BOARD BOOK OF SEPTEMBER 6, 2018

J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT IN FISCAL YEAR 2017

The Texas Department of Housing and Community Affairs ("TDHCA") is the State of Texas' lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals to be served and total funding either administered or pledged for Fiscal Year 2017 (September 1, 2016, through August 31, 2017) – are set out below:

Multifamily New Construction & Rehabilitation:
Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs.

Total Households Served: 8,583
Total Funding: $886,263,818*

Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:
Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program.

Total Households Served: 326
Total Funding: $17,323,164

Single Family Homeownership Program:
Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs.

Total Households Served: 5,870
Total Funding: $870,405,445

Rental Assistance:
Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

Total Households Served: 1,678
Total Funding: $13,668,121

Weatherization Assistance Program:
Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education.

Total Households Served: 3,349
Total Funding: $24,379,360

Homelessness
Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program.

Total Individuals Served: 36,555
Total Funding: $15,009,483

Comprehensive Energy Assistance Program:
Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

Total Households Served: 134,465
Total Funding: $94,482,215

Community Services Block Grant:
Provides administrative support for essential services for low-income individuals through Community Action Agencies.

Total Individuals Served: 492,727
Total Funding: $31,237,527

Sources: this data comes from the TDHCA 2018 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2017 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

Note: Some households may be served by more than one TDHCA program.

*FY2017 data for the Multifamily program is artificially low, largely due to federal tax reform's timing effects on 4% housing tax credit developments. A significant amount of 4% activity was delayed into the 4 months after FY2017 (Sept., Oct., and Nov., and Dec.).

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
8:00 AM
September 6, 2018

Texas Capitol Building
Capitol Extension Room E2.016
1100 Congress Avenue
Austin, TX 78701

CALL TO ORDER
ROLL CALL — **J.B. Goodwin, Chair**
CERTIFICATION OF QUORUM

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

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

Resolution recognizing October as *National Energy Awareness Month*

CONSENT AGENDA
Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Tex. Gov't Code Chapter 551. Action may be taken on any item on this agenda, regardless of how designated.

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

EXECUTIVE

a) Presentation, discussion, and possible action on Board meeting minutes summaries for May 24, 2018; June 28, 2018; July 12, 2018; and July 26, 2018 — **J. Beau Eccles**, Board Secretary

LEGAL

b) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Champions at North Dallas f/k/a Brighton's Mark (Bond 06018 / CMTS 2559) — **Jeffrey T. Pender**, Deputy General Counsel

c) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Ridge at Trinity (HTC 04608 / BOND 04608B / CMTS 4198)

MULTIFAMILY FINANCE

d) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer — **Marni Holloway**, Director of MF Finance

18409	John Cramer Apartments	El Paso
18410	Ambrosio Guillen Apartments	El Paso
18411	MLK Memorial	El Paso
18420	Walnut Creek	Austin
18422	Elysium Grand	Austin

e) Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for Sandstone Foothills Apartments (HTC #18118)

PROGRAM CONTROLS AND OVERSIGHT

f) Presentation, discussion, and possible action to authorize and delegate signature authority to the General Land Office Land Commissioner to execute any releases of lien for Community Development Block Grant Disaster Recovery Hurricane Rita, Round II, activities

Homero Cabello
Director of Program Controls and Oversight

MULTIFAMILY ASSET MANAGEMENT

g) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

99118	Rosemont of Hillsboro Phase I	Hillsboro
01001	Rosemont of Hillsboro Phase II	Hillsboro
01108	Logan's Pointe	Mount Vernon

Rosalio Banuelos
Acting Director of MF Asset Management

h) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Trust Fund Land Use Restriction Agreement

853339	Stone Ranch Apartment Homes	Killeen

i) Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609

14414	The Savannah at Gateway	Plano
15303	Reserve at Engel Road	New Braunfels
15407	Reserve at Quebec	Fort Worth
16184	Reserve at Hagan	Whitehouse

j) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

15232	Cardinal Point	Austin

k) Presentation, discussion, and possible action to consider a waiver of 10 TAC §10.101(b)(4)(I)

17347	Alton Plaza	Longview

BOND FINANCE

l) Presentation, discussion, and possible action regarding Resolution No. 19-001 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 90; approving the form and substance of the program manual and the program summary; authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 90; and containing other provisions relating to the subject

Monica Galuski
Director of Bond Finance

m) Presentation, discussion, and possible action authorizing publication of a Notice of Public Hearing for the issuance of Single Family Mortgage Revenue Bonds

n) Presentation, discussion, and possible action regarding Resolution No. 19-002 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject

RULES

o) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.1, Reasonable Accommodation Requests, and an order adopting new 10 TAC §1.1, Reasonable Accommodation Requests to the Department, and directing their publication in the *Texas Register*

Brooke Boston
Director of Programs

p) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.2, Department Complaint System, and an order adopting new 10 TAC §1.2, Department Complaint System, and directing their publication in the *Texas Register*

q) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.4, Protest Procedures for Contractors, and an order adopting new 10 TAC §1.4, Protest Procedures for Contractors, and directing their publication in the *Texas Register*

r) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.6, Historically Underutilized Businesses, and an order adopting new 10 TAC §1.6, Historically Underutilized Businesses, and directing their publication in the *Texas Register*

s) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.9, Texas Public Information Act Training for Department Employees, and directing its publication in the *Texas Register*

t) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.7, Staff Appeals Process, and 10 TAC §1.8, Board Appeals Process; and an order adopting new 10 TAC §1.7, Appeals Process, and directing publication in the *Texas Register*

u) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.10, Public Comment Procedures, and an order adopting new 10 TAC §1.10, Public Comment Procedures, and directing publication in the *Texas Register*

v) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.17, Alternative Dispute Resolution and Negotiated Rulemaking, and an order adopting new 10 TAC §1.17, Alternative Dispute Resolution, and new 10 TAC §1.12, Negotiated Rulemaking, and directing publication in the *Texas Register*

w) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.13, Contested Case Hearing Procedures, and an order adopting new 10 TAC §1.13, Contested Case Hearing Procedures, and directing publication in the *Texas Register*

x) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and an order adopting new 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and directing publication in the *Texas Register*

y) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.18, Colonia Housing Standards, and directing publication in the *Texas Register*

z) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.19, Reallocation of Financial Assistance, and an order adopting new 10 TAC §1.19, Reallocation of Financial Assistance, and directing publication in the *Texas Register*

aa) Presentation, discussion, and possible action on an order adopting the rule review in compliance with Tex. Gov't Code, §2306.039, without changes, for 10 TAC §1.22, Providing Contact Information to the Department, and directing publication in the *Texas Register*

bb) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for public comment in the *Texas Register*

cc) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule; and an order proposing new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and directing publication for public comment in the *Texas Register*

dd) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC §8.3, Participation as a Proposed Development, relating to the Section 811 Project Rental Assistance Program, and directing its publication in the *Texas Register*

ee) Presentation, discussion, and possible action on an order to readopt with changes 10 TAC §1.11, Definition of Service-Enriched Housing, and directing that it be published for readoption in the *Texas Register*

Elizabeth Yevich
Director of Housing Resource Center

ff) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.15, Integrated Housing Rule, and an order adopting new 10 TAC §1.15, Integrated Housing Rule, and directing publication for adoption in the *Texas Register*

gg) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §6.404 Distribution of WAP Funds, and an order proposing new 10 TAC §6.404 Distribution of WAP Funds, and directing publication for public comment in the *Texas Register*

Michael DeYoung
Director of Community Affairs

hh) Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, and directing publication for public comment in the *Texas Register* — **Abigail Versyp**, Director of HOME and Homelessness Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Report on the Department's Interim Balance Sheet/Statement of Net Position for the period ended May 31, 2018 — **David Cervantes**, Director of Administration

b) Report on the Department's 3rd Quarter Investment Report in accordance with the Public Funds Investment Act

c) Report on the Department's 3rd Quarter Investment Report relating to funds held under Bond Trust Indentures — **Monica Galuski**, Director of Bond Finance

d) TDHCA Outreach Activities, (July-September) — **Michael Lyttle**, Director of External Affairs

ACTION ITEMS

ITEM 3: REPORT ITEMS

a) Report on the Migrant Labor Housing Facilities Licensing Program — **Tom Gouris**, Director of Special Initiatives

b) Report on Department's Fair Housing Activities — **Suzanne Hemphill**, Manager of Fair Housing, Data Mgmt, and Reporting

ITEM 4: INTERNAL AUDIT

a) Report on the meeting of the Internal Audit and Finance Committee — **Sharon Thomason**, Chair of Audit and Finance Committee

b) Presentation and possible approval of the Annual Internal Audit Plan for Fiscal Year 2019 — **Mark Scott**, Director of Internal Audit

c) Presentation and review of the Internal Audit of the Neighborhood Stabilization Program close out process

ITEM 5: BOND FINANCE

Presentation, discussion, and possible action regarding Resolution No. 19-004 approving amendments to program documents for Taxable Mortgage Program; authorizing the execution of documents and instruments relating to the foregoing; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject — **Monica Galuski**, Director of Bond Finance

ITEM 6: EXECUTIVE

Presentation by Beth Van Duyne, HUD Regional Administrator for Region VI, on the Rental Assistance Demonstration Program

ITEM 7: RULES

a) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing publication for public comment in the *Texas Register* — **Marni Holloway**, Director of MF Finance

b) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan (which will incorporate into Chapter 11 substance from the Uniform Multifamily Rules being repealed from 10 TAC Chapter 10, Subchapters A, B, C, D, and G), and directing its publication for public comment in the *Texas Register*

c) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing publication for public comment in the *Texas Register*

d) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing publication for public comment in the *Texas Register* — **Monica Galuski**, Director of Bond Finance

e) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities, and directing publication for public comment in the *Texas Register* — **Tom Gouris**, Director of Special Initiatives

f) Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register* — **Rosalio Banuelos**, Acting Director of MF Asset Management

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

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public): — **J.B. Goodwin**, Chair

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

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

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

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

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre

licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.
De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.
NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Texas Department of Housing and Community Affairs
RESOLUTION

WHEREAS, the U.S. Department of Energy has designated October as National Energy Awareness Month;

WHEREAS, the Weatherization Assistance Program, the nation's largest residential energy-efficiency program, was established by the U.S. Department of Energy in 1976 to make homes more energy-efficient, safer, and healthier for those with low and moderate incomes;

WHEREAS, the Texas Department of Housing and Community Affairs administers a Weatherization Assistance Program, funded with both U.S. Department of Energy funds and Low Income Home Energy Assistance Program funds, which is operated by a network of community organizations, nonprofits and local governments;

WHEREAS, the Texas Weatherization Assistance Program has injected millions of dollars into communities to improve thousands of homes, thereby helping Texans, including many of whom are elderly, disabled, or families with young children, conserve energy and reduce utility costs;

WHEREAS, the Program conducts computerized energy audits and uses advanced diagnostic technology, investing as much as $7,261 in a home and providing an array of improvements that include weather stripping of doors and windows; patching cracks and holes; insulating walls, floors, and attics; replacing doors, windows, refrigerators, and water heaters; and repairing heating and cooling systems; and

WHEREAS, weatherization efforts contribute to the state's economic, social, and environmental progress by creating jobs; prompting the purchase of goods and services; improving housing; stabilizing neighborhoods; eliminating carbon emissions; and reducing the risk of fires;

NOW, therefore, it is hereby

RESOLVED, that the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate October 2018, as Energy Awareness Month in Texas.

