made in the Development Narrative that will be auto-populated in this section.) The HUB must be registered with the Texas Comptroller of Accounts, and evidence of such registration must be provided behind this tab. **Pursuant to 10 TAC §11.9(b)(2), an Application may qualify to receive up to two (2) points provided the ownership structure meets one of the following requirements in Parts 1 or 2 below.**

- Part 1
 - If attempting to score as a Qualified Nonprofit, verify whether the Application is participating in the Nonprofit Set-aside.
 - If attempting to score as a certified HUB, provide evidence of the HUB's existence from the Texas Comptroller of Public Accounts behind this tab.
 - Complete the yellow highlighted cells with the percentages of ownership interest, cash flow from operations, and developer fee.
 - Certify that the Qualified Nonprofit or certified HUB will materially participate in the Development throughout the Compliance Period.
 - Provide a detailed narrative describing how that material participation will be achieved behind this tab.
 - Indicate the experience of the Qualified Nonprofit or certified HUB by marking the checkboxes (Property Management, Construction, Development, Financing, or Compliance).
 - Certify there is no relationship between the Principals of the HUB and any other Principals of the Applicant or Developer.
 - Provide a narrative describing:
 - The Qualified Nonprofit's or certified HUB's direct experience in the housing industry as well as a statement indicating how the Qualified Nonprofit or certified HUB will materially participate in the Development throughout the compliance period. (Acceptable evidence of experience includes, but is not limited to a resume or TDHCA experience certificate. Please note that such certificate is not necessarily sufficient to satisfy a 2023 experience requirement.); **OR**

- How the certified HUB will be involved with the Development Services or in the provision of on-site tenant services during the Development’s Affordability Period. Evidence of experience in the provision of Development Services or in the provision of on-site tenant services as well as a narrative statement indicating how the HUB will provide such services must be included behind this tab.
- Part 2
 - Certify whether a participating Nonprofit meets the following criteria:
 - The ownership structure contains a nonprofit organization that meets the requirements of IRC §42(h)(5)(C) on the Application Delivery Date, with at least 51% ownership in the General Partner of the Applicant.
 - The nonprofit will maintain Control of the Development and materially participate in the operation of the Development throughout the compliance Period.
 - The Applicant will provide a minimum of three (3) additional points under 10 TAC §11.101(7) related to Resident Supportive Services, in addition to points selected under 10 TAC §11.9(c)(3).
 - The nonprofit organization, or individuals with Control of the nonprofit organization, must provide verifiable documentation of at least 10 years’ experience in the continuous operation of a Development that provides services similar to those in the proposed Development.
 - Indicate points claimed (zero if this option is not selected).
 - The score will populate based on the selections made on this form. If it is not filled out correctly, points will not be included on the self-score form.

Tab 37: Applicant, Developer, and Guarantor Ownership Charts

This sheet shows a basic format for organizational charts. Be sure that charts follow the example given and that they contain the following information:

- Correct name and ownership percentage of each entity and person. Avoid nicknames.
- Clear indication of role, e.g. Member, Member/Manager, Class B, LP, etc., and ability to exercise Control.
- Trusts must include the trustee and list all beneficiaries that have the legal ability to access, control, or direct activities of the trust and are not just financial beneficiaries.
- Nonprofit entities, public housing authorities and publicly traded corporations must show name of organization, individual board members and executive director. For individual board members, indicate those board members that have the ability to exercise Control. Any other persons with the ability to exercise Control must also be identified.
- For HTC Applications only, where there are private equity fund investors who are passive investors in the sponsorship entity, refer to 10 TAC §11.204(13)(B) regarding who must be listed on the organization chart.
- In cases of to-be-formed instrumentalities of PHAs where the board members and executive director remain to be determined, the PHA itself is shown.
- Ownership must be described to the level of natural persons, whether Owners or board members.
- Charts should show the structure of the Owner, Developer and Guarantor and include the following:
 - Any Person receiving more than 10% of the Developer Fee is on the Developer chart;

- Nonprofit entities, public housing authorities and publicly traded corporations show name of organization, individual board members and executive director;
- Ownership to the level of natural persons, whether Owners or board members; and
- Any other relationships involving the power to control the Applicant directly or indirectly.
- Create separate charts for the Owner, Developer and Guarantor, ensuring that each of the three is a complete representation of the structure of each organization, and attach them behind this tab.

Data Entry Tab for Tabs 38 and 42

- Complete the yellow highlighted cells as applicable for Tabs 38 and 42.
- The entries made on this tab will auto-populate Tabs 38 and 42.
- **Applicants should not include the data entry tabs when printing the application to PDF.**

Tab 38: List of Organizations and Principals

- Information for this tab will auto-populate based on the data entered on the Data Entry Tab for Tabs 38 and 42.

Tab 39: Previous Participation Form

- A separate form is required for each Person or entity, regardless of whether the Person or entity has previous experience with TDHCA funding or assistance.
- A separate form must be completed for each entity shown on the Owner and Developer organizational charts, and also for only those natural Persons shown on the Owner and Developer organizational charts that exercise Control.
- For Applications with MFDL, each Person (as defined by 2 CFR Part 180 and 2 CFR part 2424), Board Member, or Affiliate must complete a PPR form. See 10 TAC §1.301 for further information about previous participation review.
- Note that the appropriate fields should be marked at the bottom to indicate other TDHCA programs the entity or person has participated in.
- For “Control Begin”/”Control End” enter the time period a person’s or entity’s role in each property identified began and ended. This applies to any Developments in which a Person or entity was originally involved, but have since been transferred to another Person or entity.
- If the Person’s or entity’s role in a property or service-related activity has not ended then leave the “Control End” column blank.
- If more space is needed, unlock rows before row 40.
- Do not submit pages that are blank.
- The Excel version of the form(s) must be uploaded with the Application.

