

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
**TDHCA Governing Board Approved Draft of
Proposed Amendments to the Multifamily Direct Loan Rule at
10 Texas Administrative Code (TAC), Chapter 13**

Disclaimer

Attached is a draft of the Proposed New 10 TAC Chapter 13 that was approved by the TDHCA Governing Board on October 10, 2019. This draft incorporates changes made by the Board as a result of public comment at the meeting. This document, including its preamble, is scheduled to be published in the October 25, 2019 edition of the *Texas Register* and that published version will constitute the official version for purposes of public comment. The version herein is informational only and should not be relied upon as the basis for public comment.

Public Comment

Public Comment Period: Starts: 8:00 a.m. Austin local time on October 25, 2019. Ends: 5:00 p.m. Austin local time on November 14, 2019.

Comments received after 5:00 p.m. Austin local time on November 14, 2019 will not be accepted.

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

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

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

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2020 MULTIFAMILY DIRECT LOAN RULE

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§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 (sometimes referred to as the State Act), 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 Part 91, Part 92, Part 93, and Part 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, Subchapter I, Housing Finance Division.

(b) General. This chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), ~~Chapter 8 of this title (relating to Section 811 PRA Program),~~ and Chapter 10 of this title (relating to

Uniform Multifamily Rules), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan (QAP)) and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are layered with those other Department programs. The Applicant is also required to certify that it is familiar with 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 further 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), 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), and as further 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, as further provided in paragraphs (1) through (3) of this subsection.

~~(d)~~(1) Waivers for Layered Developments. For Direct Loan Developments contemporaneously layered with Competitive Housing Tax Credits, the Board may not waive any provision of the Notice of Funding Availability (NOFA). The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD);

(2) Waivers for Non-Layered Developments. For Direct Loan Developments not contemporaneously layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated or One Year Action Plan (OYAP), or ask HUD to grant a waiver of its regulations. If the Applicant's request is approved by the Department's Governing 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 apply, and the Direct Loan awardee (pre Loan 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.

(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 Part 91, Part 92, Part 93, and 2 CFR Part 200 ~~and 10 TAC Chapter 11, 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) Annual Income or Annual Incomes--"Annual income" as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.~~

~~(2) Choice Limiting Activity--Any transfer of title or similar action that occurs prior to a Development obtaining environmental clearance after an application for federal funds (HOME and NSP) has been submitted. Choice Limiting Activities also include closing on loans including loans for interim financing, signing of a contract, and commencing construction.~~

(3)(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.

(2) Construction Completion--That necessary title transfer requirements and construction work have been performed and the following documents have been issued for the Development: certificate(s) of occupancy (if new construction), Certificate of Substantial Completion (AIA Form G704), or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, and a Final Construction Inspection Letter from Department staff. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all ~~modifications~~corrections requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

(43) Community Housing Development Organization (CHDO)--A private nonprofit organization that has experience developing and/or owning affordable rental housing and that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME funds under the CHDO Set-Aside. In addition, a member of a CHDO's board cannot be a Principal of the Development beyond ~~his/her~~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).

(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 date of Construction Completion and ending on the date which is the required number of years as defined by the federal program from the date of Construction Completion.

(6) 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 Notice of Funding Availability (NOFA), TCAP Repayment Funds (TCAP RF) ~~funds~~ and matching contribution on NSP and NHTF Developments must ~~be used~~ meet all criteria to be classified as HOME-Match Eligible Units.

~~(7)~~ **(7) Housing Contract System (HCS)**--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

(8) Land Use Restriction (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 ~~both the~~ Federal Affordability Period ~~and, in addition to the~~ State Affordability Period requirements and State restrictive criteria.

(89) Matching contribution (Match)--A contribution to a Development from nonfederal sources that may be in ~~the form of~~ one or more of the following 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.

(910) Relocation Plan--A residential anti-displacement and relocation assistance plan ~~which~~ for which subparagraphs (A) and (B) of this paragraph apply:

(A) Includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded Developments Section 104(d) of the Housing and Community Development Act of 1974, (as amended), and 24 CFR Part 42 (as modified for NSP); and

(B) Is in form and substance consistent with requirements of the Department.

~~(1011)~~ **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 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, ~~and~~ then confirmation of that applicability will be included in the applicable NOFA.