Signed this sixth day of September 2018.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

J.B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul A. Braden, Member

Sharon Thomason, Member

Leo Vasquez, Member

Asusena Reséndiz, Member

Timothy K. Irvine, Executive Director

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on Board meeting minutes summaries for May 24, 2018; June 28, 2018; July 12, 2018; and July 26, 2018

RECOMMENDED ACTION

Approve the Board meeting minutes summaries for May 24, 2018; June 28, 2018; July 12, 2018; and July 26, 2018.

RESOLVED, that the Board meeting minutes summaries for May 24, 2018; June 28, 2018; July 12, 2018; and July 26, 2018, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
May 24, 2018

On Thursday, the twenty-fourth day of May 2018, at 8:00 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason

J.B. Goodwin served as Chair, and James "Beau" Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously adopted a resolution recognizing June 2018 as Home Ownership Month in Texas.

2) The Board unanimously approved the Consent Agenda as presented except for the following actions:

Removal of sub items 18086 Village at Overlook, San Antonio; and 18250 Sweetbriar Hills in Jasper due to their erroneous inclusion in Item 1(i) – Presentation, discussion and possible action regarding determinations of eligibility under 10 TAC §10.201(1)(m) related to Ineligible Applicants and Applications for 18033 The Miramonte, Fifth Street CDP; 18047 Miramonte Single Living, Fifth Street CDP; 18052 Nacogdoches Lofts, San Antonio; 18053 Alazan Lofts, San Antonio; 18054 Piedmont Lofts, San Antonio; 18086 Village at Overlook, San Antonio; 18096 Patriot Park Family, Plano; 18106 Hallsville Estates, Hallsville; 18109 The Trails at San Angelo, San Angelo; 18186 Avanti at Greenwood, Corpus Christi; 18188 Avanti at Sienna Palms, Weslaco; 18204 Cielo at Mountain Creek, Dallas; 18219 Cypress Creek Apartment Homes at Park South View, Houston; 18250 Sweetbriar Hills, Jasper; 18298 Heritage at Wylie, Wylie; 18306 Campanile on Commerce, Houston; 18320 Seaside Lodge Chesapeake, Seabrook; 18327 Scott Street Lofts, Houston; 18331 Greens at Mission Bend, Houston; 18333 Fulton Lofts, Houston; 18357 Capella, Brownsville; and 18358 Ovation Sr Living, Brownsville.

Moving Item 1(k) – Report on required Housing Tax Credit notifications made under 10 TAC §11.8(b)(2)(B) with a department-provided template, and possible action to accept notifications made using a superseded version of the template as satisfying the current rule – to the Action Item Agenda.

Correcting Paragraph D of §6.213 Board Responsibility of Item 1(l) – Presentation, discussion, and possible action on an order proposing the repeal of §2.203 Termination and Reduction of Funding for CSBG Eligible Entities; an order proposing new §2.203 Termination and Reduction of Funding for CSBG Eligible Entities; an order proposing the repeal of §2.204, Contents of a Quality Improvement Plan; an order proposing new §2.204, Contents of a Quality Improvement Plan; an order proposing the repeal of 10 TAC Chapter 6 Community Affairs Programs: §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; §6.205 Limitations on Use of Funds, §6.206 CSBG Needs Assessment, Community Action Plan, and

Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units and §6.415 Health and Safety and Unit Deferral; and an order proposing new 10 TAC Chapter 6 Community Affairs Programs: §6.1 Purpose and Goals, §6.2 Definitions, §6.3 Subrecipient Contract, §6.7 Subrecipient Reporting Requirements, §6.8 Applicant/Customer Denials and Appeal Rights; §6.205 Limitations on Use of Funds, §6.206 CSBG Assessment, Community Action Plan, and Strategic Plan, §6.207 Subrecipient Requirements, §6.213 Board Responsibility, §6.214 Board Meeting Requirements; §6.301 Background and Definitions, §6.304 Deobligation and Reobligation of CEAP Funds, §6.307 Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households, §6.309 Types of Assistance and Benefit Levels, §6.312 Payments to Subcontractors and Vendors; §6.403 Definitions, §6.405 Deobligation and Reobligation of Awarded Funds, §6.406 Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria, §6.407 Program Requirements, §6.412 Mold-Like Substances, §6.414 Eligibility for Multifamily Dwelling Units and §6.415 Health and Safety and Unit Deferral; and directing that they be published for public comment in the *Texas Register* – by testimony from Michael DeYoung, TDHCA Director of Community Affairs.

Heard a letter read into the record from the Honorable José Rodriguez, State Senator, Texas Senate District 29, in support of staff recommendation on Item 1(c) – Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit ("HTC") Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s) 8609.

Heard information from Tim Irvine, TDHCA Executive Director, on Item 2(a) – TDHCA Outreach Activities, (April-May) – regarding a meeting the Department had with representatives from ADAPT Texas regarding the importance of accessible, affordable, and integrated housing.

3) Chairman Goodwin used his discretion to take agenda items out of order and the Board took up Action Item 6(b) – Presentation, discussion, and possible action on timely filed scoring appeals under 10 TAC §10.901(13) of the Department's Multifamily Program Rules relating to Fee Schedule, Appeals and other Provisions for 18335 Travis Flats Austin – as presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Mr. Eccles and Mr. Irvine. Following public comment (listed below), the Board overruled staff recommendation and approved the appeal.

- The Honorable Greg Casar, City Councilmember, Austin City Council, District 4, provided information on the agenda item
- The Honorable Sarah Eckhardt, County Judge, Travis County, provided information on the agenda item
- Janine Sisak, DMA Development and representing Travis Flats, testified in opposition to staff recommendation

4) Action Item 3(a) – Report on Department's Outreach and Citizen/Community Participation Plan for the Analysis of Impediments to Fair Housing Choice – was presented by Suzanne Hemphill, TDHCA Fair Housing Project Manager. The Board heard the report and unanimously accepted it.

5) Action Item 3(b) – Report of and possible action regarding Multifamily Workout Plan for Angelica Homes Corporation, HOME #539109 – was presented by Matt Zimmerman, TDHCA Asset Management staff. The Board unanimously approved staff recommendation for the plan.

6) Action Item 3(c) – Report on the Internal Audit review of the Emergency Solutions Grants program – was presented by Mark Scott, TDHCA Director of Internal Audit. The Board heard and unanimously accepted the report.

7) Action Items 4(a) – Review and possible approval of the agency strategic plan for fiscal years 2019-23, and 4(b) – Review and possible approval of policy items for inclusion in the legislative appropriations request for fiscal years 2020-21 – were presented by Ms. Thomason, Chair of TDHCA Governing Board Audit and Finance Committee, and Michael Lyttle, TDHCA Director of External Affairs. The Board unanimously approved staff recommendation to approve the agency strategic plan and inclusion of the policy items for the legislative appropriations request.

8) Action Item 5 – Presentation, discussion, and possible action authorizing the Department to submit an application for Mainstream Housing Vouchers in response to a Notice of Funding Availability released by the U.S. Department of Housing and Urban Development, and if successfully awarded to operate such program – was presented by Brooke Boston, TDHCA Director of Programs. The Board unanimously approved staff recommendation to submit the housing vouchers application.

9) Action Item 6(a) – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Crosby Plaza) Series 2018 Resolution No. 18-021 and a Determination Notice of Housing Tax Credits – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to issue the bonds and credits.

10) Action Item 6(c) – Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2016 Qualified Allocation Plan ("QAP") related to Credit Returns Resulting from Force Majeure Events and a waiver of 10 TAC §10.204(7)(A)(i)(III) related to Financing Requirements for No. 16114, The Veranda Townhomes – was presented by Ms. Holloway. The Board unanimously approved staff recommendation, with conditions as outlined by staff, for approval of the extension and waiver requests.

11) Action Item 1(k) – Report on required Housing Tax Credit notifications made under 10 TAC §11.8(b)(2)(B) with a department-provided template, and possible action to accept notifications made using a superseded version of the template as satisfying the current rule – was presented by Ms. Holloway with additional information from Mr. Irvine. Following public comment (listed below), the Board heard and unanimously accepted the report.

- Donna Rickenbacker, Marquis Development, testified in opposition to staff recommendation
- Nathan Kelly, Blazer Residential, testified in opposition to staff recommendation

12) At 9:29 a.m., the Board went into Executive Session and reconvened in open session at 9:55 a.m. No action was taken in Executive Session.

13) Mr. Braden moved that the Board authorize staff to enter into a letter of intent with Los Robles Development Company, Inc. for the sale of the Alpine Retirement Community, 901 Orange Street, Alpine, Brewster County, Texas, and move forward with that sale after appropriate due diligence, and for staff to appropriately address the reserves with respect to such property as part of that sale. The motion was seconded by Ms. Thomason and unanimously approved by the Board.

14) The following public comment was made on matters other than items for which there were posted agenda items:

- Tamea Dula, Coats Rose, provided comment on the action taken by the Board on Item 1(k)

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 9:57 a.m.   The next meeting is set for Thursday, June 28, 2018.

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Secretary

Approved:

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Chair

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
June 28, 2018

On Thursday, the twenty-eighth day of June 2018, at 8:00 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James "Beau" Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented except for removal of sub items 18217 Cypress Creek at Santa Fe (pulled for consideration at later date) and 18274 Hill Court Villas (moved to Action Item agenda) from Item 1(q) – Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(2) related to Applicant Disclosure of Undesirable Site Features for 18086 The Village at Overlook Parkway, San Antonio; 18091 Lavon Senior Villas, Garland; 18099 Waters Park Studios, Austin; 18217 Cypress Creek at Santa Fe, Santa Fe; 18274 Hill Court Villas, Granbury; 18314 Reserves at Maplewood, Wichita Falls; 18320 Seaside Lodge, Seabrook; 18370 Heritage Tower, Longview; and 18383 Provision at Lake Houston, Houston.

