



Texas Department of Housing and Community Affairs HTC 2011 Competitive Application Cycle Frequently Asked Questions & Answers

The following represent frequently asked questions that have been received relating to non-application specific issues for the Application Cycle and Department responses to those questions. Questions and answers are in the order they appear in the 2011 Qualified Allocation Plan (QAP).

§1.1 Definitions for Housing Program Activities

Q1: If you demo an existing building down to the slab and keep the existing slab, can it be considered Rehabilitation or is it Reconstruction?

A1: If the land with buildings was acquired prior to demolition, then this could be considered Reconstruction as long as the exact same number of units or less was re-built on the same site. If, however, the buildings were demolished prior to the land being acquired, then this would not meet the definition of Reconstruction, it would be characterized as New Construction.

Q2: In Rehabilitation, is it okay to change to unit sizes or change the number of units?

A2: The QAP is silent on the ability to change unit sizes in a rehabilitation. The facts and circumstances of this kind of change on the overall development plan would likely become an important part of the determination in any specific case.

Q3: Would Reconstruction on only part of the contiguous, original Development Site still qualify as Reconstruction?

A3: The QAP is silent on portions of the development site however it would be reasonable to assume that a deminimis shift in the original development site could be acceptable on the other hand significant changes to the original development site would be inconsistent with the intent of the rule as it is currently written.

Q4: If a Housing Authority wants to replace the same number of housing units on two separate noncontiguous sites, neither of which is the original Development Site, will the Department allow the proposed Development to be treated as Reconstruction? The definition for Reconstruction does not indicate that the Development Site needs to be the same site where the Existing Residential Units are located. The Housing Authority has deemed the existing public housing units as "obsolete." They want to sell the site where the existing units are and use the proceeds to, in part, replace the same number of units on two scattered sites. In addition, the scattered sites are located in different census tracts. Therefore, will the Department allow the Housing Authority and the proposed Development to qualify for points associated with §49.9(a)(18) Developments in Census Tracts with No Other Existing Same Type Developments Supported by Tax Credits if one of the scattered sites is in a census tract that has a similar Development?

A4: No, the Department would characterize this activity as New Construction.

General

Q1: Where can we find the estimated allocation amounts by region?

A1: **The Housing Tax Credit Regional Allocation Formula (RAF) is posted at the following location: <http://www.tdhca.state.tx.us/multifamily/applications.htm>**

Q2: How do we receive the TDHCA Application number?

A2: **The TDHCA Application number will be assigned after the Pre-Application or Application is filed with the Department.**

Q3: Will demographic exhibits, when posted, include a list of jurisdictions that have "special HUD relationship" making HOME loans ineligible?

A3: **A list of Participating Jurisdiction Status of Texas Cities/Counties can be found on the HOME Program webpage located at this link: <http://www.tdhca.state.tx.us/home-division/docs/10-SFApp-PJ-list.pdf>**

Q4: What documentation needs to be submitted in order to change the rural to urban designation of a place?

A4: **Typically this documentation should include a letter from a local official clearly indicating that the place has an incorporated area boundary that touches the boundary of another place with a population of over 25,000. Any request to change a designation must be submitted in writing to the Department prior to the start of the Application Acceptance Period for competitive HTC applications.**

Q5: Do non-TDHCA HOME units go under the "other designation" column of the rent schedule?

A5: **Yes.**

Q6: A Development Site is within the ETJ of municipality which is Urban; however, it is closest to the city boundary of another municipality which is Rural. Would the Development be limited to 80 Units? Also, do we need to consider the 2x per capita for a place if a site is in an ETJ, would it make sense to also consider the urban/rural nature of a site if it is in an ETJ?

A6: **Yes, the development would be limited to 80 units. Yes, consideration needs to be made for 2x per capita for a place if it is within an ETJ, regardless of the Urban/Rural nature of a site.**

§49.4(b)(11) Ineligible Applications

Q1: Regarding the ineligibility item for having more than 50% of the developer fee deferred as reflected in the Sources and Uses exhibit in the application or the commitments from the lender or syndicator; is that deferred over 15 years or "held" during construction/lease-up?