~~(1112)~~ **Site and Neighborhood Standards**--HUD requirements for new construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or new construction Developments in HOME (24 CFR §92.202). Proposed Developments that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

(13) 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 State Act which is usually an additional period after the Federal Affordability Period.

~~(1214)~~ **Surplus Cash**--Except when the first lien mortgage is a federally insured HUD ~~or FHA~~ mortgage, which shall be 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.

§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 basic Application and funding requirements.

(b) Oversourced Developments. Direct Loan funds may not be ~~awarded~~contracted if an underwriting report ~~that has been~~ issued by the Department's Real Estate Analysis Division ~~has become final and~~ concludes ~~that~~ the Development does not need all or part of the MDFL funding for which it has applied because it is ~~over sourced.~~ oversourced, and for which a timely appeal has been completed, as further 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), as applicable.

(c) Funding Sources. Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP-RF loans, HOME Program Income, ~~NSP~~NSP1 Program Income, (NSP1 PI or NSP), and any other similarly encumbered funding that may become available by the Department's Governing ~~Boards~~Board's (Board) action, except as otherwise noted in this chapter. Similar funds include any funds that are ~~required~~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, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion,

demolition, or operating cost reserves, all 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 ~~distressed~~ Developments previously ~~funded~~awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions, or be restricted by a NOFA.

(2) Ineligible Activities. Direct Loan funds may not be used for Adaptive Reuse Developments. MFDL Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code may not have more than 15% Market Rate Units.

(e) ~~While~~Ineligible Costs. All costs associated with the Development and known by the ~~sponsor~~Applicant must be disclosed as part of the Application. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 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;
- (4) Detached Community Buildings;
- (5) Carports and/or garages;
- (6) Parking garages;
- (7) Swimming pools;
- (8) Commercial Space costs;
- (9) Reserve accounts not related to NHTF;
- (10) TDHCA fees;
- (11) Syndication and organizational costs;
- (12) Delinquent fees, taxes, or charges;
- (13) Costs incurred more than 24 months prior to the effective date of the Direct Loan Contract, unless the Application is awarded TCAP RF;

(14) Costs that have been allocated to or paid by another fund source, including but not limited to: Deferred Developer Fee, contingency, and general partner loans and advances;

(15) Deferred Developer Fee;

(16) Bond fees;

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

~~(16)~~(18) The portion of soft costs that are allocated to support ineligible hard costs; and

(19) Other costs limited by Award or NOFA, or as established by the Board.

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

(a) Set-Asides. Specific types of ~~Applications~~Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in Set-Asides. The ~~Supportive Housing~~Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA- (except if CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only ~~whenif~~ identified in ~~thea~~ NOFA-; flexible Set-Asides are not required to be programmed on an annual basis. The amount of a single award may be credited to multiple Set-Asides, in which case the ~~depleted~~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) ~~Supportive Housing~~Soft Repayment Set-Aside. The ~~Supportive Housing~~Soft Repayment (SH/SR) Set-Aside will be ~~limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the~~funded primarily with NHTF allocationallocations received by the Department ~~and not otherwise programmed.~~ ~~Supportive Housing and.~~ The Soft Repayment ~~may be two independent set-asides in the NOFA, in order to accommodate fund source requirements. The SH/SR Set-Aside is reserved for developments that are not able to support amortizing debt due to higher costs for supportive services~~with providing Supportive Housing and/or extremely low-income and rent restrictions- that would not exist otherwise. Soft repayment loans may be structured as deferred payable, deferred forgivable, or Surplus Cash flow loans at an interest rate as low as zero percent. It is the responsibility of the Applicant to account for any Eligible Basis and/or taxable event implications when requesting any of the potential loan structures available in this set-aside. Applicants seeking to qualify under this set-aside must propose Developments that meet either the requirements of clause (i) or (ii)

of this subparagraph:

- (i) The Supportive Housing requirements in 10 TAC §11.1(d)(121) including the ~~other~~ underwriting ~~consideration~~considerations for Supportive Housing Developments in 10 TAC §11.302(g)(3) of ~~the~~this title (relating to Underwriting and Loan Policy~~);~~; or
- (ii) The requirements in subclauses (I) - ~~(IIIIV)~~ of this clause, ~~funding exclusively units targeting 30% Area Median Income (AMI) households;~~

~~(I)~~for which all Units assisted with MFDL funds:

(I) Must be available for households earning 30% AMI or less and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b);

(II) ~~Any Units assisted with MFDL funds~~ May not also be receiving any project-based subsidy;

(III) ~~May not be receiving~~ tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

~~(III) Units assisted with MFDL~~(IV) May not be restricted to 30% AMI or less by ~~another Department program~~ Housing Tax Credits, or any other fund source.