2) Action Item 3(a) – Report on the meeting of the Audit and Finance Committee and Action on recommendations of that committee for (i). Approval of the updated Internal Audit Charter; (ii). Approval of the Annual Operating Budget; and (iii). Approval of the Housing Finance Division annual operating budget – was presented by Ms. Thomason, Chair of TDHCA Governing Board Audit and Finance Committee. The Board unanimously approved the committee's recommendations on all three items.

3) Action Item 3(b) – Report and possible action on guidance related to income averaging for amendments, compliance monitoring, and future Qualified Allocation Plans – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Tim Irvine, TDHCA Executive Director. The Board heard the report, took public comment (listed below), and accepted the report.

- Mike Sugrue, Stoneleaf Properties, provided information on the agenda item

4) Action Item 4(a) – Presentation, discussion, and possible action on Resolution No. 18-023 authorizing the issuance and delivery of Texas Department of Housing and Community Affairs Series 2018 Issuer Note; approving the form and substance of related documents; authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this Resolution; and containing other provisions relating to the subject – was presented by Monica Galuski, TDHCA Director of Bond Finance.

The Board (absent Mr. Braden who was not present for this item) unanimously approved the resolution per staff recommendation.

5) Action Item 4(b) – Presentation, discussion, and possible action on Resolution No. 18-024 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2018 Series A, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this Resolution, and containing other provisions relating to the subject – was presented by Ms. Galuski. The Board unanimously approved the resolution per staff recommendation.

6) Chairman Goodwin exercised his discretion to take agenda items out of order and Action Item 5(h) – Presentation, discussion, and possible action on a request for waiver of rules: 17510 Brook Haven Supportive Housing, Rockdale – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to deny the waiver request.

7) Action Item 5(a) – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Riverside Townhomes) Series 2018 Resolution No. 18-026 and a Determination Notice of Housing Tax Credits – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to issue the bonds and credits.

8) Action Item 5(b) – Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Oaks on Lamar) Series 2018 Resolution No. 18-027 and a Determination Notice of Housing Tax Credits – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to issue the bonds and credits.

9) Action Item 5(c) – Presentation, discussion, and possible action on staff determinations regarding Undesirable Neighborhood Characteristics for 18020 St. Elizabeth Place, Houston; 18038 3rd Street Lofts, Lubbock; 18053 Alazan Lofts, San Antonio; 18054 Piedmont Lofts, San Antonio; and 18250 Sweetbriar Hills Jasper – was presented by Ms. Holloway. Following public comment (listed below), the Board unanimously found 18053 Alazon Lofts to be an ineligible site and found 18020 St. Elizabeth Place, 18038 3rd Street Lofts, 18054 Piedmont Lofts, and 18250 Sweetbriar Hills to be eligible sites.

(Note: staff had no recommendation for any of the sub items other than on 18250 Sweetbriar Hills which was to find the site eligible.)

18053 Alazan Lofts

- Jason Arechiga, NRP Group, provided information on sub item
- Sarah André, Consultant to NRP Group, provided information on sub item

18054 Piedmont Lofts

- Jason Arechiga, NRP Group, provided information on sub item

18020 St. Elizabeth Place

- Michael Lyttle, TDHCA Director of External Affairs, read a letter into the record from the Honorable Carol Alvarado, State Representative, Texas House District 145, which included information on sub item
- Mr. Lyttle read a letter into the record from Rhonda Skillern Jones, President, Houston Independent School District, which included information on sub item

- Sarah André, Consultant to St. Elizabeth Place, provided information on sub item
- Harvey Clemons, Jr., TIRZ #18 in Houston, provided information on sub item
- Warren Simmons, Harris County Constable, Precinct 6, provided information on sub item
- Ray Miller, Houston Housing and Community Development Department, provided information on sub item
- Jerry Davis, City Councilmember, Houston City Council, provided information on sub item
- Kathy Flanagan Payton, Fifth Ward Community Redevelopment Corporation, provided information on sub item
- Les Kilday, Kilday Development, provided information on sub item
- Cynthia Bast, Locke Lord, provided information on sub item
- Barry Palmer, Coats Rose, provided information on sub item
- Lora Myrick, BETCO Consulting, provided information on sub item

18038 3rd Street Lofts

- Sarah André, Consultant for 18038 3rd Street Lofts, provided information on sub item
- Dan Sailler, DS Ventures and Developer of 18038 3rd Street Lofts, provided information on sub item
- Gilbert Salinas, Lubbock citizen, provided information on sub item

10) Action Item 5(d) – Presentation, discussion, and possible action on staff determinations regarding Undesirable Site Features for 18095 Retreat West Beaumont, Beaumont; 18138 Lancaster Senior Village, Fort Worth; 18162 Guadalupe Villas, Lubbock; 18254 Somerset Lofts, Houston; 18274 Hill Court Villas, Granbury; 18327 Scott Street Lofts, Houston; 18335 Travis Flats, Austin; and 18338 The Greenery Houston – was presented by Ms. Holloway with additional information from Mr. Irvine. Following public comment, the Board unanimously approved staff recommendation to find 18095 Retreat West Beaumont (staff's published recommendation was to find the site ineligible but staff revised the recommendation during deliberation on this item), 18138 Lancaster Senior Village, 18274 Hill Court Villas, and 18338 The Greenery (per necessary mitigation) as an eligible sites.

Staff provided no recommendation on 18162 Guadalupe Villas, 18254 Somerset Lofts, and 18335 Travis Flats; all three were ruled by the Board to be an eligible site subject to mitigation based on HUD standards.

The Board did not consider sub item 18327 Scott Street Lofts as it was pulled from the agenda.

18274 Hill Court Villas

- Devin Rhodes, Wheatland Investment Group, testified in opposition to staff recommendation
- Cynthia Bast, Locke Lord attorney, representing 18274 Hill Court Villas, testified in support of staff recommendation

18138 Lancaster Senior Village

- Kathryn Saar, Consultant for 18138 Lancaster Senior Village, provided information on the sub item

18162 Guadalupe Villas

- Donna Rickenbacker, Marque Development and Consultant to 18162 Guadalupe Villas, provided information on the sub item
- Tracy Watson, Phase Engineering, provided information on the sub item

- Kent Hance, Developer for 18162 Guadalupe Villas, provided information on the sub item
- Dan Sailler, DS Ventures, provided information on the sub item
- Jim Howell, Gibco Environmental, provided information on the sub item
- Gilbert Salinas, Lubbock citizen, provided information on the sub item
- Zachary Krotchtengel, representative of the developer for 18162 Guadalupe Villas, provided information on the item
- Stewart Brewer, Lubbock citizen, provided information on the sub item
- Sarah André, tax credit consultant, provided information on the sub item
- Barry Palmer, Coats Rose, provided information on the sub item
- Sonya Brewer, Lubbock citizen, provided information on the sub item

18254 Somerset Lofts

- Donna Rickenbacker, Marque Development and Consultant to 18254 Somerset Lofts, provided information on the sub item
- Ray Miller, Houston Housing and Community Development Department, provided information on sub item

18335 Travis Flats

- Janine Sisak, DMA Development, provided information on the sub item

18338 The Greenery

- Val DeLeon, DMA Development, provided information on the sub item

11) Ms. Holloway, with additional information from Mr. Irvine and Mr. Eccles, presented Action Item 5(e) – Presentation, discussion, and possible action on a report of Third Party Requests for Administrative Deficiency received prior to the deadline for 18000 Evergreen at Garland Senior Community, Garland; 18002 Evergreen at Basswood Senior Community, Garland; 18018 Columbia Renaissance Square II Senior, Fort Worth; 18020 St. Elizabeth Place, Houston; 18026 Maple Park Senior Village, Lockhart; 18033 The Miramonte, Fifth Street; 18038 3rd Street Lofts, Lubbock; 18043 Huntington at Miramonte, Fifth Street; 18047 Miramonte Single Living, Fifth Street; 18053 Alazan Lofts, San Antonio; 18084 Artisan at Ruiz, San Antonio; 18096 Patriot Park Family, Plano; 18138 Lancaster Senior Village, Houston; 18148 Palmview Village, Palmview; 18162 Guadalupe Villas, Lubbock; 18166 The Legacy at Buena Vista, San Antonio; 18186 Avanti at Greenwood, Corpus Christi; 18221 Cypress Creek Apartment Homes at Hazelwood Street, Princeton; 18223 Harvest Park Apartments, Pampa; 18261 Fish Pond at Portland, Portland; 18269 2400 Bryan, Dallas; 18273 Museum Reach Lofts, San Antonio; 18274 Hill Court Villas, Granbury; 18283 Pines at Allen Street, Kountze; 18288 Village at Greenwood, Corpus Christi; 18293 Silver Spur Apartments, Palmview; 18294 The Legacy, Palmview; 18305 Star of Texas Seniors, Montgomery; 18306 Campanile on Commerce, Houston; 18333 Fulton Lofts, Houston; 18347 Avenue Commons, Andrews; 18357 Capella, Olmito; 18358 Ovation Senior Living, Olmito; 18368 The Reserves at Merriwood Ranch, Garland; and 18371 Diboll Pioneer Crossing, Diboll. The Board heard the report, listened to public comment (listed below), accepted the report and asked staff to review and report back on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living.

(Note: Ms. Thomason left the meeting during deliberation this item)

- Kent Hance, Developer, provided information on sub item 18038 3rd Street Lofts

- Nathan Kelly, Blazer Residential, provided information on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living
- Jeremy Bartholomew, Resolution Real Estate, provided information on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living
- Tamea Dula, Coats Rose, provided information on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living
- Ray Miller, Houston Housing and Community Development, provided information on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living
- Barry Palmer, Coats Rose, provided information on sub items 18033 The Miramonte, 18043 Huntington at Miramonte, and 18047 Miramonte Single Living
- Kathryn Saar, tax credit consultant, provided information on sub items 18293 Silver Spur Apartments and 18294 The Legacy
- Russ Michaels, attorney, provided information on sub items 18293 Silver Spur Apartments and 18294 The Legacy
- Emanual Glockzin, Developer for 18305 Star of Texas Seniors, provided information on the sub item

12) Action Item 5(f) – Presentation, discussion, and possible action on timely filed scoring appeals for 18000 Evergreen at Garland Senior Community, Garland; and 18057 Granbury Manor, Granbury – was presented by Ms. Holloway. Sub item 18057 Granbury Manor was pulled from the agenda. Following public comment (listed below), the Board upheld staff recommendation to deny the appeal.