Tab 40: Nonprofit Participation

All nonprofit Applicants or Principals must complete this form regardless of the level of ownership or Application set-aside.

- Complete all appropriate yellow highlighted cells. Yes/No questions have drop-down menus.
- The worksheet allows listing up to 20 board members. If more space is needed, print additional forms or contact staff.
- Include the Board Members’ **home** addresses.
- Do not submit pages that are blank.

Tab 41: Nonprofit Supporting Documentation

Applications involving 501(c)(3) or (4) nonprofit General Partners that **do not** elect to be included under the Nonprofit Set-Aside only need to submit the IRS determination letter described below, or if the nonprofit designation is not due to a 501(c)(3) or (4) determination, the Application must contain a disclosure of the basis of the nonprofit status. **Tax Exempt Bond Applications only need to submit the first two items below in addition to the Nonprofit Participation Form:**

- A resolution approved at a regular meeting of the majority of the Board of Directors of the nonprofit that meets the requirements of 10 TAC §11.204(14).
- IRS Determination Letter, which states that the nonprofit organization is a §501(c)(3) or (4) entity. This designation must be in place as of the beginning of the Application Acceptance Period. If the organization is a Qualified Nonprofit Organization as defined in the tax code, notwithstanding any apparent limitations in the QAP about the particular parts of the Code under which a nonprofit may qualify, submit an IRS determination letter.

For Competitive HTC Applications, the additional documentation requirements identified in this section must be completed **only** if the Applicant is eligible and has elected to compete under the Nonprofit Set-Aside Allocation pursuant to Tex. Gov't Code §2306.6706, which requires that the organization's 501(c)(3) or (4) designation be in place at the beginning of the Application Acceptance Period:

- Third Party Legal Opinion – Be sure your legal opinion contains all of the required statements pursuant to Tex. Gov't Code §2306.6706 and 10 TAC §11.204(14)(A)(iii). A template is provided on the website at: <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.
 - Note: The Third Party Legal Opinion letter template was revised in 2017. Please ensure your counsel has this version of the template so they can determine if they will be able to provide any required opinion or they may contact the Department with any questions.
- Financial Statement - The nonprofit's most recent financial statement prepared by a Certified Public Accountant.
- Certification of Residence- a certification that a majority of the board members reside in the State of Texas if the Development is in a Rural Area, or within 90 miles of the Development if it is not in a Rural Area.

The worksheet allows up to 20 board members to be listed. If more space is needed, simply print out another form or contact staff, but do not submit pages that are blank.

Tab 42: Development Team Members

- Information for this tab will auto-populate based on the data entered on the Data Entry Tab for Tabs 38 and 42.

Tab 44: Experience Certificate

- Experience certifications issued by the Department from 2014-2022 are valid for use.
- The **2023 Experience Certification Request Form**, along with the required documentation (found in 10 TAC §11.204(6) to establish experience may be submitted to the Department within the Application behind this placeholder tab.
- If experience documentation was submitted prior to the Application deadline, as applicable to the program, but an experience certificate has not issued, indicate such on the form and include a copy of the request.
- **Applicants should review 10 TAC §11.204(6) for specific requirements associated with**

obtaining an experience certificate as the criteria for who can qualify has been modified for 2023.

- Alternative experience documentation may be provided in accordance with 10 TAC §13.5(d)(1) if MFDL is the only source of Department funding being requested.
- Note: An agreement between a HUD listed as a participant on a previous Application and the person in control of that same Application does not meet this requirement.
- The 2023 Experience Certification Request Form is located on the Apply for Funds page of the TDHCA website or at: <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.
- DUNS Number and SAM.gov Registration (Direct Loan Applications Only) If available, include the DUNS and SAM.gov registration for the Applicant entity behind this tab. This information is an absolute requirement prior to Contract execution should the Applicant receive an award of federal funds.

Data Entry Tab for Tab 45

- Complete the yellow highlighted cells as applicable for Tab 45.
- The entries made on this tab will auto-populate Tab 45.
- **Applicants should not include the data entry tabs when printing the application to PDF.**

Tab 45: Applicant Credit Limit Documentation and Certification (Competitive HTC Only)

Information for this tab will be auto-populated with the data entered on the Data Entry Tab for Tab 45.

Community Input Scoring Items

Tab 46: Community Input

Fill-in the form and include the letters behind the form as applicable.

- Part 1: Local Government Support
 - An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) through (C) below. The resolution(s) must be dated prior to and submitted no later than 5:00 p.m. (Austin local time) on March 1, 2023. **Resolution(s) must specifically identify the Development by legal description, address, Development name, or Application number.** A municipality or county should consult its own staff and legal counsel as to whether their handling of actions regarding such resolution(s) are consistent with Fair Housing laws as they may apply, including any Fair Housing Activity Statement-Texas (FHAAT) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:
 - (A) Within a municipality, the Application can receive seventeen (17) points for a resolution from the Governing Body of that municipality expressly stating that the municipality supports the Application or Development; or fourteen (14) points if the resolution states that the municipality has no objection to the Application or Development.
 - (B) Within the extraterritorial jurisdiction of a municipality, the Application may receive(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly stating that the municipality supports the

be tax exempt and its primary purpose must be the overall betterment, development, or improvement of the community as a whole or one of its major aspects such as schools, fire protection, law enforcement, city-wide transit, flood mitigation or similar activities. The Applicant must include:

- Evidence of the organization’s tax-exempt status, e.g. a copy of the organization’s IRS determination letter.
 - Evidence that the tax-exempt status of the organization is current as of October 1 of the year preceding Application submission. Evidence of IRS exemption can be found at <https://apps.irs.gov/app/eos/>, and evidence of state exemption can be found at <https://comptroller.texas.gov/taxes/exempt/search.php>.
 - Evidence that it either has a location or conducts activities within the specific city or county of the Development. Evidence can include a listing of activities and where they are held, membership lists showing addresses, brochures indicating activities and the geographical service area, annual reports, etc. Churches can be eligible for these points if they operate a beneficial activity to the community outside of religious services (food pantry, clothes closet, after-school care available to the community regardless of membership, etc.).
 - Community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts), or taxing entities so evidence of how the organization was created and by whom/what group, etc., should be included.
- Two (2) points for a letter of support from a property owners association created for a master planned community containing the Development Site that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under 10 TAC §11.9(d)(4). Include documentation evidencing the establishment of the association and the master planned community to which it belongs.
 - Two (2) points for a letter of support from a Special Management District whose boundaries include the Development Site, as of the Full Application Delivery Date as identified in 10 TAC §11.2(a). Include evidence of the District’s boundaries, indicating the location of the Development Site inside those boundaries, along with evidence of the existence of the District itself.

Please note that input evidencing unlawful discrimination under Fair Housing law or scoring the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. The Department will refer input appearing to indicate non-compliance under the Fair Housing Act, to the Texas Workforce Commission for investigation, but the 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.

Third Party Reports

All third party reports must be submitted in their entirety by the deadline. Incomplete reports will result in termination of the Application. Reports should be submitted in a searchable electronic copy in the format of a single file containing all of the required information and conform to Subchapter D of the

QAP. Exhibits should be clearly bookmarked. Third Party Reports combined into one PDF will not be accepted.

All third party reports must contain the following statement, “all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department’s website, release the report in response to a request for public information and make other use of the report as authorized by law.”

Tab 47: Third Party Reports

The required Environmental Site Assessment (ESA) must be submitted to the Department no later than 5:00 p.m. (Austin local time) on March 1, 2023 for 9% HTC Applications under 10 TAC §11.2(a), pursuant to 10 TAC §11.201(2) for Tax-Exempt Bond Applications, or at the time of Application submission for MFDL funds. The ESA must meet the requirements of 10 TAC §§11.205(1) and 11.305.

- All Applications for Direct Loans from the Department, except for those which are ultimately awarded TCAP RF must complete the environmental clearance process in accordance with 24 CFR Part 93 or Part 58 (prior to engaging in choice limiting activities such as closing on land, loans, beginning demolition or construction activities, or entering into construction contracts). A Phase I ESA will not satisfy the environmental clearance required for use of Direct Loan funds. Mark the appropriate yellow highlighted cells.
- HOME-ARP Applicants must submit their completed Part 50 or Part 58 environmental clearance 30 days after the Application Acceptance date.

The Primary Market Area (PMA) Map is required with full Application submission. For 9% HTC Applications, this is on March 1, 2023. A PDF copy of the map as well as the definition of the PMA, based on census tracts, ZIP codes, or census place should be included with the Application to ensure timely submission.

The Market Analysis is required for all Developments and must be submitted no later than 5:00 (Austin local time) on April 3, 2023 for Competitive HTC Applications under 10 TAC §11.2(a), pursuant to 10 TAC §11.201(2) for Tax-Exempt Bond Applications, or at the time of Application submission for MFDL. The Market Analysis must meet the requirements of 10 TAC §§11.205(2) and 11.304.

- It is the responsibility of the Applicant to ensure this analysis forms a sufficient basis for the Applicant to be able to use the information obtained to ensure the Development will comply with fair housing laws.
- For HOME-ARP, demonstration of current market demand for proposed project for QPs is required; market assessment for QPs are not required. However, the Applicant must demonstrate that unmet need among qualifying populations for the type of housing proposed through gap analysis, Continuum of Care data, public housing and affordable housing waiting lists, point-in-time surveys, housing inventory count, or other relevant data on the need for permanent housing for qualifying populations.

If applicable, the Scope and Cost Review (SCR) must be submitted to the Department no later than 5:00 p.m. (Austin local time) on March 1, 2023 for Competitive HTC Applications under 10 TAC §11.2(a), pursuant to 10 TAC §11.201(2) for Tax-Exempt Bond Applications, or at the time of Application submission for MFDL funds. The SCR must meet the requirements of 10 TAC §§11.205(3) and 11.306.

- For Rehabilitation (excluding Reconstruction) and Adaptive Reuse Tax-Exempt Bond

Developments that do not include a request for Direct Loan or where the Department is not the bond issuer, a Scope and Cost Review is not required. The Application must include a Scope of Work Narrative as described in 10 TAC §11.306(k).

- The Applicant must upload the Department’s SCR Supplement as an Excel workbook, which can be found on the Apply for Funds page of the TDHCA website or at <http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

If applicable, the Appraisal must be submitted to the Department no later than 5:00 p.m. (Austin local time) on March 1, 2023 for Competitive HTC Applications under §11.2(a), pursuant to 10 TAC §11.201(2) for Tax-Exempt Bond Applications, or at the time of Application submission for MFDL funds. The Appraisal must meet the requirements of 10 TAC §§11.205(4) and 11.304.

- If the Application contains a Market Analysis and the Appraisal is not required to fulfill purposes other than establishing the value of land or buildings, an appraisal is not required if no acquisition costs are entered in the Development Cost Schedule.