(B) CHDO Set-Aside. Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, ~~equal to at least 15%,~~ will be set aside for eligible ~~Community Housing Development Organizations (CHDO)~~CHDOs meeting the requirements of the definition of Community Housing Development Organization ~~found~~ in 24 CFR §92.2 and §13.2(4-)of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing ~~in on~~ Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) set-aside, ~~or unless~~ the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor as the result of a disaster declaration. CHDO funds are typically available as fully-repayable amortizing debt consistent with §13.8 of this chapter (relating to ~~Debt Loan~~ Structure Policy) and Underwriting Requirements). In instances where an application submitted under the CHDO Set-Aside also ~~qualifies~~would qualify under the ~~SH/SR Soft Repayment~~ Set-Aside, ~~CHDO~~ funds under this Set-Aside may be structured in accordance with the ~~SH/SR Soft Repayment~~ Set-Aside requirements. A grant for CHDO operating expenses ~~grant~~ may be awarded in conjunction with an award of MFDL funds under ~~the CHDO~~this Set-Aside 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.

(C) General Set-Aside. The General Set-Aside is for all other applications that do not meet the requirements of the ~~SH/SR Soft Repayment~~, ~~CHDO set-asides~~, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be ~~repositioned~~reallocated into the CHDO

Set-Aside in order to fully fund a CHDO award that ~~meets or~~ exceeds the ~~set-aside~~remaining amount in the Set-Aside.

(2) Flexible Set-Asides:

(A) 4% HTC and Bond Layered Set-Aside. The 4% and Bond Layered Set-Aside is reserved for Applications ~~meeting all MFDL requirements that are~~ layered with 4% Housing Tax Credits and Private Bond funds ~~that do 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 ~~tenants~~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 ~~to the extent if~~ sufficient funds are available to award ~~to~~ at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% HTC Layered Set-Aside. The 9% Layered Set-Aside is reserved for Applications ~~meeting all MFDL requirements that are~~ layered with 9% Housing Tax Credits, ~~and 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 9% HTC allocation; however, an allocation of 9% 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 ~~to~~ 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 received directly from HUD in the annual NOFA will be ~~initially~~ allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the ~~set-asides applicable~~ Set-Asides (unless the funds have already been through a RAF). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After expiration of the RAF, remaining funds within each respective Set-Aside may collapse ~~but may still be available within set-asides as on an end date~~ identified in the NOFA. ~~Remaining funds within one or more set-asides may collapse in accordance with the NOFA.~~ All Applications received prior to these collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the ~~RAF~~Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, ~~will~~may 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) Priorities for the Annual NOFA. Complete Applications received during the period of the RAF will be prioritized for review and recommendation to the Board, ~~to the extent that~~ funds are available both in the region and in the Set-Aside under which the Application is received. If insufficient funds are available in a region to fund all Applications then the oversubscribed Applications will be evaluated only after the RAF and/or Set-Aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region or Set-Aside, the Applicant may request to be considered under another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board ~~to the extent~~ funds are available in accordance with the order of prioritization described in paragraphs (1) - (3) of this subsection.

(1) **Priority 1:** Applications not layered with current year 9% 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 ~~will~~may be prioritized based on score within their respective Set-Aside ~~and subregion or region during the RAF for a certain time period to the extent that two or more Applications are received in the same set-aside that request less than or equal to the amount available in the subregion or region. Once the RAF period has ended, Applications will be reviewed on a first come first served basis within their set-aside, or, for certain populations, or for certain geographical areas,~~ as reflected further described in the NOFA.