- Tamea Dula, Coats Rose attorney, representing 18000 Evergreen at Garland Senior Community, testified in opposition to staff recommendation
- Brad Forslund, Churchill Residential, and developer of 18000 Evergreen at Garland Senior Community, testified in opposition to staff recommendation
- Tony Sisk, Churchill Residential, and developer of 18000 Evergreen at Garland Senior Community, testified in opposition to staff recommendation
- Jean Latsha, Pedcor Investments, testified in support of staff recommendation
- David Yarden, Amtex Multi Housing, testified in support of staff recommendation
- Barry Palmer, Coats Rose attorney representing 18000 Evergreen at Garland Senior Community, testified in opposition to staff recommendation

13) Action Item 5(g) – Presentation, discussion, and possible action to issue a list of approved applications for 2018 Housing Tax Credits in accordance with Tex. Gov't Code §2306.6724(e) – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to issue the list as presented.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 12:38 p.m. The next meeting is set for Thursday, July 12, 2018.

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Secretary

Approved:

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Chair

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
July 12, 2018

On Thursday, the twelfth day of July 2018, at 8:02 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James "Beau" Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented.

2) Action Item 2(a) – Report on the meeting of the Audit and Finance Committee and action on recommendations of that committee: Approval of the items for inclusion in the Legislative Appropriations Request for fiscal years 2020-21 – was presented by Ms. Thomason, Chair of TDHCA Governing Board Audit and Finance Committee, and Michael Lyttle, TDHCA Director of External Affairs. The Board unanimously approved staff recommendation for the inclusion of several policy items for the legislative appropriations request.

3) Action Item 2(b) – Report regarding schedule and proposed changes for 2019 QAP and Multifamily Rules submission – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Tim Irvine, TDHCA Executive Director. The Board heard the report, listened to public comment (listed below), and accepted and approved the report unanimously.

- Jean Latsha, Pedcor Investments, provided comment on some of the proposed changes

4) Action Item 3(a) – Presentation, discussion, and possible action on timely filed scoring and other appeals under 10 TAC §10.902 of the Department's Multifamily Program Rules relating to the Appeals Process for 18020 St. Elizabeth Place, Houston; 18086 The Village at Overlook Parkway, San Antonio; 18157 Bamboo Estates, Lyford; and 18221 Cypress Creek Apartment Homes at Hazelwood Street, Princeton – was presented by Ms. Holloway with additional information from Mr. Irvine and Mr. Eccles. Sub items 18086, 18157, and 18221 were not considered by the Board as 18086 and 18157 were withdrawn and 18221 was approved by staff prior to the meeting. Following public comment (listed below), the Board approved staff recommendation to deny the appeal by a 4-2 vote (Ms. Reséndiz and Mr. Vasquez voted against).

- Sarah André, consultant for 18020 St. Elizabeth Place, testified in opposition to staff recommendation

- Kathy Flanagan Payton, Fifth Ward Community Redevelopment Corporation, provided information on the item
- Barry Palmer, Coats Rose attorney representing 18020 St. Elizabeth Place, testified in opposition to staff recommendation
- Sally Burchett, Structure Development and affiliated with 18020 St. Elizabeth Place, provided information on the item
- David Koogler, Mark-Dana Corporation, testified in opposition to staff recommendation
- Harvey Clemons, Jr., Fifth Ward Community Redevelopment Corporation, testified in opposition to staff recommendation
- Lora Myrick, BETCO Consulting, testified in support of staff recommendation
- Tamea Dula, Coats Rose attorney representing 18020 St. Elizabeth Place, testified in opposition to staff recommendation

5) Action Item 3(b) – Presentation, discussion, and possible action on a remanded Request for Administrative Deficiency regarding site eligibility under 10 TAC §11.3(g) related to Proximity of Development Sites for 18033 The Miramonte, Fifth Street CDP; 18043 Huntington at Miramonte, Fifth Street CDP; and 18047 Miramonte Single Living, Fifth Street CDP – was presented by Ms. Holloway with additional information from Mr. Irvine and Mr. Eccles. As staff had no recommendation on this item and following public comment (listed below), the Board unanimously found the sites to be eligible and instructed staff to further define the "future rules" around contiguity.

(Note: Ms. Reséndiz left the meeting during deliberation on this item)

- Tamea Dula, Coats Rose attorney representing the applicant, provided information on the item
- Barry Palmer, Coats Rose attorney representing the applicant, provided information on the item
- Mark Musemeche, MGroup and the applicant, provided information on the item
- Nathan Kelly, Blazer Residential, provided information on the item
- Jeremy Bartholomew, Resolution Real Estate, provided information on the item
- Mr. Lyttle read a letter into the record from the Honorable Rodney Ellis, County Commissioner Precinct One, Harris County Commissioners Court, which included information on the item
- Cynthia Bast, Locke Lord attorney representing Blazer Residential, provided information on the item

6) The Board did not consider Action Item 3(c) – Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §10.101(a)(2) related to Applicant Disclosure of Undesirable Site Features for 18217 Cypress Creek at Santa Fe, Santa Fe –as it was withdrawn.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 10:36 a.m. The next meeting is set for Thursday, July 26, 2018.

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Secretary

Approved:

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Chair

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
July 26, 2018

On Thursday, the twenty-sixth day of July 2018, at 8:00 a.m., the regular meeting of the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") was held in Room JHR 140 of the John H. Reagan Building, 105 W. 15th Street, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James "Beau" Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented except for Item 1(i) – Presentation, discussion, and possible action on Resolution No. 18-028 authorizing the filing of one or more applications for reservation to the Texas Bond Review Board with respect to Qualified Mortgage Bonds and containing other provisions relating to the subject – which was moved to the Action Item agenda.

2) Action Item 1(i) – Presentation, discussion, and possible action on Resolution No. 18-028 authorizing the filing of one or more applications for reservation to the Texas Bond Review Board with respect to Qualified Mortgage Bonds and containing other provisions relating to the subject – was presented by Monica Galuski, Chief Investment Officer/TDHCA Director of Bond Finance, with additional information from Tim Irvine, TDHCA Executive Director. Following public comment (listed below), the Board unanimously approved staff recommendation adopting the resolution.

- Barry Palmer, Coats Rose attorney, testified in opposition to staff recommendation
- Jean Latsha, Pedcor Investments, testified in opposition to staff recommendation
- Jason Arechiga, NRP Group, testified in opposition to staff recommendation
- David Yarden, Amtex Housing, testified in opposition to staff recommendation

3) Action Item 3 – Presentation, discussion, and possible action regarding the adoption of a final order concerning Southmore Park Apartments Ltd., with respect to Southmore Park (HTC 94004/CMTS 1204/LDLD 141/SOAH Docket #332-17-5544HCA) – was presented by Jeff Pender, TDHCA Deputy General Counsel. The Board unanimously approved staff recommendation to adopt the final order.

4) Action Item 4(a) – Presentation, discussion, and possible action regarding Awards of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications: 18000 Evergreen at Garland Senior Community, Garland; 18002 Evergreen at Basswood Senior Community, Garland; 18036 Clyde Ranch, Clyde; 18040 Farmhouse Row, Slaton; 18052 Nacogdoches Lofts, San Antonio; 18054 Piedmont Lofts, San Antonio; 18099 Waters Park Studios, Austin;

18322 Las Casitas de Azucar, Santa Rosa; 18369 The Residences at Canyon Lake, Canyon Lake; and 18391 Merritt Manor, Manor – was presented by Andrew Sinnott, TDHCA Multifamily Direct Loans Administrator. The Board unanimously approved staff recommendation on the awards.

5) Action Item 4(b) – Presentation, discussion, and possible action regarding awards from the 2018 State Competitive Housing Credit Ceiling and approval of the waiting list for the 2018 Competitive Housing Tax Credit Application Round and confirming obligations to the Section 811 Project Rental Assistance Program for those properties that sought and were awarded points for providing program units – was presented by Sharon Gamble, TDHCA Competitive Housing Tax Credit Program Administrator, with additional information from Mr. Irvine and Mr. Eccles. Following public comment (listed below), the Board unanimously approved the staff recommended award and waiting lists.

- Michael Lyttle, TDHCA Director of External Affairs, read a letter into the record from the Honorable Vincent M. Perez, County Commissioner, Precinct Three, County of El Paso, which was in opposition to staff recommendation as it related to 18012 Jamie O. Perez Memorial Apartments, Socorro, and 18707 Nevarez Palms, Socorro
- Andrea Steel, Coats Rose attorney, testified in opposition to staff recommendation as it related to the score for 18305 Star of Texas Seniors, Montgomery
- Claire Palmer, attorney for 18305, testified in support of staff recommendation as it related to the score for 18305
- Bobby Bowling, applicant for 18012 and 18707, provided information regarding staff recommendation on 18012 and 18707
- Tamea Dula, Coats Rose attorney representing 18052 Nacogdoches Lofts, testified in opposition to staff recommendation
- Sarah André, tax credit consultant, testified in opposition to staff recommendation
- Debra Guerrero, NRP Group, testified in opposition to staff recommendation
- Ryan Combs, Palladium USA, provided information on the item

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 9:42 a.m. The next meeting is set for Thursday, September 6, 2018.

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Secretary

Approved:

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Chair

1b

BOARD ACTION REQUEST

LEGAL DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Champions at North Dallas f/k/a Brighton's Mark (Bond 06018 / CMTS 2559)

RECOMMENDED ACTION

WHEREAS, Champions at North Dallas f/k/a Brighton's Mark, owned by Special Account-U, L.P. f/k/a PRSA-U, LP, f/k/a Phoenix Realty Special Acct-U LP ("Owner"), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, representatives of Owner have attended multiple informal conferences and signed a prior Agreed Final Order in 2016;

WHEREAS, Owner complied with the terms of the prior Agreed Final Order, and the full administrative penalty was deferred and forgiven;

WHEREAS, TDHCA performed a new file monitoring review on October 24, 2017, and identified the following new violations that were not timely resolved: failure to maintain complete written tenant selection criteria, failure to provide documentation that households were within prescribed limits upon initial occupancy for 21 units, and failure to provide annual recertification documentation for two units;

WHEREAS, the written tenant selection criteria violation, one household income violation, and one annual recertification violation were resolved on June 27, 2018, after intervention by the Enforcement Committee;

WHEREAS, on July 31, 2018, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of $15,000, with $7,500 to be paid within 30 days of signature and the remaining $7,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 15, 2019;

WHEREAS, unresolved compliance findings include failure to provide documentation that households were within prescribed limits upon initial occupancy for 20 units, and failure to provide annual recertification documentation for one unit; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of $15,000, subject to partial forgiveness as outlined above, for noncompliance at Champions at North Dallas (f/k/a Brighton's Mark), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Special Account-U, L.P. f/k/a PRSA-U, LP, d/b/a DE Special Account-U, L.P. ("Owner") is the owner of Champions at North Dallas f/k/a Brighton's Mark ("Property"), a low income apartment complex composed of 180 units, 45 of which are restricted, located in Collin County. Records of the Texas Secretary of State indicate the following officers as of 2018: Brian Eby (Senior Director), Michael Chor (Director), James Martha (Managing Director), and Mona Bert (CFO). The general partner is Global Investors GP, L.L.C., f/k/a Henderson Global Investors G/P., L.L.C., d/b/a DE Global Investors GP, L.L.C. with the following members and/or officers: Kristin Rice, Doug Denyer, Carrie Dewees, Mike Schwaab, and Brian Eby. The primary owner contact in CMTS is currently Thomas Sayers, but was previously Michael Chor earlier in 2018. The property is managed by Pinnacle Property Management Services LLC, and CMTS indicates the following contacts: Cheryl Caudill and Janet Quintana. The following representatives attended the Enforcement Committee's informal conference as authorized representatives for ownership, though not part of the ownership structure: Michele Butler (Regional Vice President, Pinnacle), Cheryl Caudill (Regional Manager, Pinnacle), Mollie Kickbush (Senior Compliance Manager, Pinnacle).