A1: **It's at the time the permanent financing is anticipated to be in place and as reflected in the permanent financing proforma.**

Q2: Can more than 50% of the developer fee be deferred during the construction period, to minimize the size of the construction loan?

A2: **Yes as long as it is anticipated to be paid down to less than 50% as reflected in the permanent financing proforma.**

§49.4(c)(8) Ineligible Developments

Q1: Do the unit maximum percentages apply to Rehabilitation Developments?

A1: **No, the unit maximum percentages apply to any Development located in an urban area involving New Construction, Reconstruction or Adaptive Reuse.**

Q2: Do the unit maximum percentages apply to urban Developments only or does it also apply to Rural?

A2: The unit maximum percentages do not apply to Developments in Rural areas.

Q3: Do New Construction Developments have to provide 1 bedroom units?

A3: Yes, a Development with only 2 and 3 bedroom units is considered an ineligible Development.

Q4: Do the unit maximum percentages apply to both Elderly and Family Developments?

A4: The unit maximum percentages do not apply to Qualified Elderly Developments, developments composed entirely of Single Family dwellings and Single Room Occupancy developments.

§49.4(c)(11)(E) Ineligible Developments

Q1: What is the definition of "fall line" of high voltage transmission power lines?

A1: The QAP does not include a definition of "fall line." This is a calculation determined by an engineer or the utility company.

Q2: For Applicant disclosure, what if you do not discover a negative amenity or other ineligibility item at pre-application? Will you have the opportunity to disclose this at full application?

A2: If an Applicant did not disclose a negative amenity or other ineligibility item at pre-application, the Applicant will have the opportunity to address these types of items at full application via the Certification of Principal exhibit located in V1, T5, Pt E.

§49.5(b) Site and Development Restrictions - Credit Amount

Q1: Please confirm whether the amount of credits requested can change between pre-application and Application.

A1: Yes, the credit amount requested can change from pre-application to Application.

Q2: Is the \$2 million credit cap per Application an absolute cap, or can an Applicant request more for a property that is eligible for a 30% increase in basis because it is located in a QCT?

A2: An Applicant may not request more than \$2M in annual tax credits for any given Application.

§49.5(d) Site and Development Restrictions - 30% boost

Q1: Define structural parking.

A1: The QAP or Definitions for Housing Program Activities does not have a specific definition for structural parking; however, the term would mean a parking garage.

Q2: Have the other criteria been removed for the 30% boost?

A2: Developments located in an exemplary or recognized school attendance zone has been removed from consideration for being eligible for the 30% boost in eligible basis. However, Developments located in such attendance zones still receive consideration under Selection.

Q3: Can you explain more the QCT tract with greater than 30% of the households served by HTC are not eligible for the 30% increase in eligible basis? This seems like all QCT's would then not get the 130% boost?

A3: The change in the rule was derived from concerns that QCTs were being over concentrated with HTC units. As a result the over concentration percentage for the boost issue was made consistent with the over concentration threshold requirement so that no development proposing to increase the number of existing units in a location

would be eligible for a boost where they exceeded the 30% concentration of HTC units regardless of whether they received a resolution from the local governing body.

Q4: Are urban areas eligible to qualify for the 30% increase or is it just available to rural areas?

A4: Urban areas can qualify for the 30% increase in eligible basis. See §49.5(d) of the 2011 QAP for

§49.6(b) Allocation Set-Asides

Q1: Can an application be moved from the at-risk set-aside into the regional allocation after full application?

A1: Yes

Q2: It appears that an application we are working on will be considered to be in the nonprofit set aside as the general partner will have a nonprofit managing member. If we apply in the nonprofit set aside, will it also compete in the general set aside? In other words, if we did not score high enough to receive an award in the nonprofit set aside, and did in the general set aside, would we still get an award?

A2: Applications compete in the general set-aside regardless. Once priority applications are identified the Department makes sure that the 10% federal requirement is met.

Q3: If there are not enough funds in the nonprofit set-aside pool to fund the Applications, are the remaining nonprofit designated Applications considered with the balance of the general pool?

A3: Applications compete in the general set-aside regardless. Once priority applications are identified the Department makes sure that the 10% federal requirement is met.