(2) **Priority 2:** Applications layered with current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation: under the provisions of the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date ~~as described identified in 10 TAC §Chapter 11.2~~ of this title ~~(relating to Program Calendar for Housing Tax Credits). In order for an MFDL application layered with 9% HTC to be considered complete, Applications for both programs must be timely received.~~the QAP. Priority 2 applications will be recommended for approval of the MFDL award at the same meeting when the Board approves the 9% HTC allocations. Applications ~~that are on the wait list for a 9% HTC allocation~~allocations are not guaranteed the availability of MFDL funds. ~~If the applicable NOFA is over-subscribed for MFDL funds, the Applicant will be notified and may amend their Application to accommodate another fund source, as further provided in §13.5(f) of this chapter.~~

(3) **Priority 3:** Applications that are received after the Market Analysis Delivery Date ~~as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits) for 9% HTC Applications on~~ identified in the QAP will generally have a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe an additional prioritization period for certain populations, or for certain geographical areas. Applications layered with 9% HTC that are on the waitlist after the late July Board meeting will be considered Priority 3 Applications; if the Applicant receives an allocation later in the year, the Application Acceptance date will be the date the Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

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

§13.5. Award Process.

(a) **Notice of Funding Availability (NOFA).** All MFDL funds from the annual allocation will be distributed 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 the MFDL program, along with scoring criteria, priorities, award limits, and other Application information. Other funds may be distributed by NOFA or through other lawful methods approved by the Board. ~~Set-aside, RAFasides, RAFs,~~ and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) **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).

(c) **Application Acceptance Date** ~~of Receipt.~~ 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), ~~in addition to the application,~~ 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 ~~are received on~~ have the same Application Acceptance Date, in the same region, (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection 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 9% HTC, will be used to determine the Application's rank.

~~(c) 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). Failure to timely respond to any notice of Deficiency will result in suspension of the Application and reestablishment of the date of receipt of the Application to the final date at which the cure to the notice was received by the Department. If the date of receipt of the Application is reestablished, an Application could be de-prioritized in favor of another Application received prior to the new submission date.~~

(d) 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 habitable Units.

(e) Environmental Clearance. ~~The Department shall use its best efforts to conclude the environmental review of the property expeditiously.~~ All Applicants for MFDL funds, ~~regardless of whether or not the Development Site is in a Participating Jurisdiction,~~ must include the following language in the purchase contract or site control agreement: "~~(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."

(f) Oversubscribed Funds for 9% HTC-Layered Applications. ~~Applications also requesting 9% HTC may have the ability to revise financing prior to award.~~ 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 9% 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 Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

(g) Source of Direct Loan Funds. When determining the source of funds that an Application will receive when recommended for an award ~~from a set-aside that has multiple sources of funds,~~ the Department will ~~prioritize~~ select sources of funds for recommended Applications ~~in the order described, as provided~~ in paragraphs (1) ~~–(3)–(4)~~ of this subsection, ~~which may be limited by the type of activity an Application is proposing and/or the Development Site of an Application. The funds may further be prioritized or assigned to an Application based on limiting repayment risk and other considerations.~~

(1) Federal- The Department will generally select the recommended source of funds that have 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;

(2B) Federal funds that do not have commitment and expenditure deadlines; will be selected next; and

(3C) 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 recommend 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 ~~the Application Applications received under the Annual NOFA~~ for eligibility and threshold ~~at the time of full Application~~ 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 ~~to the Application~~ at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order ~~and of the Application~~ that would have resulted in the Application being ranked below another Application ~~in received prior to the ranking, the Department may terminate the subject~~ Application.

(1) Applicants requesting MFDL as the only source of Department funds ~~may~~must meet the Experience Requirement ~~under 10 TAC §11.~~ as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing evidence of the acceptable documentation listed in §11.204(6)(i)-(ix) of this title evidencing the successful development, and operation for 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)~~ (2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments previously given awards that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

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

(B) Started or completed construction has already started or been completed, regardless of fund source, and are not proposing acquisition and/or rehabilitation, must be found eligible by the Board. The Board may find other applicants eligible for good cause such as Developments assisted by the Department that have encountered adverse factors beyond their control that could materially impair their ability to provide the affordable housing.

(3) An Application that requires a finding of an eligibility by the Board determination must identify that fact prior to, or in their Application so that the staff may present the matter to the Board for 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, as applicable. A finding of eligibility under this section does not guarantee an award. In general, these applications Applications requiring eligibility determinations generally will not be funded with HOME, or NHTF/NSP funds.