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by prior owners in 1983 and 1996 in consideration for multiple BOND allocations. Current owner acquired the property in 1999, and the LURA remains in effect per Section 9 of the LURA which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty in 2012 for reporting violations, and in 2016 for not properly calculating and implementing an updated utility allowance, failing to fully annually recertify one unit, and failing to provide a required lease notice form to two units. The 2012 referral was corrected and closed informally. The 2016 referral was closed by signing an Agreed Final Order, calling for an administrative penalty in the amount of $500, to be fully forgiven if all violations were resolved as required by the Order. Violations were addressed as required by the Order and the administrative penalty was fully deferred and forgiven. Owner was referred for an administrative penalty again in 2018, and findings of noncompliance were significantly worse, with the property ultimately sending notices of lease nonrenewal to 20 households for failure to qualify for occupancy.

The following compliance violations identified during 2018 were referred for an administrative penalty and have been resolved:

1. Written tenant selection criteria;
2. Household income above limit upon initial occupancy / Program Unit not leased to qualified Low-Income household for unit 314; and
3. Annual recertification not performed for unit 212.

The following compliance violations identified during 2018 were referred for an administrative penalty and are unresolved, with management reporting that the households are either refusing to cooperate with certification efforts, or that the households do not qualify for occupancy:

1. Household income above limit upon initial occupancy / Program Unit not leased to qualified Low-Income household for units 1014, 1026, 1111, 1113, 1233, 1235, 1335, 412, 416, 514, 621, 717, 722, 726, 811, 814, 825, 913, 923 and 925; and
2. Annual recertification not performed for unit 717.

Owner representatives participated in an informal conference with the Enforcement Committee on July 31, 2018, and have agreed to sign an Agreed Final Order with the following terms:

1. A $15,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit $7,500 portion of the administrative penalty on or before October 8, 2018;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before June 15, 2019;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of $7,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Representatives for Pinnacle Property Management Services LLC have indicated that this property will now be run through their national compliance department to ensure future compliance. This was not part of Pinnacle's original management contract with the Owner, and they previously only handled property management staffing and CMTS reporting. They believe this change will prevent future compliance problems.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of $15,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST SPECIAL ACCOUNT-U, L.P., F/K/A PRSA-U, LP, D/B/A DE SPECIAL ACCOUNT-U, L.P. WITH RESPECT TO CHAMPIONS AT NORTH DALLAS (F/K/A BRIGHTONS MARK) (BOND FILE # 06018 / CMTS # 2559)	§ § § § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 6th day of September, 2018, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") considered the matter of whether enforcement action should be taken against **SPECIAL ACCOUNT-U, L.P., F/K/A PRSA-U, LP, D/B/A DE SPECIAL ACCOUNT-U, L.P.,** a Delaware limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT ("FOF")

Jurisdiction:

1. During 1983 and 1996, Fulsom I Associates ("Original Owner") and Consolidated Apartment Ventures, L.P. ("Prior Owner") were awarded funds by the Board in the form of multiple BOND issuances to refinance and operate Champions at North Dallas (f/k/a Brightons Mark) ("Property") (HTC file No. 06018 / CMTS No. 2559 / LDLD No. 276).

2. Original Owner signed a Special Warranty Deed and Deed Restrictions, also known as a land use restriction agreement ("LURA") regarding the Property, effective August 30, 1983, and filed of record at Volume 1742, Page 312 of the Official Public Records of Real Property of Collin County, Texas ("Records"), as amended by an Amendment to and Restatement of Special Warranty Deed and Deed Restrictions, signed July 16, 1996 by Prior Owner, and filed of record at Document Number 96-0069945 of the Records. In accordance with Section 9 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

3. Respondent took ownership of the Property on June 11, 1999, and although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 9 thereof.

4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations[1]*:*

5. Property has a history of violations and previously signed an Agreed Final Order on July 22, 2016, agreeing to an administrative penalty of $500, to be fully forgiven provided that Respondent complied with all requirements. Findings in that Agreed Final Order included: failure to properly calculate and implement a utility allowance, failure to provide a compliant Affirmative Marketing Plan, failure to annually recertify one unit; and failure to provide lease notices for two units. Respondent fully complied with the terms of the Agreed Final Order and no administrative penalty was paid.

6. An on-site monitoring review was conducted on October 24, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notification of noncompliance was sent and a March 19, 2018, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
   a. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The finding was corrected June 27, 2018, one hundred days past the deadline, after intervention by the Enforcement Committee.
   b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1014, 1026, 1111, 1113, 1233, 1235, 1335, 314, 412, 416, 514, 621, 717, 722, 726, 811, 814, 825, 913, 923 and 925, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding for unit 314 was corrected June 27,

[1] Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

2018, one hundred days past the deadline, after intervention by the Enforcement Committee.

c. Respondent failed to perform an annual recertification for units 212 and 717, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. The finding for unit 212 was corrected June 27, 2018, one hundred days past the deadline, after intervention by the Enforcement Committee.

7. The following violations remain outstanding at the time of this order:

   a. Household income above limit upon initial occupancy / Program Unit violations described in FOF #6.b; and

   b. Annual recertification described in FOF #6.c.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements.

4. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2018, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for the following units: 1014, 1026, 1111, 1113, 1233, 1235, 1335, 314, 412, 416, 514, 621, 717, 722, 726, 811, 814, 825, 913, 923 and 925.

5. Respondent violated 10 TAC §10.612 in 2018 by failing to annually recertify units 212 and 717.

6. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.

7. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

8. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.

9. An administrative penalty of $15,000 is an appropriate administrative penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $15,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a $7,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before October 8, 2018.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits, hereto, and submit full documentation of the corrections to TDHCA on or before June 15, 2019.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty, and that remaining $7,500 portion of the of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of $7,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	**If via USPS:**
TDHCA Attn: Ysella Kaseman 221 E 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on ___Sept. 6___ *, 2018.*

By: ______________________
Name: J.B. Goodwin
Title: Chair of the Board of TDHCA

By: ______________________
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 6th day of September, 2018, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 6th day of September, 2018, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF ________________§

BEFORE ME,__________________, a notary public in and for the State of ____________, on this day personally appeared ______________________, known to me or proven to me through ______________________ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is ______________________, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of __________________ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

SPECIAL ACCOUNT-U, L.P., F/K/A PRSA-U, LP, D/B/A DE SPECIAL ACCOUNT-U, L.P.,
a Delaware limited partnership

GLOBAL INVESTORS GP, L.L.C., F/K/A HENDERSON GLOBAL INVESTORS GP, L.L.C., D/B/A DE GLOBAL INVESTORS GP, L.L.C.,
a Delaware limited liability company

By: ____________________________

Name: ____________________________

Title: ____________________________

Given under my hand and seal of office this _______ day of ____________, 2018.

____
Signature of Notary Public

____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires:__________

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:

   http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y

2. Refer to the following link for copies of forms that are referenced below:

   http://www.tdhca.state.tx.us/pmcomp/forms.htm

3. Technical support and training presentations are available at the following links:

   Income and Rent Limits: http://www.tdhca.state.tx.us/pmcomp/irl/index.htm

   Utility Allowance: http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm

   Affirmative Marketing Webinar: http://www.tdhca.state.tx.us/pmcomp/presentations.htm

   Affirmative Marketing Technical Assistance: http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf

   FAQ's: http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm

4. **All corrections must be submitted via CMTS:** See link for steps to upload documents http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf.

5. **Important notes -**

   i. Do not backdate any documents listed below.

   ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Annual Recertification affecting unit 717:**

   i. If the household present in the unit as of July 3, 2018, is found to qualify, complete an annual recertification and submit the following: application, verifications of all sources of income and assets, Income Certification, and first and signatory pages of the lease. Please remember that the application, verifications of income and assets, and the Income Certification must be dated within 120 days of one another. – OR –

   ii. If a new qualified household has occupied the unit, submit a full tenant file proving income eligibility. A full tenant file will include: application, verifications of all sources of income and assets, Income Certification, first and signatory pages of the lease, and Tenant Rights and Resources Guide Acknowledgement. Please remember that the application, verifications of income and assets, and the Income Certification must be dated within 120 days of one another.

7. **Household income above limit upon initial occupancy / Program Unit not leased to Low-Income Household, affecting units 1014, 1026, 1111, 1113, 1233, 1235, 1335, 412, 416, 514, 621, 717, 722, 726, 811, 814, 825, 913, 923 and 925:**

    i. If occupied by a new qualified household: Submit a full tenant file proving income eligibility. A full tenant file will include: application, verifications of all sources of income and assets, Income Certification, first and signatory pages of the lease, and Tenant Rights and Resources Guide Acknowledgement. Please remember that the application, verifications of income and assets, and the Income Certification must be dated within 120 days of one another.

    ii. If the household present in the unit as of July 3, 2018, is found to qualify under new circumstances, complete a new certification using the household's current income and asset sources, and current income limits. Submit a full tenant file proving income eligibility, including: current application, third party or firsthand verifications of all sources of income and assets, Income Certification, Lease/Lease Addendum and Tenant Rights and Resources Guide Acknowledgement. Please remember that the application, verifications of income and assets, and the Income Certification must be dated within 120 days of one another.

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html. Forms discussed below are available at: http://www.tdhca.state.tx.us/pmcomp/forms.htm.

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with "none" or "n/a." The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a "Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs" that includes the additional requirements.
2. **Release and Consent**: Have tenant sign TDHCA's Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
    a. **Income Verification for Households with Section 8 Certificates:** This form is signed by the Public Housing Authority, certifying that the household is eligible at initial occupancy. This form can only be completed at initial occupancy and cannot be used to correct a finding of noncompliance relating to income eligibility.
    b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
    c. **Employment Verification Form**: Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
    d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;

e. **Telephone Verifications**: these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;

f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
   a. **Under $5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than $5,000, as reported on the Intake Application, the TDHCA Under $5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
   b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
   c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member. *Remember that this form, along with the application and verifications of income and assets, must all be dated within 120 days of one another.*

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(f) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.