§49.8(4) Threshold - Experience Certification

Q1: Does the required experience need to be tax credit units or can conventionally financed units suffice?

A1: The QAP requires experience with the tax credit program and process.

Q2: Does the experience certificate have to be in the name of an individual? What if you are a housing authority?

A2: The experience certificate must be in the name of an individual. Executive Directors of non-profits and public housing authorities may qualify for this experience.

Q3: If you had an experience certificate for 2010 do you need to do it again for 2011?

A3: Yes. All individuals seeking to submit a Housing Tax Credit application in 2011 must re-certify for an experience certificate. An experience certificate for a prior year will not be accepted.

Q4: Part A: If the experience certificate is given to an individual who will be acting solely as the General Contractor (and maybe a Guarantor) through an experienced General Contractor entity, will this qualify an inexperienced developer entity to proceed through Application?

Part B: Also, will this relationship count against the experienced individual's cap if the individual through an experienced developer entity affiliate chose to move forward on a separate Application?

A4: Part A- Yes, as long as the inexperienced developer partners with the experienced General Contractor.

A4: Part B- It will not affect the experienced individual's cap as long as that individual is not in Control of the Development with the inexperienced developer. However, the common understanding of the experience requirement is to be able to have that experienced

developer affect necessary changes and it might be difficult show that they could make such changes without some control over the development.

Q5: For purposes of the experience certificate, is experience with New Construction acceptable for Reconstruction Developments (our Reconstruction will involve all new underground utilities and new site plan, not using any of the "old" building components)?

A5: No. The development for which you are basing the experience must be for the same construction type as what the Application is proposing. In order to qualify for an experience certificate for a proposed Reconstruction Development, experience from a prior Rehabilitation development must be submitted.

Q6: The QAP permits the General Contractor to provide the experience certificate, but the experience appears to be only as a Development Owner, General Partner or Developer. Is that correct?

A6: Yes. In order to document experience the individual must be able to show that he/she was a Principal of the Development Owner, General Partner or Developer. An individual who previously served in the capacity of a General Contractor will not be able to obtain the experience certificate unless he/she can also document that they served in the capacity of the aforementioned roles.

§49.8 Threshold - Certifications

Q1: Will the Certification of Principal or Development Owner need to be submitted with original signatures or just a PDF of the signatures?

A1: A PDF or scanned copy of the signatures will be acceptable.

§49.8(6) Threshold - Architectural Drawings

Q1: Will the Department consider allowing the submission of the architectural drawings as a separate file on the CD from the full Application? The difference in size of these documents caused some PDF problems in the full Application PDF file.

A1: No, the architectural drawings cannot be submitted on a separate CD from the full Application and must be submitted within the Application in the designated place.

§49.8(8)(A) Threshold - Site Control

Q1: If individual A enters into an earnest money contract, and assigns it to entity B and entity B files the pre-application and the Application as Applicant or as the Developer, is there continuous site control? Presume that individual A is not involved in the Application at all.

A1: If the assignment takes place prior to the pre application and both site control documents (seller to A and assignment from A to B) are provided in the pre application, then B has site control and is the applicant and eligible for the pre application points. However if the assignment between A and B is not executed until after the pre application as evidenced by it not being included in the pre application filing, then the continuous site control has not been evidenced and B could not get points for the pre application.

Q2: A nonprofit group has acquired several of the lots in the Application and will have option agreements for the other lots. They will assign the lots they own from the nonprofit group to the tax credit limited partnership at the original cost to the nonprofit group. The nonprofit group will be the sole member of the general partner. Does this trigger the identity of interest requirements?

A2: Yes, this would trigger identity of interest requirements.

Q3: Most sellers will not have audited financial statements available for identity of interest transactions. What should they do in this instance?

A3: In cases of identity of interest transactions, the QAP currently allows two different forms of documentation to be provided. An Applicant may include a settlement statement to document the original purchase of the land by the seller; OR an Applicant may provided the most recent audited financial statement for the seller specifically indicating the asset value for the Development Site.

Q4: What is the most recent year of nonprofit audited financial statements required for 2011?