(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and under this subsection will not be considered more than 3060 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 the Board to consider would consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control which that could not have been prevented by timely start of construction 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 weather events, typical construction or financing delays.

(D) Applications for Developments that previously given awards received an award from the Department that have not yet achieved Construction Completion, Applications in within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed in the original Application the last time that

the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

~~(i)~~ **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; ~~provided,~~ however, ~~that~~ any changes in federal requirements will be reflected in the contractual terms ~~and.~~ Further provided, that if, after award, but prior to execution of such Contract, there are new rules in effect, the ~~Applicant~~ 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 in effect at the time of Application.

§13.6. Scoring Criteria.

The criteria identified in paragraphs (1) - (7) of this section will be used in the evaluation and ranking of Applications ~~to the extent that if~~ other Applications ~~were received on~~ have the same ~~date and 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. The scoring items used to calculate the score for a 9% HTC Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this chapter ~~to the extent that if~~ an MFDL Application is also concurrently requesting 9% ~~housing tax credits~~ HTC:

(1) Opportunity Index. Applicants eligible for points under 10 TAC §11.9(c)(4) (relating to the Opportunity Index) (7 points).

(2) Resident Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to Resident Services) (~~9~~10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to Resident Services) (1 point).

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

(4) Subsidy per Unit. An Application that caps the per 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 ~~Tenants~~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 entire Federal and State Affordability Period.~~Periods.~~ These Units maynot be restricted to 30% or less of AMGIAMI by another fund source~~;~~ however, layering on other HTC Units may be considered for scoring purposes.

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

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

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

~~(6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs (A)–(B) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), both of which pertain to the requirements of the Section 811 Project Rental Assistance Program (Section 811 PRA Program) (10 TAC Chapter 8).~~

~~(A) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the Department's Section 811 PRA Program will do so in order to receive two points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8.~~

~~(B) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC §8.3 (relating to Participation as a Proposed Development) is eligible to receive two points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule (811 Rule), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.~~

~~(7) Tiebreaker. In the event that two or more Applications receives~~**(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% ~~AMGIAMI~~ MFDL Units within the Development that would convert to households at 15% ~~AMGIAMI~~ 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 ~~all applications~~ 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 incentivized as point scoring items in §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 234 Condo limits with the applicable high cost percentage adjustment in effect at the time start date of ~~application~~ 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 ~~or combined with~~ other federal funds that may subsidize a Unit. ~~Stricter per-unit subsidy~~

(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 ~~are allowable and incentivized as point scoring items in §13.6 of this title (relating to Scoring Criteria), subject to high cost factors.~~

(d) **Minimum Number of MFDL Units.** The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits as well as and the cost allocation analysis—ensuring that, which will ensure 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 ~~will determine the amount of MFDL units required.~~

§13.8. Loan Structure and Underwriting Requirements.

(a) **Loan Structures.** Except for awards made under the ~~SH/SR~~ Soft Repayment Set-Aside, all Multifamily Direct Loans awarded under the annual NOFA will be underwritten as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, and a 30 year amortization with a loan term that matches the term of any superior loans (within six months) at the time of Application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the Development feasible under all applicable sections of this chapter and 10 TAC §11.302 (relating to Underwriting Rules and Guidelines), ~~and subsection (c) of this section or may conclude the Development is infeasible and recommend denial.~~ 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 ~~of this title~~ (relating to Pre-Closing Amendments to Direct Loan Terms).

(b) **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, and may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan that will allow the Department to mitigate any increased risk, or 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 ~~amount~~amounts of any superior loans after that cause the initial total DCR to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with §11.302 of this title (relating to Underwriting Report ~~must~~Rules and Guidelines), the award may be approved by the Board subject to termination.