If applicable, the Feasibility Report must be submitted to the Department no later than 5:00 p.m. (Austin local time) on March 1, 2023 for Competitive HTC Applications under 10 TAC §11.2(a), pursuant to 10 TAC §11.201(2) for Tax-Exempt Bond Applications, or at the time of Application submission for MFDL funds. The Feasibility Report, if required, must meet the requirements of 10 TAC §11.204(15).

Tie Breakers

Tab 48: Tie Breakers

Pursuant to 10 TAC §11.7(1), there is a two-step tie breaker for 9% HTC Applications in the event of a tie. The first step of the tie breaker has two parts, where the second part (rent burden) only applies if the first part (poverty) is met by both (or more) tied Applications. If tied Applications do not meet the first step in the tie breaker process, those tied Applications move straight to the second step of the tie breaker involving linear distance (10 TAC §11.7(2)).

Please note MFDL has different tie breakers outlined in the rules and NOFA; therefore, Tab 48 does not apply for MFDL Applications, unless required for another Departmental funding source.

HOME-ARP Rental Development

Applicants applying for HOME-ARP must complete the following tabs:

- Tab 49 HARP Specific
- Tab 50 HARP Rent Schedule 16-40
- Tab 51 HARP COCA
- Tab 52 HARP Pro Forma 16-40

For instructions on how to complete these tabs, see the HOME-ARP Supplemental Manual for New Applicants at <https://www.tdhca.state.tx.us/multifamily/special-initiatives.htm>. The HOME-ARP Supplemental Manual may be updated as needed if there are any guidance updates. Any updates will be notated in this document, and appropriate notice will be given. Applicants should ensure they have the latest version of the HOME-ARP Supplemental Manual for New Applicants before submitting the Application.

Review Tabs

These tabs will be used by staff in the review process. While there is nothing to be completed or supplied with these tabs at submission, they should be included and bookmarked.

Tab 53 - Deficiency Documents

Tab 54 – Scoring Notice

Tab 55 - Third-Party Requests for Administrative Deficiency

Tab 56 – REA Division RFI Documents

Tab 58 – Board Action

Tab 59 – Public Comment

Tab 60 – Commitment or Determination Notice

Tab 61 – MFDL Award Letter

Tab 62 – Carryover Documents

Instructions for Converting From Excel to PDF Format

Once the Excel Application file is complete and you are ready to convert the Excel file to PDF, follow these instructions. Be sure to check all of the page breaks in the Excel file before you convert to PDF.

Please note that both the Excel and PDF files must be submitted in order for the Application to be considered complete. The Excel file must be converted to PDF, and **Applications submitted as a scanned copy of the Excel file will be rejected as materially deficient.**

Excel 2016 users should follow these steps:

1. With the file open, click the File menu. Choose Save as Adobe PDF.
2. Choose Sheets or Entire Workbook. If using Sheets, choose each item you would like to convert to PDF by clicking on the item in the Sheets in Excel box and clicking Add. The item will appear in the Sheets in PDF box.
3. Once all items are selected for conversion, click Convert to PDF.
4. Save a copy of the PDF file to your computer.
5. Once files are saved in PDF, click on the Page Thumbnails icon to look through the document.
6. Make sure to insert bookmarks by selecting the Bookmarks icon. Review automatic bookmarks before submitting and edit automatic labels as needed by right clicking and choosing Rename.

Excel 2007 users should follow these steps:

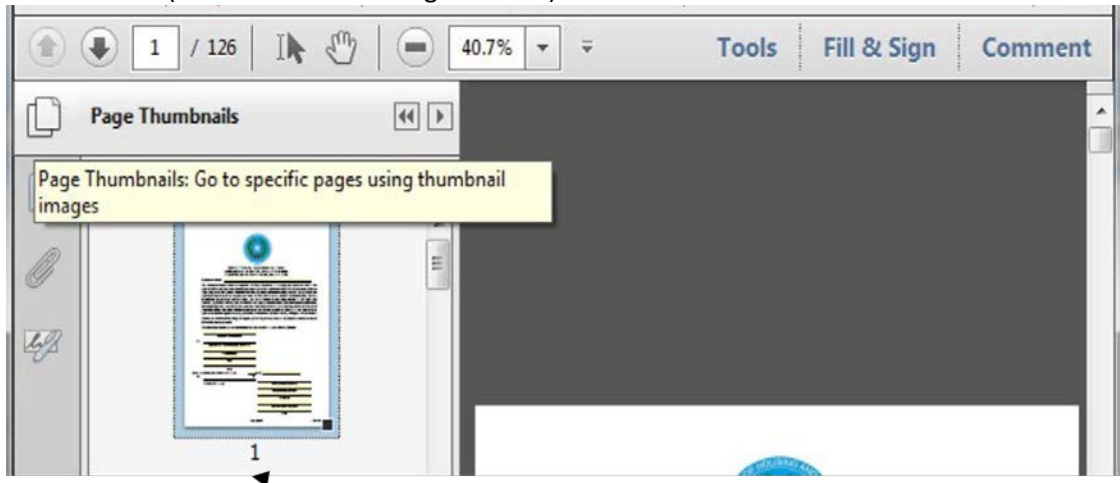
1. Click the Microsoft Office Button, point to the arrow next to Save As, and then click PDF or XPS.
2. In the File Name list, type or select a name for the workbook.
3. In the Save as type list, click PDF.
4. If you want to open the file immediately after saving it, select the Open file after publishing check box. This check box is available only if you have a PDF reader installed on your computer.
5. Next to Optimize for, do one of the following, depending on whether file size or print quality is more important to you:
 - a. If the workbook requires high print quality, click Standard (publishing online and printing).

- b. If the print quality is less important than file size, click Minimum size (publishing online).
6. Click Options. Under Publish What select Entire Workbook and click OK.
7. Click Publish.