8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc.

   In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

   a) Information about Fair Housing and tenant choice; and
   b) Information regarding common amenities, unit amenities, and services.

   A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

   In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:
   http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf.

Exhibit 3:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1c

BOARD ACTION REQUEST

LEGAL DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Ridge at Trinity (HTC 04608 / BOND 04608B / CMTS 4198)

RECOMMENDED ACTION

WHEREAS, Ridge at Trinity f/k/a Grove Village, owned by Loop 12 Trails, Ltd. ("Owner"), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, representatives of Owner have attended multiple informal conferences and signed a prior Agreed Final Order in 2017;

WHEREAS, Owner complied with the terms of the prior Agreed Final Order, and the full administrative penalty was deferred and forgiven;

WHEREAS, TDHCA performed a new file monitoring review on October 25, 2017, and identified the following new violations that were not timely resolved: affirmative marketing plan violation, utility allowance violation, household income above limit upon initial occupancy violations for 4 units, gross rent violations for overcharging application fees, written tenant selection criteria violations, and a violation for failure to make the required monthly expenditure for supportive services;

WHEREAS, the household income violation for unit 1057 was resolved on June 29, 2018, after intervention by the Enforcement Committee;

WHEREAS, on July 31, 2018, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of $10,000, with $2,500 to be paid within 30 days of signature and the remaining $7,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before October 8, 2018;

WHEREAS, currently, unresolved compliance findings include affirmative marketing plan violation, utility allowance violation, household income above limit upon initial occupancy violations for 3 units, gross rent violations for overcharging application fees, written tenant selection criteria violations, and a violation for failure to make the required monthly expenditure for supportive services; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of $10,000, subject to partial forgiveness as outlined above, for noncompliance at Ridge at Trinity (f/k/a Grove Village), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Loop 12 Trails, Ltd. ("Owner") is the owner of Ridge at Trinity ("Property"), a low income apartment complex composed of 230 units, located in Dallas County. Alvin Johnson is the President and a director for Hope Housing Foundation, the managing member for the general partner, and the primary contact in CMTS. Records of the Texas Secretary of State list the following directors for Hope Housing Foundation: Shadrick Howard, Darrell Foster, Doneric Norwood, Susan Richardson, Pamela Thomas, Alvin Johnson, and Peggy Lawless. Both properties are self managed. Covanne Edmunds is the compliance manager for Hope Housing Foundation. Shelia Gibson is the onsite manager for Ridge at Trinity.

The Property is subject to two land use restriction agreements (collectively, "LURA's"). The first land use restriction agreement was signed by a prior owner and effective as of August 1, 2006, in consideration for a BOND allocation ("BOND LURA"). The second land use restriction agreement was signed by a prior owner and effective as of May 18, 2009, in consideration for a housing tax credit allocation ("HTC LURA"). The property went into receivership in 2013, and ultimately did not receive IRS Forms 8609. The Owner acquired the property out of receivership in 2015, and both LURAs remain in effect per Section 2 of the HTC LURA and Section 12 of the BOND LURA, each stipulating that their restrictions run with the land.

Owner was previously referred for an administrative penalty in 2016 for file monitoring violations including: failure to provide Annual Eligibility Certifications for two units, failure to include required lease language for 29 units, failure to provide Fair Housing Disclosure Notices for four units, failure to provide a Notice of Amenities and Services for one unit, failure to provide documentation that households were within prescribed limits upon initial occupancy for 12 units, failure to provide evidence of appropriate social service expenditures, and failing to provide evidence that 7 units identified as casualty losses had been restored. Many units were vacant as a result of a rehabilitation started by Owner after purchasing the property in 2015, so the Enforcement Committee initially tabled a decision for six months to allow more time for completion of the rehabilitation plan. The rehabilitation was completed and TDHCA performed a physical inspection at the end of 2016, verifying improved conditions. That physical inspection was not referred for an administrative penalty, but file violations remained unresolved despite completion of the rehabilitation. The 2016 file monitoring administrative penalty referral was ultimately closed by signing an Agreed Final Order in 2017, calling for an administrative penalty in the amount of $5,000, with $500 due at signing and the remainder to be forgiven if all violations were resolved as required by the Order. Violations were addressed as required by the Order and the remaining administrative penalty was fully deferred and forgiven.

Owner was referred for an administrative penalty again in 2018. The following compliance violations identified during 2018 were referred for an administrative penalty and have been resolved:

1. Household income violation for unit 1057.

The following compliance violations identified during 2015 were referred for an administrative penalty and are unresolved. Details are provided for some of the violations because Owner submitted partial corrections for many violations, and was confused about others.

1. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts. A HUD approved plan was received, but it did not include copies of documentation to prove they had conducted outreach marketing to groups identified in the plan.
2. Failure to maintain current Utility allowance. A HUD approved utility allowance was received for the year 2016, but it is outdated.
3. Failure to prove eligibility for units 1011, 1086, and 2012. Corrections were received, but incomplete for all three files.
4. Gross rent violation for overcharged application fees. Invoices were submitted to support an application fee of $24 for the first applicant in a household, however, subsequent applicants for the same unit may only be charged $19.43 because allowable fees are limited to the actual costs to check income, credit history, and landlord references, plus up to $5.50 per unit for out of pocket costs to process the application.
5. Failure to provide compliant written policies and procedures, including tenant selection criteria. Policies were submitted, but did not meet minimum rule requirements.
6. Failure to meet minimum monthly expenditure for supportive services. The LURA requires a minimum monthly expenditure of $2,320, but cost documentation was submitted to support expenditures on an annual basis. Documentation showed that Owner spent more than the required monthly expenditure during some months in 2017, but then adjusted subsequent months to a lower amount to annualize the expenditures. This is not permitted because the minimum expenditure required by the LURA is monthly, not annual.

Owner participated in an informal conference with the Enforcement Committee on July 31, 2018, and agreed to sign an Agreed Final Order with the following terms:

1. A $10,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit $2,500 portion of the administrative penalty on or before October 8, 2018;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before October 8, 2018;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of $7,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the remaining administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of $10,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST LOOP 12 TRAILS, LTD. WITH RESPECT TO RIDGE AT TRINITY (F/K/A GROVE VILLAGE) (HTC # 04608 / BOND #04608B / CMTS # 4198)	§ § § § § § § §	BEFORE THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 6th day of September, 2018, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA" or "Department") considered the matter of whether enforcement action should be taken against **LOOP 12 TRAILS, LTD.**, a Texas limited partnership ("Respondent").

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act ("APA"), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT ("FOF")

Jurisdiction:

1. During 2004, Grove Village Limited Partnership ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of $402,329 to acquire, rehabilitate, and operate Ridge at Trinity (f/k/a Grove Village) ("Property") (HTC file No. 4608 / CMTS No. 4198 / LDLD No. 370).

2. Prior Owner signed a land use restriction agreement ("BOND LURA") regarding the Property. The LURA was effective August 1, 2006, and filed of record at Document Number 200600324711 of the Records. In accordance with Section 12 of the BOND LURA, the BOND LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the BOND LURA.

3. Prior Owner signed a land use restriction agreement ("HTC LURA") regarding the Property. The HTC LURA was effective May 18, 2009, and filed of record at Document Number 2010000017174 of the Official Public Records of Real Property of Dallas County, Texas ("Records"). In accordance with Section 2 of the HTC LURA, the HTC LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the HTC LURA.

4. Respondent took ownership of the Property on January 29, 2015. Although an Agreement to Comply was not signed for the BOND LURA, Respondent is bound to the terms of the BOND LURA in accordance with Section 12 thereof. Respondent signed an agreement with TDHCA to assume the duties imposed by the HTC LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective January 30, 2015, and filed the same in the Records at Document Number 201500027657, thereby further binding Respondent to the terms of the HTC LURA.

5. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations[1]*:*

6. Property has a history of violations and previously signed an Agreed Final Order during 2017, agreeing to a $5,000 Administrative Penalty, with $500 due at signing and the remainder to be forgivable provided that Respondent complied with all requirements. Findings in that Agreed Final Order included: failure to provide Annual Eligibility Certifications for 2 units, failure to include required lease language for 29 units, failure to provide Fair Housing Disclosure Notices for 4 units, failure to provide a Notice of Amenities and Services for 1 unit, failure to provide documentation that households were within prescribed limits upon initial occupancy for 12 units, failure to provide evidence of appropriate social service expenditures, and failing to provide evidence that 7 units identified as casualty losses had been restored. Respondent fully complied with the terms of the Agreed Final Order and the remainder of the administrative penalty was deferred and forgiven.

[1] Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

7. An on-site monitoring review was conducted on October 25, 2017, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a March 30, 2018, corrective action deadline was set, however, the following violations were not corrected before the corrective action deadline:

   a. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to the Enforcement Committee's informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the groups identified within the plan. The finding remains unresolved;

   b. Respondent failed to timely update and recalculate the utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. A utility allowance was received in response to the Enforcement Committee's informal conference notice, but it was an outdated utility allowance approved by HUD in 2016. The finding remains unresolved;

   c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 1011, 1057, 1086, and 2012, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The finding for unit 1057 was corrected on June 29, 2017, 101 days past the deadline, after intervention by the Enforcement Committee. The findings for units 1011, 1086, and 2012 remain unresolved;

   d. Respondent collected gross rents that exceeded income limits as a result of an unsupported $24 application fee, a violation of 10 TAC §10.622 (Special Rules Regarding Rents and Rent Limit Violations). TDHCA publishes maximum rent limits for the tax credit program annually and owners are responsible for ensuring that the maximum rents that they charge include the amount of rent paid by the household, plus an allowance for utilities, plus any mandatory fees. 10 TAC §10.622(c)(1) further stipulates that application fees can only be charged for the actual cost of checking a prospective tenant's income, credit history and landlord references, plus up to $5.50 per unit for out of pocket costs to process the application. Owners are required to support the application fee with invoices. Documentation was received in response to the Enforcement Committee's informal conference notice, but it stated that the development is currently charging an application fee of $24.00 per applicant. Submitted invoices justify an out of pocket cost of $19.43. The rate of $24.00 would be permissible for the first applicant but all subsequent applicants in the same household must be charged no more than $19.43 per application. The finding remains unresolved;

e. Respondent failed to maintain compliant written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements; and

f. Respondent established that supportive services are being provided, but failed to provide evidence to verify the required monthly expenditure, a violation of Section (4)(g) of the BOND LURA and 10 TAC §10.619 (Monitoring for Social Services). The BOND LURA requires an expenditure of $10 per month per unit, for a total expenditure of $2,320 per month. Cost documentation was received in response to the Enforcement Committee's informal conference notice, with documentation to support expenditure on an annual basis. There were multiple months were more than $2,320 was spent, so Respondent was under the impression that they could spend less than the monthly requirement for other months to compensate. The expenditure is required monthly. The finding remains unresolved.