(c) Criteria for Construction-to-Permanent Loans. Direct Loans awarded through the Department must adhere to the following criteria as identified in paragraphs (1) - ~~(7)~~(9) 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 ~~term for permanent loans~~ 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, the construction term shall be 24 months;

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

(3) The permanent term for MFDL loans at the time of award shall be no less than 10 years and no greater than 40 years and the amortization schedule shall be 30 years. 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;

~~(4)~~ Amortized loans shall be structured with a regular monthly payment beginning on the first day of the 25th full month following the actual date of loan closing and continuing for the loan term;

~~(5)~~ If the first lien mortgage is a federally insured HUD ~~or FHA~~ mortgage, the Department may approve a loan structure with annual payments beginning the following year after the end of the construction term payable from surplus cash flow as defined by HUD provided that the ~~debt coverage ratio~~DCR, inclusive of the loan, continues to meet the requirements in this ~~subchapter~~title;

~~(6)~~ If the proposed first lien is a federally insured HUD ~~or FHA~~ mortgage that requires the Direct Loan to be subject to 75% of surplus cash flow as defined by HUD, staff will require the debt service coverage ratio on both the ~~federally~~HUD insured loan and the Department's loan - as restricted to 75% of Surplus Cash Flow - to continue to meet the minimum 1.15 DCR in accordance with 10 TAC §11.302(d)(4)(D) (relating to ~~Underwriting Rules~~Acceptable Debt Coverage Ratio Range), and ~~Guidelines~~); may require payment of the remaining 25% from

other sources;

(~~57~~) 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 balloon 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 USDA Rural Development;

(~~68~~) If the Direct Loan amounts ~~to~~are more than 50% of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include ~~the~~ documents ~~as~~ identified in either subparagraphs (A) ~~or~~ (B) of this paragraph:

(A) A letter from a Third Party CPA 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; and

(~~79~~) 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 ~~20~~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 ~~20%-10%~~ that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. 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. ~~This support case will be reviewed by staff, and staff will provide their assessment and recommendation to the Board. The Applicant's support should include all mitigating or supporting factors including, by way of example, and not by way of limitation, performance bonds or collateral, lines of credit, or intercreditor agreements;~~ 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) For Applicants proposing new construction, an "as completed" appraisal that reflects the prospective value of the completed property consistent with rent and income restrictions-~~

~~proposed in the Application pursuant to 10 TAC §11.304 (relating to Appraisal Rules and Guidelines) which results in total repayable loan to value of not greater than 80% must be provided.~~

~~(C) For Applicants proposing rehabilitation, the "as is" appraisal required by 10 TAC §11.205(4) (relating to Required Third Party Reports) may meet this requirement without needing an "as-completed" appraisal provided the loan to value is not greater than 80%.~~

(B) Evidence submitted through the Application Submission Process that shows the Direct Loan amount is not greater than 80% of the Total Housing Development Costs.

(d) Evaluations. All Direct Loan Applicants ~~where other~~ in which third-party financing entities are part of the sources of funding must ~~submit~~ include a pro forma and lender approval letter evidencing review of the Development and the Principals as described in 10 TAC §11.9(e)(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.

~~(e)~~ **(e) Criteria for Construction Only Loans.** Direct 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 Direct Loan is the only construction loan, the term may not exceed 24 months;

(2) The interest rate will be specified in the NOFA and approved by the Board; and

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

(f) Criteria for Permanent Refinance Loans. If the Department's Loan will repay existing debt, the first payment will be due the month after the month of loan closing, unless the Board approves another date.

(g) 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 2012 ~~2015~~ International Existing Building Code (IEBC) or International Building

Code (IBC)), as applicable. ~~Rehabilitation~~ 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)–(6)~~subsections (a) - (e) of this section:

~~(1)~~(a) Third-Party Recommendations. Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any ~~Physical Conditions Assessment~~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)~~(b) Lead and Asbestos Testing. For properties originally constructed prior to 1978, the ~~Physical Conditions Assessment and rehabilitation~~Scope of Work and Cost Review and scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the ~~rehabilitation~~Development Owner must implement the mitigation recommendations of the testing report;

~~(3) All accessibility requirements pursuant to 10 TAC Chapter 1, Subchapter B must be met;~~

~~(4)~~(c) 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;

~~(5)~~(d) Properties in Catastrophe Areas. Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

~~(6) Should IEBC be more restrictive than local codes, or should local codes not exist, then the Development must meet the requirements imposed by IEBC.~~

~~§13.10~~(e) Minimum Construction Standards. Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD.

§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 ~~Direct Loan~~MFDL eligible costs. As a result of this requirement, the Department will ~~always~~ use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit ~~included~~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. 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. For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203. Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA, or as specifically approved in writing by the Department.