Inserting Documents into the PDF

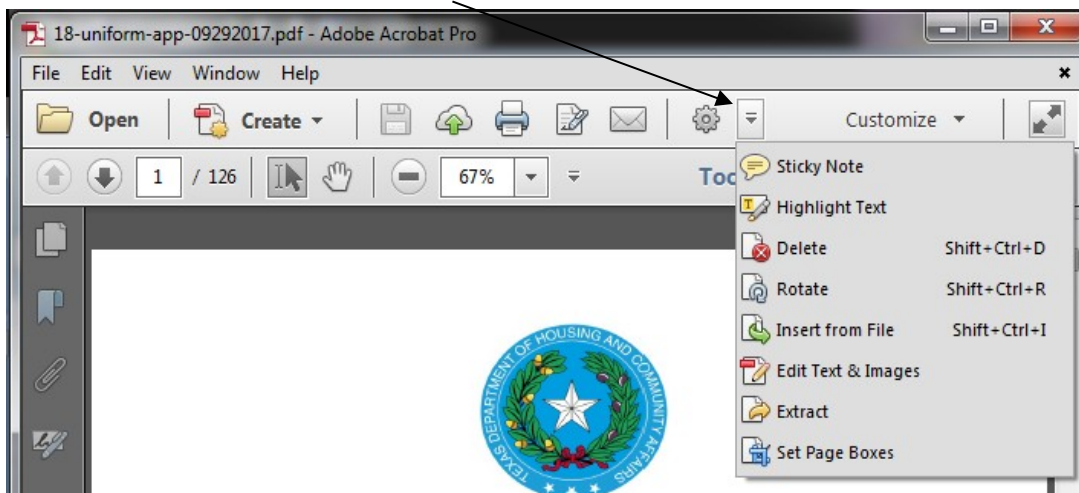
If there are documents to be submitted as part of the Application, include those documents in the PDF Application. To do this, applicants should follow these steps:

1. Convert the Excel application to PDF per the instructions above.
2. Once you have collected all required executed documents, scan them as individual files and name them (“app-cert.pdf”, “owner-cert.pdf”, etc).
3. Insert the scanned forms into the PDF Application in the order required. For instance, you will need to insert the signed Applicant Certification form. You can either:
4. Click the “thumbnails” button, then drag and drop the PDF form before or after the existing form (then delete the un-signed form).



Alternatively, applicants could use the “insert from file” option:

1. Select “Insert from File”, navigate to document to be inserted and select it.
2. In the dialog box, selected appropriate page number and indicate whether the document is to be inserted before or after that page. Click Okay.



The Application submitted should be the PDF file created from converting the Excel file (into which additional documentation has been inserted), as well as the Excel file itself.

Creating Bookmarks

Because they cannot be reviewed, Applications submitted without bookmarks will be terminated.

Once the file has been converted to PDF and all executed forms have been inserted into their appropriate locations within the file, the Applicant will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. The locations may need to be designated for the rest. To correctly set the Bookmark locations, open the PDF file in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View → Navigation Panels → Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit, right-click on the corresponding Bookmark for the form/exhibit, **select Set Destination** and a pop-up box will appear ask: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select Yes.

If Bookmarks were not already created within the Excel file, they will need to be created: **Document → Add Bookmark**. Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. Set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select Set Destination. A pop-up box will appear asking: "Are you sure you want to set the destination of the selected bookmark to the current location?" **Select Yes**.

Tabs within the Excel Application workbook have been color coded to distinguish between "Parts" of the Application consistent with this manual. Additionally, beside each bulleted item a label to use for purposes of bookmarking the final PDF Application file is included in parentheses.

If there are extra blank pages of any exhibit after conversion of the Excel file to PDF, they must be deleted in order to limit the size of the Application file. To delete any extra, unnecessary pages identify the page number(s) to be deleted. On the Adobe Acrobat Task Bar click on Document and select Delete Pages from the drop down list. A box will appear prompting a selection of the page(s) to be deleted. Enter the page numbers to be deleted and hit OK. If a page is deleted, the Applicant is responsible for ensuring it was done correctly and did not inadvertently delete pages that should have been retained.

The PDF formatted file should be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

For questions on using or difficulties with the Microsoft Excel based Application, contact Julie Leung via email at julie.leung@tdhca.state.tx.us. In some instances a file may have small variations in bookmarks,

file sizes, or readability that are not explicitly cited as requirements in the rule. Staff will use a reasonableness standard in determining when such deviations rise to the level of necessitating termination or other remedy.

Application Assembly Instructions

Prior to submitting any Application fees or the Application itself, a fully-executed 2023 Electronic Application Filing Agreement should have already been submitted.

Applicants are reminded that both the Excel and PDF files must be submitted, along with the Application Fee, in order for the Application to be considered complete. The Excel file must be converted to PDF, Applications submitted as a scanned copy of the Excel file will be rejected as materially deficient.

For each Application, the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the Excel file as well as the PDF created from the Excel file (with added documents). Do not print and scan the Excel file. Do not print and scan the PDF file. Convert the Excel form to a PDF, and then insert scanned pages only as indicated below. Scanned copies of the Application are difficult to read, are not searchable, raise questions regarding accuracy and will not be accepted.