A4: Nonprofit audited financial statements should be for 2010 or the most recent fiscal year.

Q5: Is an escrow receipt a requirement of the land contract?

A5: The QAP requires proof of consideration of the contract, if required by the contract. Typically, this proof will be in the form of an escrow receipt. However, the Department will accept another form of documentation as long as that documentation is able to show that consideration, if required, was received by the seller within the timeframe specified in the contract.

Q6: Can a Guarantor who is also the General Contractor sign the purchase contract if they are not part of the ownership? In other words, does a Guarantor count as a "Principal" for purposes of this issue?

A6: Either the Guarantor (also the General Contractor) is part of the ownership or they are not. If they sign the purchase contract they must be in the transaction at full application as a Principal.

§49.8(9) Threshold - Signage

Q1: What happens if the land seller does not want the Developer to post a sign on the property, can we send written notifications in lieu thereof?

A2: A sign must be installed on the property unless it is prohibited by local code or ordinance in which case such documentation must be submitted with the Application and written notifications can be sent in lieu thereof.

§49.8(12) Threshold- Applications Involving Nonprofit General Partners and Qualified Nonprofit Developments

Q1: Public housing authorities/public instrumentalities are non-profit entities but are clearly not 501(c)(3) entities. However, they bring a tax benefit to the project. Are they required to complete and submit all the information required under Volume 3, Tab 8 pertaining to the entity and board members?

A1: All nonprofit entities that are designated as 501a(c)(3), 501(c)(4) or exempt from taxes under 501(a) must provide the documentation required under Volume 3, Tab 8 of the Application. For public housing authorities/public instrumentalities, which are not designated as one of the aforementioned types, the Department will expect to receive the following:

- Nonprofit Participation Exhibits of the Application
- Third Party Legal Opinion- a modified legal opinion will be acceptable to address only those items that apply to these entities. For example, the legal opinion for a public housing authority/public instrumentality would not be able to opine that it is eligible for a Housing Credit Allocation from the Nonprofit Set-Aside and that the entity otherwise meets the requirements of §42(h)(5). It could, however, opine that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion; that one of the exempt purposes of the nonprofit

organization is to provide low-income housing; that the nonprofit organization prohibits a member of its board of directors from receiving material compensation for service on the board; and that the nonprofit organization will be the Developer or Co-Developer.

- A copy of the nonprofit organization's most recent audited financial statement- a copy of the nonprofits most recent 990s will be acceptable.

Q2: It appears that the only types of non-profits that are "Qualified Non-Profits" are those that can participate in the Non-Profit Set-aside. Is this correct? If so, we may have one or two 501c3 non-profits that cannot participate in the set-aside because of where their board members live and in those cases would a statement indicating that the organization cannot make the certification with regard to the board members as in 12(E) on page 39 of the QAP suffice?

A2: If a nonprofit entity has a designation of 501(c)(3), 501(c)(4), or exempt from taxes under 501(a), but the nonprofit is not eligible to participate in the state's Nonprofit set-aside because of where the majority of the board members live, then the legal opinion and certification required would include this statement. In other words, the legal opinion may state that the nonprofit entity meets the definition of a qualified nonprofit organization under Section 42(h)(5), but that it does not meet the definition of a qualified nonprofit organization under 2306.6706.

§49.8(14) Threshold - Supplemental Threshold Reports

Q1: Is a primary market area (PMA) map still due at Application or can it wait until the market study is submitted on April 1, 2011?

A1: Yes, the Application should still contain a PMA map as well as an engagement letter from the report provider.

Q2: Does a Reconstruction Development need to submit a Property Condition Assessment?

A2: Yes.

§49.9(a)(1) Selection - Financial Feasibility

Q1: Is there a standard (baseline) financial liquidity and net worth standard that will be required by the financial institutions? There is a concern that some friendly lenders will have lower requirements than others.

A1: The Department has not identified a baseline for financial liquidity and net worth standards but believes this should be left up to the financial lending institutions.

§49.9(a)(2) Selection - Quantifiable Community Participation (QCP)

Q1: If an opposition letter is worth zero points, two support letters would be worth 24 points each so a total of all three letters is 48 points. If you take the average of all the letters it would be $48/3 = 16$ points. Is this correct?