(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 ~~and when assisting distressed developments.~~ 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 ~~layered~~ used in a 9% or 4% 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. Unit designations may not change to meet Income Averaging requirements.

§13.11. Post-Award Requirements.

~~(a)~~ Direct Loan awardees must ~~execute an~~ satisfactorily complete the following Post-Award Letter and Loan Term Sheet provided by the Department within 30 calendar days ~~Requirements after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions approved by the Board.~~

~~(b)~~ approval date. If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the ~~Applicant~~ 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)~~ (b) Extensions to the benchmarks in paragraphs (1) - (4) and (7) of this subsection may only be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

(1) Award Letter and Loan Term Sheet (ALLTS). If provided, Direct Loan awardees must execute and return to the Department an Award Letter and Loan Term Sheet provided by the Department within 15 calendar days after receipt. The ALLTS 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, Direct Loan awardees must submit a fully completed environmental review (if applicable) including any applicable reports to the Department within 90 calendar days ~~after 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 14 calendar days of the Board approval date. Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance ~~may lead~~ will be subject to termination of the Direct Loan award.

~~(d)~~ (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 ~~60 days of environmental clearance being obtained, or, if environmental clearance is not required, within 60~~ 30 calendar days after receipt of the Board approval date ~~Contract~~.

~~(e)~~ (4) Loan Closing and Construction Commencement. Loan closing must occur and construction must begin ~~no later than three~~ on or before the date described in the Contract and ALLTS. If construction has not commenced within 12 months from the effective date of ~~at~~ the Contract. Effective Date, the award may be terminated.

~~(f)~~ (5) 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 §10.402(h) of this title (relating to ~~Housing Tax Credit and Tax Exempt Bond Developments~~Construction Status Report).

~~(g)~~**6) Mid-Construction Development Inspection Letter.** In addition to any other ~~requirements~~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 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 ~~that~~ 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 ~~will~~may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for distribution in accordance with the percentage of Construction Completion.

~~(h)~~**7) Construction Completion.** Construction must be completed, as reflected by the Development's certificate(s) of occupancy ~~and~~(if applicable), Certificate of Substantial Completion (AIA Form G704), and issuance of a final development inspection request must be submitted toClosed Final Development Inspection Letter by the Department within ~~18~~the construction term of any superior construction loan(s) or 24 months of the actual loan closing date if no superior construction loan(s) exist, with the repayment period beginning at the same time as the repayment on any superior permanent loan(s) or on the first day of the 25th month following the actual date of loan closing- if no superior permanent loan(s) exist, unless extended in accordance with applicable provisions in §13.12 or §13.13 of this chapter. The ~~final development inspection letter~~Closed Final Development Inspection Letter issued by the Department will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements-

~~(i) Receipt of a Closed Final Development Inspection Letter, indicating that all deficiencies identified in the Final Inspection Letter have been corrected, must occur within 24 months of the actual date of loan closing;~~ this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter ~~requirement.~~ required by this subsection.

~~(j) Extensions to the benchmarks in subsections (a)–(i) of this section may only be approved by the Executive Director or authorized designee in accordance with §13.12 or §13.13 of this chapter as applicable;~~

~~(k)~~**8) Initial Occupancy.** Initial occupancy of all MFDL assisted Units by eligible ~~tenants~~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;

~~(9)~~ **Per Unit Repayment.** Repayment will 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.

~~(10)~~ **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.

~~(11)~~ **Loan Closing.** In preparation for closing any Direct Loan, the Development Owner must submit the items described in ~~paragraphs (1)–(7) of this subsection;~~ 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.

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

~~(2B)~~ 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.

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

~~(4C)~~ When Department funds have a first lien position during the construction period, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department is required. ~~Such assurance of completion will run to the Department as obligee.~~ Development Owners utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

~~(5D)~~ Documentation required for preparation of closing loan documents includes, but is not limited to:

~~(A)(i)~~ Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a 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) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

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

(Civ) 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

(Dv) If layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);).

~~(E) Final Development information, including but not limited to a final development cost schedule, sources and uses, operating pro forma, annual operating expenses, cost categories for the Direct Loan funds, updated written financial commitments or term sheets and any additional financing exhibits that have changed since the time of application.~~

~~(E)~~ If required by the fund source, prior to Contract Execution unless an earlier period is described in ~~Chapter~~Chapters 10, 11, or 112 of this title, the Development Owner must provide verification of:

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

(Bii) Site and Neighborhood clearance from the Department;

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

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

(7E) 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.