All Application materials must be submitted via the Department's secure web transfer server. The Applicant must physically deliver the following:

- Completed hard copy of the 2023 Payment Receipt. Attach evidence of nonprofit status (as applicable) and a check for the correct Application Fee made out to "Texas Department of Housing and Community Affairs". If submitting a Bond pre-application, submit the additional fees pursuant to §12.10 of the Multifamily Housing Revenue Bond Rules and reflect such fees on the Payment Receipt; and
- Copy of the Certificate of Reservation (for Tax-Exempt Bond Developments only).
 - Note: Applicants intending to submit an Application Fee that does not include evidence that a Certificate of Reservation from the Texas Bond Review Board has been issued will not be accepted. **Applications that are uploaded regardless of this provision will not be acknowledged as submitted.**
- The applicable Application Fee pursuant to 10 TAC §11.901(3). Please do not submit checks for more than the applicable fee. In order to protect your financial information, do not include a copy of the check in your Application.

Application Delivery Instructions

Applications are accepted only through the Serv-U portal. Physical delivery of Applications will not be accepted. For guidance on using Serv-U, refer to the Electronic Document Upload User Guide (MF Serv-U FTP) posted on the Department's "Apply for Funds" page.

Application payments are accepted during regular business hours. **Do not send regular mail to this address.**

Deliver To: Multifamily Finance Division
(overnights) Texas Department of Housing and Community Affairs

221 East 11th Street
Austin, Texas 78701

Regular Mail: P.O. Box 13941 Austin, Texas 78711

The applicant is solely responsible for proper delivery of the Application and payment.

4% HTC and Bond Applications

4% Housing Tax Credit Applications and Multifamily Bond pre-applications can be submitted throughout the year. Submission dates are posted on the Departments website at the following link:

<https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>.

Multifamily Direct Loan Program Applications

Multifamily Direct Loan Applications may be submitted throughout the submission period described in the applicable Notice of Funding Availability (NOFA) <http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm>.

9% HTC Applications

The Application and fee payment for competitive Applications must be received by TDHCA no later than 5:00 p.m. (Austin local time) on March 1, 2023. Mailed or couriered payments must be received by the same deadline. TDHCA is not responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the payment to TDHCA and such service fails to deliver the payment by the deadline, then the Application will be considered untimely and will not be accepted.

The Department will accept walk-in delivery of the Application fee payment by appointment. The Application must be uploaded to Department's ServU system by 5:00 p.m. (Austin local time). All required supplemental reports must be submitted simultaneously with the Application (unless otherwise noted). The ServU system will be disabled at 5:00 p.m. (Austin local time) on March 1, 2023. The Department is not responsible for transmission failures whether caused by malware, internet connectivity problems or equipment failures on the part of the Applicant. Applicants are advised to take any steps necessary to ensure timely delivery of all Application materials.

Multifamily Direct Loan Program Instructions, except for HOME-ARP

Application Delivery Instructions

All Applicants 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 this manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Multifamily 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. Applications will not be considered received until all of the required Third Party T

If the Application is for Multifamily Direct Loan (MFDL) funds in conjunction with 4%, the following sections of 2023 Multifamily Uniform Application must be completed in addition to those required when applying for 4%:

- Multifamily Direct Loan Certification
- Tab 6a – Auto-populated based on selections made in Tabs 9 and 19
- Tab 8 – Site and Neighborhood Standards (New Construction only)
- Tab 9 – Applicable sections (if seeking points under the 2023 MFDL NOFA)
- Tab 10 – Applicable sections (if seeking points under the 2023 MFDL NOFA)
- Tab 17 – Section 5 (Direct Loan request)
- Tab 17 – Section 6
- Tab 19 – Sections 2, 3, and 6 (if seeking points under the 2023 MFDL NOFA)
- Tab 20 – Section 3
- Tab 21 – Uniform Relocation Act/104: Actions that involve demolition, Conversion, or removal of housing units, farms, nonprofits or commercial business.
- Tab 24 – National HTF (NHTF) Units or MF Direct Loan Units (all other Set-Asides) column as applicable
- Tab 32 - (if applicable)
- Tab 33 – Match Funds
- Tab 44 – Unique Entity Identifier and SAM.gov Registration (all MFDL) and Davis Bacon Labor Standards (not required for NHTF)
- Tab 47 – Section 2

Applications for Multifamily Direct Loan funds as the only source of Department funds, or applying when the Development has already received an award from the Department must include all sections of the 2023 Multifamily Uniform Application, except for those sections that reference Housing Tax Credit Applications only or as reflected in the NOFA. All applicable Third Party Reports are required in accordance with 10 TAC §11.205 regardless of whether the Application is layered with Housing Tax Credits, except as reflected in the NOFA.

The Application submission deadline and Application Acceptance Dates are described in the NOFAs. If the Application is for HOME funds under the CDHO Set Aside, the CHDO box in Tab 17 of the 2023 Multifamily Uniform Application must be checked, and the 2023 CHDO Certification Packet (located on the Apply for Funds page of the

Multifamily Direct Loan Program Information

Multifamily Direct Loan funds may be made available through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the HOME allocations, loan repayments from the Tax Credit Assistance Program (TCAP Repayment Funds or "TCAP RF"), National Housing Trust Fund (NHTF) allocations. Set asides under the annual NOFA for the Multifamily Direct Loan Program include General/Soft Repayment, Community Housing Development Organizations (CHDO), in the amounts described in the NOFA. Other Set-Asides may be described in the annual NOFA or a special purpose NOFA.

Multifamily Direct Loan funds are structured as fully amortizing, -with a term of 15-40 years and an amortization of 30-40 years. This does not apply in cases where the first lien mortgage is a federally insured HUD or FHA mortgage, as described in 10 TAC §13.8(c)(5) or (6). Additional information on treatment of FHA-insured mortgages is detailed in the NOFA. If the Direct Loan is in a second or third lien position, the term should match within six months of the shortest term of the senior loan(s) so long as neither exceeds 40 years and 6 months. The interest rate requested on the loan may be as low as the minimum interest rate described in the NOFA.