8. The following violations remain outstanding at the time of this order:

   a. Affirmative marketing plan violation described in FOF #7.a;

   b. Utility allowance violation described in FOF #7b;

   c. Household income violations described in FOF #7c;

   d. Gross rent violation described in FOF #7d;

   e. Written tenant selection criteria violation described in FOF 7e; and

   f. Supportive services violation described in FOF #7f.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.

2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).

3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.

4. Respondent violated 10 TAC §10.617 in 2017, by failing to provide a complete affirmative marketing plan;

5. Respondent violated 10 TAC §10.614 in 2017 by failing to properly calculate a utility allowance;

6. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2017, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 4 units;

7. Respondent violated 10 TAC §10.622 in 2017 by charging excessive application fees resulting in gross rents exceeding the allowable limits;

8. Respondent violated 10 TAC §10.610 in 2017, by not maintaining written tenant selection criteria meeting TDHCA requirements; and

9. Respondent violated Section 4(g) of the BOND LURA and 10 TAC §10.619 in 2017 by failing to make the required monthly expenditures for supportive services.

10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.

11. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.

12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.

13. An administrative penalty of $10,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is assessed an administrative penalty in the amount of $10,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a $2,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before October 8, 2018.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before October 8, 2018.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty, and that remaining $7,500 portion of the of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the remaining administrative penalty in the amount of $7,500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	**If via USPS:**
TDHCA Attn: Ysella Kaseman 221 E 11th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on ___________Sept. 6_________, 2018.

By: ______________________________
Name: J.B. Goodwin
Title: Chair of the Board of TDHCA

By: ______________________________
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 6th day of September, 2018, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 6th day of September, 2018, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF ________________§

BEFORE ME,____________________, a notary public in and for the State of ______________, on this day personally appeared __________________________, known to me or proven to me through __________________________ to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is __________________________, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of ____________________ for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

LOOP 12 TRAILS, LTD., a Texas limited partnership

HHF TRINITY TRAILS, LLC, a Texas limited liability company, its general partner

HOPE HOUSING FOUNDATION, a Texas nonprofit corporation, its managing member

By: ______________________________

Name: Alvin Johnson

Title: President

Given under my hand and seal of office this ________ day of _____________, 2018.

____
Signature of Notary Public

____
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF ______
My Commission Expires:___________

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:

   http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y

2. Refer to the following link for copies of forms that are referenced below:

   http://www.tdhca.state.tx.us/pmcomp/forms.htm

3. Technical support and training presentations are available at the following links:

   Income and Rent Limits: http://www.tdhca.state.tx.us/pmcomp/irl/index.htm

   Utility Allowance: http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm

   Affirmative Marketing Webinar: http://www.tdhca.state.tx.us/pmcomp/presentations.htm

   Affirmative Marketing Technical Assistance: http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf

   Tenant Selection Criteria Webinar: http://www.tdhca.state.tx.us/pmcomp/presentations.htm

   FAQ's: http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm

4. **All corrections must be submitted via CMTS:** See link for steps to upload documents http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf.

5. **Important notes -**

   i. Do not backdate any documents listed below.

   ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Written tenant selection criteria ("TSC")** ***and*** **Gross Rent violations** – Respondent submitted written tenant selection criteria, however, the criteria did not meet all TDHCA requirements. Update the policy as indicated below, then upload to CMTS. A copy of 10 TAC §10.610 is available at: http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=10&rl=610

   Required updates include:

   i. Update the application fee section of the TSC to show a $24 fee for the first applicant in a unit, then $19.43 for each subsequent applicant. The development is currently charging an application fee of $24.00 per applicant, as stated in the TSC and submitted tenant ledgers. This amount exceeds the amount allowed under §10.622(c)(1), which states "Development Owner's may add up to $5.50 per Unit for their out of pocket costs for processing and application". The submitted TSC and resident ledgers, along with screening invoices, justify an out of pocket cost of $19.43. The rate of $24.00 would be permissible for the first applicant on a single unit but all subsequent applicants must be charged no more than $19.43 per application. Adjust application fee immediately and adjust the TSC accordingly.

   ii. Include the current income and rent limits applicable to the property per 10 TAC §10.610(b)(1)(A)(iii). Remove the 30% income limits from the TSC as they are not applicable for

the Development. Please bear in mind that the 2018 rent/income limits have taken effect and are available online.

iii. Remove the application deposit from the TSC. This application deposit is separate from, and in addition to, the application fee that covers the owner's actual out-of-pocket cost for processing the application. The 8823 Audit Guide and Treasury Regulation 1.42-11 addresses fees for services and refundable fees that must be paid as a condition of occupancy. This "application deposit" does not seem to be a fee for a service. Nor does it seem to be a refundable fee that must be paid as a condition of occupancy (e.g. a security deposit being collected when the lease is being signed for a unit). It appears that there is no offsetting out of pocket expense; it is a fee related to applying for a unit and is therefore disallowed. You must cease charging application deposits and update your leasing criteria accordingly;

iv. Verify whether persons employed with commission, bonus, or tip based income should be classified as "self employed" and update the TSC as necessary. The TSC submitted on 6/29/2018, categorized persons employed with commission, bonus, or tip based income as "self employed". This may not be accurate and the Department recommends that the Development verify this with a council of their choosing;

v. Remove the "non-refundable high risk fee" from the TSC. This is a non permissible fee and the practice must be discontinued;

vi. Add the required language verbatim: "Specific animal, breed, number, weight restriction, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s)";

vii. Review whether you would like to include a rental insurance requirement in your TSC and update the TSC if necessary. The Department advises that requiring renter's insurance may be permissible, but is considered a mandatory fee and the cost of said insurance must be included in the gross rent calculation;

viii. Update the waitlist policy to meet the requirements at 10 TAC §10.610(1) and (2). Also update it to include specifically when and why the wait list is opened or closed, include a prioritization in accordance with 24 CFR 8.27, and have separate wait lists for the 50% and 60% set asides;

ix. Update the TSC to include a non-renewal and termination policy in line with 10 TAC §10.610(f);

x. Update the TSC to include a reasonable accommodation policy in line with 10 TAC §10.610(c)(1) and (2); and

xi. Update the TSC to include a policy in accordance with §10.610(g). Since form 8609 was never issued for the property each building will be considered it own project in this regard.

7. **Utility Allowance** – Obtain and implement a HUD approved utility allowance with 2018 approval. Upload a copy of the HUD approval for the 2018 utility allowance. Also submit the development's updated Unit Status Report via CMTS to demonstrate that the utility allowance has been implemented. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days, outside of this Agreed Final Order. For more information, see: http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm

8. **Supportive services** – The Development submitted copies of supporting documentation to evidence the BOND expenditure requirement on an annual basis. However, the Development is still not meeting the required $2,300 cost per month on social services. The submission included an owner's explanation of the expenditure shortfall by exceeding the required amount on an annual basis for 2017. However, per §10.619(c) the requirement is based on a monthly requirement as defined in the Land Use Restrictive Agreement (LURA) as "at least $10 per unit per month." The last month provided to the Department was September 2017, with an expenditure of $1501.93. To correct, upload documentation of expenses from when the Development's social services expenditures have returned to, and maintained the required amount. Include at least 4 months after September 2017.

9. **Affirmative marketing plan** – A HUD-approved Affirmative Marketing Plan was submitted, but did not include evidence of outreach marketing to all "least likely to apply" groups identified in box 3b of the plan. Additional marketing materials were then submitted, but were still incomplete.

   Identify community contacts for, and conduct outreach marketing efforts to, all groups identified in box 3b of the HUD approved plan. Upload copies of these marketing outreach efforts to CMTS. Do not include any additional marketing efforts to groups that *are not* identified in the plan, as this would be considered general marketing rather than affirmative marketing.

   Technical support:

   a. Identify in your plan specific organizations, media, and community contacts in the housing market to send marketing outreach materials to all of the groups checked in box 3b of your HUD-approved plan. The organizations must specifically reach those groups designated as least likely to apply. Some specific examples:
      i. Least likely to apply population - People with disabilities:
         1. Local Center for Independent Living ("CIL") – serve persons with all disability types. Not all counties are covered http://www.txsilc.org/page_CILs.html
         2. Aging and Disability Resource Center ("ADRC") – intake and referral for persons with physical, intellectual, or developmental disabilities - all counties are covered: https://www.dads.state.tx.us/contact/search.cfm
         3. Local Intellectual and Developmental Disability Authority (LIDDA) – serves persons with intellectual, or developmental disabilities - all counties are covered: https://www.dads.state.tx.us/contact/search.cfm
         4. Local Mental Health Authority (LMHA) – serves persons with Mental Illness and Substance Use disorders - all counties are covered: https://www.dshs.texas.gov/mhservices-search/
         5. Local non-profits in your area serving people with disabilities
         6. Call 211 and ask about resources for people with disabilities in your area, reach out to groups serving people with disabilities in your community
      ii. Least likely to apply population - White:
         1. Examples of acceptable community contacts might include community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"
      iii. Least likely to apply population - Asian:
         1. Local Asian real estate association
         2. Local Asian Chamber of Commerce
         3. Local Asian American Resource Center
         4. Local organizations serving the Asian community
         5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

iv. Least likely to apply population - Black/African American:

1. Local Black/African American Chamber of Commerce
2. Local Black/African American Professionals Social Network
3. Weekly Black/African American newspaper / website for a city
4. Local community center or YMCA in a historically black/African American neighborhood;
5. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

v. Least likely to apply population - Hispanic:

1. Local Hispanic Chamber of Commerce
2. Local Young Hispanic Professional Association
3. The Hispanic Alliance
4. Mexican American Cultural Center
5. Local Spanish language publications
6. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

vi. Least likely to apply population – Not Hispanic:

1. Community centers, places of worship, libraries, grocery stores in census tracts with a high concentration of the racial group. In TDHCA's Web Tool, these areas are listed under "tracts for outreach consideration"

b. Send marketing outreach materials to the identified organizations, ensuring that said marketing materials comply with all requirements of 10 TAC §10.617. Remember that 10 TAC §10.617(f)(5) requires marketing materials to include the Fair Housing Logo and give contact information that prospective tenants can access if reasonable accommodations are needed in order to complete the application process. This contact information sentence must include the terms "reasonable accommodation" and must be in English and Spanish. Here is a sample of an acceptable sentence recently included in marketing materials from another property: "*Individuals who need to request a reasonable accommodation to complete the application process should contact the apartment manager at XXX-XXX-XXXX. Personas con discapacidad que necesitan solicitar un acomodacion razonable para completer el proceso de aplicacion deben comunicarse con el Administrador del apartment al XXX-XXX-XXXX.*"

9. Household income above limit upon initial occupancy – units 1011, 1086, and 2012

Specific problems with past submissions for these units include, but are not limited to:

a. Unit 1011: Incomplete corrections were submitted on 6/29/2018 for tenant: William Mark Hill. The application disclosed employment that was not reported on the certification and was not verified.

b. Unit 2012: Incomplete corrections were submitted on 6/29/2018 for tenant: DeAsha Brown. The Tenant Selection Criteria were not included in the submission, the student income only needs to be reported if the household is receiving Section 8 assistance. Please recalculate income on the Tenant Income Certification.

c. Unit 1086: Incomplete corrections were submitted on 6/29/2018 for tenant: Brianna Johnson. The income certification was incomplete and needs to be submitted in full. Reported child support needs to be included in the annual income, or the file must include documentation of failed attempts to collect it.