A1: Yes.

Q2: If the Development is outside of the Neighborhood Organization's boundary, does their input still affect the Applicant's score?

A2: No, it will not affect the Applicant's score for purposes of QCP.

Q3: Can the current owner initiate or assist with forming a homeowners association or resident council?

A3: No.

Q4: Do super neighborhoods still qualify as Neighborhood Organizations?

A4: Yes, provided they are on record with the state or county and the boundaries include the development site.

Q5: Does QCP input have to be on the TDHCA form?

A5: No, the QCP documentation does not have to be on the TDHCA form provided on the website; however, it should still contain the required information as indicated on the form.

Q6: In order to receive negative QCP points, does the organization have to be on record with TDHCA?

A6: No, the organization can be on record with the county or the state, though it has to provide written opposition comments to the Department for points to be considered.

§49.9(a)(3) Selection - Income Levels of Tenants of the Development

Q1: It seems that there is confusion regarding scoring items #3 (Income Levels of Tenants of the Development) and #7 (Rent Levels of the Units). Specifically if we are to add an additional 5% of 30% units to the selection made in 49.9(a)(3) Income Levels of Tenants of the Development, are we able to take those additional 30% units from those set aside for 50% units or must they come out of the units set aside for 60% rents

A1: An Applicant for low income housing tax credits subject to the 2011 Qualified Allocation Plan ("QAP") has agreed to set aside qualifying units to obtain points under 10 TAC §49.9(a)(3). The issue presented is whether these same set-aside units may be used to qualify the Applicant for additional points under QAP §49.9(a)(7) or whether in order to receive points under QAP §49.9(a)(7) the Applicant must provide additional set-aside units at the income levels provided for in that subsection (7).

The plain meaning and intent of QAP §49.9(a)(7) is to offer additional points for additional units, over and above those provided to receive the points available under QAP §49.9(a)(3). This is reinforced by the fact that QAP §49.9(a)(7) is predicated on the Applicant already having qualified for the points under QAP §49.9(a)(3) and by the fact that if the same units qualified for both, QAP §49.9(a)(7) would be irrelevant, in effect merely adding 12 points to the points awarded under QAP §49.9(a)(3) based on the income levels served and the percentage of the unit mix for each.

Q2: Can you illustrate how points could be maximized under both sections 49.9(a)(3) and 49.9(a)(7) using a 100-unit example?

A2: There are three ways to get the maximum points for #3 and #7. Using a 100-unit development you could do the following:

- 50 at 50%, 8 at 30% and 42 at 60%; OR
- 35 at 50%, 10 at 30% and 55 at 60%; OR
- 65 at 50%, 5 at 30% and 30 at 60%.

§49.9(a)(5) Selection - Governmental Instrumentality Funding

Q1: Please confirm that if in a non-participating jurisdiction, TDHCA HOME funds can qualify for points at the lower (Rural) level, even though the project is located in the Urban subregion.

A1: Yes, this is correct.

Q2: Can TDHCA HOME funds be used for both Selection Criteria #5 (Commitment of Development Funding by Governmental Instrumentality) and Selection Criteria #26 (Leveraging of Private, State and Federal Resources)?

A2: Yes, HOME funds can be used as the same source for both #5 and #26, as long as the same amount is not used for both selection items. For example, if \$2M in total HOME

funds is requested and \$1M is used for #5 and the other \$1M is used for #26, this is allowed.

Q3: Is a resolution from the local unit of government only required if we are seeking TDHCA HOME funds for this scoring item? This resolution from the city or county is NOT required for either local CDBG or HOME (participating jurisdictions) funds or loans from a valid Housing Finance Corporation, correct?

A3: A resolution is required if an Applicant is seeking TDHCA HOME funds to use on behalf of the local unit of government, these resolutions are due with the application on March 1st. A resolution is not required for local CDBG or HOME funds. For Housing Finance Corporations, a resolution would be needed if the HFC is loaning or granting funds outside of its jurisdiction. Typically a development that receives an award of tax credits must prove up all financing, including that from an HFC, by Commitment. So, if an HFC provided funding in any form to the development the Applicant will be required to provide an executed Inter-local Agreement in cases where the HFC is providing funds to an area that is outside of its jurisdiction. It has been the Department's experience that in order for an Applicant to obtain an Inter-local Agreement between the HFC and the local unit of government, the local unit of government has to approve such agreement by vote or resolution.