Please refer to the applicable Multifamily NOFA and 10 TAC Chapter 13 for more information. The NOFA, the QAP, and the Multifamily Direct Loan Rule work in conjunction; Applicants are encouraged to fully review all federal and state laws and regulations.

Community Housing Development Organizations (CHDO)

The 2023 CHDO Certification Packet must be submitted for all Applicants requesting funds under the CHDO Set-Aside. Applicants, or the sole members of the general partners of applicants, for HOME funds under the CHDO Set Aside must meet the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(4). Applicants are cautioned to read carefully the requirements under the CHDO definition in 24 CFR §92.2 and 10 TAC §13.2(4) to ensure the organization meets these requirements before submitting an Application under the CHDO Set Aside. Furthermore, a CHDO must be the Owner, developer, or sponsor of the housing proposed to be built in accordance with 24 CFR §92.300. Finally, 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).

A CHDO must demonstrate its accountability to the low income community where the housing is being proposed in accordance with 8(i) and (ii) of the CHDO definition in 24 CFR §92.2. This requirement may be met, in part, by having board members from the community where the housing is being proposed and/or having an advisory board comprised of members from the community where the housing is being proposed. Additionally, the CHDO must have a formal process for low-income input to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing. As a final requirement within 8(i) and (ii), the CHDO must have a designated service area (i.e. the "community" in which it produces housing) and have demonstrated experience serving the community for at least one year prior to applying for HOME funds. A community can be a neighborhood or neighborhoods, city, county, metropolitan area, or multi-county area (but not the entire state).

HOME American Rescue Plan (HOME-ARP) Program Instructions

Application Delivery Instructions

All Applicants 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 this manual. Additional files required for Application submission (e.g., Third Party Reports) outside the Multifamily 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. Applications will not be considered received until all of the required Third Party Reports are submitted.

If the Application is for HOME-ARP in conjunction with 4% or 9% Housing Tax Credits, the following sections of 2023 Multifamily Uniform Application must be completed in addition to those required when applying for 4% or 9% Housing Tax Credits:

- Multifamily Direct Loan Certification
- Tab 8 – Site and Neighborhood Standards (New Construction only)
- Tab 17 – Section 5 (HOME-ARP request)
- Tab 19 – Section 5 (if seeking points under the 2023 HOME-ARP NOFA)
- Tab 20 – Section 3
- Tab 21 – Uniform Relocation Act/104: Actions that involve demolition, Conversion, or removal of housing units, farms, nonprofits or commercial business.
- Tab 44 – Unique Entity Identifier and SAM.gov Registration and Davis Bacon Labor Standards
- Tab 47 – Section 2

In addition, if HOME-ARP is layered with 4% or 9% Housing Tax Credits or Multifamily Direct Loan Program funds, the following sections of 2023 Multifamily Uniform Application must be completed in addition to those required when applying for 4% or 9% Housing Tax Credits or Multifamily Direct Loan Program funds:

- Tab 49 HARP Specific
- Tab 50 HARP Rent Schedule 16-40
- Tab 51 HARP COCA (optional)
- Tab 52 HARP Pro forma 16-40

Instructions for completing Tabs 49-53 are included in a HOME-ARP Supplemental Manual for New Applicants.

With a few exceptions, new Applicants should complete the Uniform Multifamily Application by reading references to “All Programs” or “Direct Loan Applications Only” as applicable to the HOME-ARP Application. The exceptions are listed as waivers in the NOFA, and reminders are included in this Uniform MF Manual. Items that apply only to 4% or 9% HTC do not apply to HOME-ARP. All applicable Third Party Reports are required in accordance with 10 TAC §11.205 regardless of whether the Application is layered with Housing Tax Credits, except as reflected in the NOFA.

The Application submission deadline and Application Acceptance Dates are described in the NOFA.

HOME-ARP Program Information

The Department was allocated \$132,969,147 of funds from the U.S. Department of Housing and Urban Development (HUD) under Section 3205 of the American Rescue Plan Act, which HUD has called the HOME-ARP Program. HUD issued waivers and new activities from HOME annual funds for HUD-ARP per CPD Notice 21-10 and Appendix: Waivers and Alternative Requirements for Implementation of the HOME-ARP Program (<https://www.hudexchange.info/resource/6479/notice-cpd-2110-requirements-for-the-use-of-funds-in-the-home-arp-program/>).

Related to rental development, the Department programmed funds into affordable rental housing including Capitalized Operating Cost Assistance Reserves (COCA), and nonprofit capacity building/nonprofit operating cost assistance (NCO).

HOME-ARP was created to serve specific populations called qualifying populations (QPs). These include:

- Households that are experiencing homelessness, per 24 CFR §91.5;
- Households at-risk of homelessness, per 24 CFR §91.5;
- Households with at-risk of homelessness criteria, and waiver to allow for income up to 50% AMI, per HUD CPD Notice 21-10;
- Households fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking, per HUD 24 CFR §5.2003;
- Households with 30% AMI with severe housing cost burden defined as paying more than 50% of monthly household income toward housing costs, per HUD CPD Notice 21-10;
- Households who have qualified as homeless previously, are currently housed with temporary/emergency assistance, and who need additional housing assistance or supportive services to avoid a return to homelessness, per HUD CPD Notice 21-10; or
- Veterans (and their families) that meet one of the above definitions.