(e12) **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.

~~(1A)~~ Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) 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. ~~In the event the Development receives funding that requires the Department's funding to be in a subordinate position, the individual who is able to control the Development (all such individuals if more than one possess such power jointly and severally) will execute a personal guaranty in favor of the Department that in the event that the Development fails to fulfill its requirements of affordability for the required period, and as a result the Department is required to repay funds to the U.S. Department of Housing and Urban Development using non-federal funds and the net proceeds available to the Department after a foreclosure, deed in lieu of foreclosure, or similar disposition of the Development are insufficient to make such repayment, the guarantor(s) will jointly and severally guarantee repayment of that amount.~~

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

~~(3B)~~ 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.

(p13) Disbursement of Funds. The Borrower must comply with the requirements in ~~paragraphs (1) – (11)~~ subparagraphs (A) - (K) of this ~~subsection~~ 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 ~~may be~~ is required with a request for disbursement:

~~(1A)~~ 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;

~~(2B)~~ 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 ~~G703~~ HUD equivalent form;

(3C) 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;

(4D) At least 50% of ~~the~~Direct Loan funds will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(5E) The initial draw request for the Development must be entered into the Department's Housing Contract System no later than ~~10 business~~15 calendar days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(6E) 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;

(7G) Developer Fee disbursement shall be limited by subparagraph (H) of this paragraph ~~(9) of this subsection~~ and is further conditioned upon clauses (i) - (iii), as applicable:

(A*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

(B*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

(C*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; and

~~(8H)~~ 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;

~~(9I)~~ Table Funding ~~requests~~ 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 and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been ~~completed and~~ submitted to and accepted by the Department at least 10 calendar days prior to ~~planned~~ the anticipated closing date;

~~(10J)~~ Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion. ~~Ten percent~~ 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 ~~subparagraphs (A) - (G)~~ clauses (i) - (xii) of this ~~paragraph~~ subparagraph are required in order to approve the final draw request:

~~(A)~~ Fully executed Certificate of Substantial Completion (AIA Form G704) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

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

~~(C)~~ For Developments not layered with Housing Tax Credits, a Closed Final

Development Inspection Letter from the Department;

~~(Div)~~ For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD maintains Davis-Bacon oversight as a result of a HUD-insured first lien loan;

~~(Ev)~~ Certificate(s) of Occupancy (if New Construction);

~~(Fvi)~~ 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

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

~~(Hk)~~ The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted unless Development Period has been extended in accordance with 10 TAC §13.12(3) or 10 TAC §13.13 of this chapter ~~(relating to, as applicable.~~

(14) 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

§13.12(a) Executive Approval Required Pre-Closing Amendments to Direct Loan Terms

The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this section. Board approval is necessary for any other changes prior to closing.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(e) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must document submit sufficient evidence documenting good cause, which includes including but is 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 processes a process required to close; including, but not limited to:

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

(ii) The environmental review 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 sufficient time at least 45 days to complete the review;

(2) Changes to the 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 ~~date~~ required in 10 TAC §13.11(h) or (i), respectively, g) 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. ~~Such a request will generally not be approved prior to initial loan closing;~~

(4) Changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount; up to 20%, may be approved prior to closing.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development; 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 ~~generally~~ not be approved unless the Applicant competes for the additional funding under an open NOFA;

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

(b) 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(h), (i),g)~~ or ~~(pm)~~(11) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

~~(b)~~**(b) Amendments to MFDL Awards.** Except in cases of Force Majeure, changes to ~~federal~~ terms of awards subject to mandatory HUD reporting requirements will only be processed after the ~~Development~~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 ~~section~~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 §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

(2) ~~Resubordination~~**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-~~or full~~ repayment of the MFDL lien is made with the request; and

(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.

~~(E)(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.~~

~~(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~~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 §10.406 of this title (relating to Ownership Transfers), and no prospective Owner (including entity, person, Board Member, as those terms are defined in 2 CFR Part 180, including Limited Partners) have been subject to state Debarment or are on the Federal Suspended or Debarred Listing.