§49.9(a)(6) Selection - Support from State Representative or State Senator

Q1: What if an Applicant gets two letters - one support and one opposition letter and then later the opposition letter is retracted does the Application still get the 14 points?

A1: The opposition letter cannot change to support unless it is before April 1 but if the opposition is withdrawn then that letter score would result in a neutral score and the other letter would still have 14 points awarded.

§49.9(a)(9) Selection - Tenant Services

Q1: Will the LURA still permit changes in the services over the years without an amendment?

A1: No. Because each of the tenant service options have different point values if the services change over the years, this will require both an amendment to the Application as well as an amendment to the LURA.

§49.9(a)(13) Selection - Community Revitalization, Historic Preservation, Rehabilitation

Q1: Is the community revitalization form going to specify that the new construction option is only 3 points while the other options are 6 points? The draft application on the website does not specify.

A1: Yes, the final application has made that distinction.

Q2: Can the Community Revitalization Plan for new construction be substantiated with a letter from the Governing Body stating that the Development Site is located within the targeted geographic areas outlined in the Community Revitalization Plan?

A2: A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan is acceptable. If the letter comes from the Governing Body, the Department will accept this also.

§49.9(a)(15) Selection - Green Building Amenities

Q1: What happens if you select LEED certification and get points at application, but subsequently cannot substantiate at Cost Certification?

A1: The Department strongly discourages the selection of any amenity that they believe will not ultimately be implemented into the Development as proposed. If LEED certification

is not obtained at Cost Certification an amendment to the Application and approval by the Board will be required.

§49.9(a)(17) Selection - Economic Development Initiatives

Q1: Is TDHCA going to post a spreadsheet for Economic Development Initiatives like they have in the past?

A1: The Department is not able to maintain an accurate and current list and is not expecting to publish a list for 2011.

Q2: What documentation will be required for Economic Development Initiatives, Section B?

A2: The Applicant must provide documentation of receipt of funds to the area, either by way of a letter directly from the funding entity granting the funds or other documentation deemed acceptable to the Department that reflects that an award was made to the area, along with a map identifying the designated area for such funding.

Q3: Can information be pulled from the Small Business Administration website as was done last year and for 2009 applications to substantiate points under Section B of the Economic Development Initiative selection item?

A3: Yes

Q4: Could you give a couple of examples of the Economic Development Initiatives?

A4: §49.9(a)(17) of the QAP, under both Sections A and B, provides a specific list of the types of programs that would qualify under this selection item.

§49.9(a)(24) Selection - Qualified Census Tracts with Revitalization

Q1: This tab appears to require all four types of evidence indicated, but comments made during the HTC Application webinar appear to indicate that only the letter and the census tract map are required. Is that correct?

A1: In order to be eligible for this point the Applicant must be able to document the following:

- Development is located within a Qualified Census Tract- a map of the tract must be provided with location of the Development Site identified; AND
- A letter from the Appropriate Local Official stating there is a Community Revitalization Plan in effect and the Development is within the area covered by the plan; OR
- A copy of the Community Revitalization Plan with specific boundaries identified, documentation of adoption of the Plan by the appropriate jurisdiction or its designee, and a map of the specific boundaries of the Plan with the location of the Development Site within these boundaries identified.

§49.9(a)(28) Selection - Scoring Criteria Imposing Penalties

Q1: Will Applicants receive penalties if they did not meet the substantial construction deadline in a preceding round?

A1: No, penalties will not be applied if the Applicant did not meet the substantial construction deadline in a preceding round.

§49.14(b) and (c) - Program Related Fees

Q1: Is there a discounted application fee for CHDO's?

A1: Yes. Qualified Nonprofit Organizations or CHDO's can qualify for a 10% discount in the pre-application and Application fee provided that documentation to substantiate the designation is submitted with the fees.