At least 70% of the HOME-ARP Units must be for QP households. QP households pay no more than 30% of their income toward rent, and will be underwritten at zero rent, unless paired with project based assistance. In order to support zero rent Units, HOME-ARP has several flexibilities including:

- No maximum unit subsidy;
- COCA for up to 15 years;
- Possibility to adopt the Public Housing Authority utility allowance, which may better pair with project-based assistance (not available for Developments with HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program Repayment Funds (TCAP-RF), a property containing HOME Match Units, or NHTF, unless the Development is all-bills paid); and
- Up to 30% of the households may be for low-income households (60% or 80% AMI) at high HOME rent.

More information about HOME-ARP QPs, flexibilities, and financial layering possibilities may be found online at <https://www.tdhca.state.tx.us/home-arp/index.htm>.

Applications are structured as fully amortizing, or deferred forgivable (for Supportive Housing Developments), with a term of 15-40 years and an amortization of 15-40 years. The interest rate

requested on the loan may be as low as the minimum interest rate described in the NOFA.

Please refer to the applicable HOME-ARP NOFA at the following link for more information: <http://www.tdhca.state.tx.us/nofa.htm>. The NOFA (including waivers to existing Texas Administrative Code), and existing Texas Administrative Code Chapters 1, 2, 10, 11, 12 and 13, work in conjunction; Applicants are encouraged to fully review all federal and state laws and regulations.

Supplemental Information

Requests for Waivers and Staff Determinations

The Department will accept requests for waivers and staff determinations during the Application Acceptance Period. These requests can be submitted with the pre-application or full Application submission, or separately. Requests **will not** be accepted after full Application submission for 9% HTC Applications. Requests should be submitted directly to the appropriate staff below and when possible submitted electronically, either through the Serv-U system (with an email to the appropriate staff member), or by email attachment. **Hard copies will not be accepted.** Applicants should refer to 10 TAC §11.207 and 10 TAC §11.1(k) for more information on waivers and staff determinations, respectively. Waivers for Direct Loans are also limited by 10 TAC §13.1(c), and may be further limited by the requirements of an applicable NOFA.

For Competitive 9% HTC Applications, contact Colin Nickells at colin.nickells@tdhca.state.tx.us.

For 4% HTC/Bond Applications, contact Jon Galvan at jonathan.galvan@tdhca.state.tx.us.

For Multifamily Direct Loan Program Applications, contact Connor Jones at connor.jones@tdhca.state.tx.us.

For HOME-ARP, contact Naomi Cantu at naomi.cantu@tdhca.state.tx.us.

Appeals

For 9% Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 and the process identified 10 TAC §11.902. Matters that can be appealed are described in the Rule. 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.

Appeals must be filed in writing 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. The Applicant must specifically identify the grounds for appeal, based on the original Application and additional documentation filed as a result of the Deficiency process. Appeals may not be used to introduce new information or documents that were not available prior to Application submission.

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.

Generally, 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.

Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application. The decision of the Board regarding an appeal is the final decision of the Department.

For 4% HTC, Direct Loan only, an Applicant or Development Owner may appeal decisions made by the Department pursuant to 10 TAC §1.7, as applicable. Matters that can be appealed are described in the Rule.

Applicants must file a written appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the appealing party of the staff decision. Posting of materials or logs on the Department's website is considered "notice". The written appeal must specifically identify the grounds for the appeal.

The Executive Director will respond in writing not later than the fourteenth day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response, they may appeal in writing directly to the Board within seven days after the date of the Executive Director's response. The appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting.

If the Applicant receives additional information after the Executive Director has denied the appeal, but prior to the posting of the appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider it. New information will cause the appeal deadlines to begin again.

The Board will hear public comment on the appeal under its Public Comment Procedures in 10 TAC §1.10. While public comment will be heard, persons making public comment are not parties to the appeal and no rights accrue to them as a result of the appeal process.

Applicable appeals not submitted in accordance with 10 TAC §1.7 will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal.

All written appeals should be submitted to the Multifamily Programs Director and the Administrator of the applicable program. Appeals may be uploaded to the Serv-U file for the Application, in all instances the Applicant must email notification of the appeal to staff as follows in order for it to be considered received:

For all Applications, contact Cody Campbell at cody.campbell@tdhca.state.tx.us.

and

For 9% HTC Applications, contact Colin Nickells at colin.nickells@tdhca.state.tx.us.

For 4% HTC/Bond Applications, contact Jon Galvan at jonathan.galvan@tdhca.state.tx.us.

For Multifamily Direct Loan Applications, except HOME-ARP contact Connor Jones at connor.jones@tdhca.state.tx.us.

For HOME-ARP, contact Naomi Cantu at naomi.cantu@tdhca.state.tx.us.

Public Access to Applications

The Department will allow the public to view any pre-applications or Applications that have been submitted to the Department in an electronic format. These electronic versions should be available within approximately two weeks of the close of the Application Acceptance Period on the Department's website at <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/> for 9% HTC Applications and at <http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm> for 4% HTC Applications. An Applicant may request, via an open records request, a paper copy between the hours of 8:00 a.m. and 5:00 p.m. (Austin local time) Monday through Friday. There may be an associated cost with requesting this information.

Applicable Rules and Reference Materials

2023 SITE DEMOGRAPHIC CHARACTERISTICS REPORT

2023 Multifamily Housing Revenue Bond Rule (10 TAC Chapter 12) 2023 Multifamily Direct Loan Rule (10 TAC Chapter 13)

2023 Post Award and Asset Management Requirements (10 TAC Chapter 10 Subchapter E) 2023

QUALIFIED ALLOCATION PLAN (10 TAC Chapter 11)

TEXAS GOVERNMENT CODE CHAPTER 2306 INTERNAL REVENUE CODE SECTION 42 TEXAS GOVERNMENT

CODE CHAPTER 1372 NOTICES OF FUNDING AVAILABILITY (NOFA)