To correct the violations for units 1011, 2012, and 1086: Follow the instructions in the table below and submit complete documentation via CMTS. If you are uncertain how to compile a complete tenant file, technical support regarding each file component is at Exhibit 2.

Circumstance with respect to units listed above	**Instruction**
I. If unit is occupied by the same household listed above AND that household qualifies for occupancy	Submit copies of the household's application, verifications of all sources of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addenda, and the executed Tenant Rights and Resources Guide Acknowledgment form, *in addition to* making the specific corrections noted above for each unit. If the original file does not include all required information, or the household's circumstances have changed, you should certify the household under their current circumstances. This means that the application, verifications of all sources of income and assets, and the Income Certification would be new, and all dated within 120 days of one another.
II. If unit is occupied by a new qualified household that occupied the unit after 6/29/2018.	Submit the full tenant file, including copies of the household's application, verifications of all sources of income and assets, executed Income Certification form, first and signatory page of the lease contract, applicable lease addenda, and the executed Tenant Rights and Resources Guide Acknowledgment form. Remember that the application, verifications, and Income Certification must be dated within 120 days of one another.

III. If unit is occupied by a nonqualified household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of notice documents to TDHCA* by 10/8/2018. B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after the October deadline is acceptable for this circumstance provided that Requirement A above is fulfilled.
IV. If unit is occupied by a nonqualified household with a non-expired lease	A. Send a notice of nonrenewal to the household and provide a copy to TDHCA* by 10/8/2018. B. Once the unit becomes available, occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after the October deadline is acceptable for this circumstance provided that Requirement A above is fulfilled.
V. If unit has been vacant *more than* 30 days	A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA by 10/8/2018. B. Occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after October is acceptable for this circumstance provided that Requirement A above is fulfilled.
VI. If unit has been vacant *less than* 30 days	A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA by 10/8/2018. B. If unit is not ready for occupancy, submit a letter to TDHCA by 10/8/2018 including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy). C. Occupy the unit by a qualified household, and submit the full new tenant file within 60 days of occupancy. Receipt of the full tenant file after October is acceptable for this circumstance provided that Requirements A and B above are fulfilled.

** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.610(f)*

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html. Forms discussed below are available at: http://www.tdhca.state.tx.us/pmcomp/forms.htm.

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with "none" or "n/a." The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a "Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs" that includes the additional requirements.
2. **Release and Consent**: Have tenant sign TDHCA's Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
    a. **Income Verification for Households with Section 8 Certificates:** This form is signed by the Public Housing Authority, certifying that the household is eligible at initial occupancy. This form can only be completed at initial occupancy and cannot be used to correct a finding of noncompliance relating to income eligibility.
    b. **First hand verifications:** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
    c. **Employment Verification Form**: Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;
    d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount. If child support is ordered but is not

being received, documentation regarding collection attempts must be included, otherwise child support will need to be included in the annual income calculation;

e. **Telephone Verifications**: these are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature;

f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.

4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
   a. **Under $5000 Asset Certification Form:** If the total cash value of the assets owned by members of the household is less than $5,000, as reported on the Intake Application, the TDHCA Under $5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
   b. **First hand verifications** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
   c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at http://www.tdhca.state.tx.us/pmcomp/irl/index.htm When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(f) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above.

7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.

8. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc.

   In accordance with 10 TAC §10.613(m), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

   a) Information about Fair Housing and tenant choice; and
   b) Information regarding common amenities, unit amenities, and services.

   A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

   In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, resolution will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at:
   http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf.

Exhibit 3:

Texas Administrative Code

TITLE 10	COMMUNITY DEVELOPMENT
PART 1	TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10	UNIFORM MULTIFAMILY RULES
SUBCHAPTER E	POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406	Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

(1) the selling HUB is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

(4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (30) calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired.

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

(h) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer (#18409 John Cramer Memorial Apartments, El Paso)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for John Cramer Memorial Apartments, sponsored by the Housing Authority of the City of El Paso ("HACEP"), was submitted to the Department on January 12, 2018;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on June 14, 2018, and will expire on November 11, 2018;

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

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Category 4 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee ("EARAC");

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $1,147,196 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for John Cramer Memorial Apartments, and conditioned upon the following, is hereby approved as presented to this meeting:

1. HACEP or the management company contracted by HACEP is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by December 31, 2018.

2. HACEP is required to designate agreed upon persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which HACEP has the power to exercise control.

3. HACEP is required to ensure that agreed upon persons attend the training listed in (A) and review the webinar trainings listed in (B) below and provide TDHCA with a certification of attendance for (A) and a certification of completion for (B) no later than December 31, 2018.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and

(B) Review the TDHCA Compliance Training webinars:
(i) 2015 Tenant Selection Criteria Webinar Video;
(ii) 2015 Tenant Selection Criteria Presentation;
(iii) 2015 Tenant Selection Criteria- Q and A's;
(iv) §10.610 – Tenant Selection Criteria;
(v) 2015 Affirmative Marketing Requirements Webinar Video;
(vi) 2015 Affirmative Marketing Requirements Presentation;
(vii) 2015 Affirmative Marketing Requirements- Q and A's.

4. HACEP is required to submit the Written Policies and Procedures for all developments subject to a TDHCA LURA for Department review no later than December 31, 2018.

5. HACEP agrees that for future applications submitted through December 31, 2018, a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted 14 days prior to Board approval.

6. The Executive Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

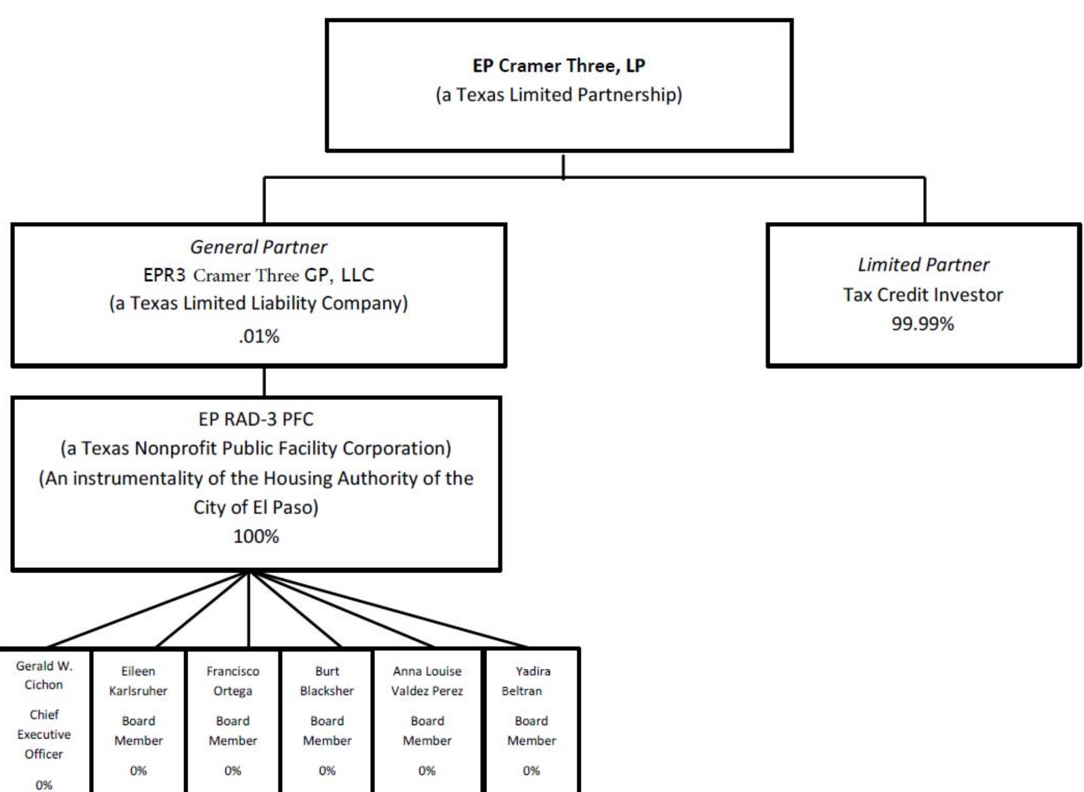
BACKGROUND

General Information: John Cramer Memorial Apartments is located at 184 Barker Road, El Paso, El Paso County, and consists of 144 units. The subject property was originally constructed in 1973 and the units are occupied and operating as public housing. The property is currently owned by HACEP and is part of the acquisition and rehabilitation of a three property bond financing, including Ambrosio Guillen Apartments and MLK Memorial Apartments, which are also on the Board agenda for consideration of an award today. These properties will be converted from public housing to Section 8 rental assistance through the Rental Assistance Demonstration ("RAD") program administered by HUD. The Development will serve the general population and conforms to current zoning. All of the units will be rent and income restricted at 60% of the Area Medium Family Income. The census tract (0037.02) has a median household income of $28,070, is in the third quartile, and has a poverty rate of 31.5%.

Organizational Structure: The Borrower is EP Cramer Three, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered an Extra Large Category 4 and the previous participation was deemed acceptable by EARAC, with the aforementioned conditions, after review and discussion.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer (#18410 Ambrosio Guillen Apartments, El Paso)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Ambrosio Guillen Apartments, sponsored by the Housing Authority of the City of El Paso ("HACEP"), was submitted to the Department on January 12, 2018;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on June 14, 2018, and will expire on November 11, 2018;

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

WHEREAS, pursuant to 10 TAC §10.101(a)(2) of the Uniform Multifamily Rules related to Undesirable Site Features, Development Sites within 500 feet of a railway may be considered ineligible unless an exemption and/or mitigation is submitted;

WHEREAS, Ambrosio Guillen is located approximately 150 feet from the closest of several spur tracks used for loading and unloading railcars and railcar storage;

WHEREAS, pursuant to the rule, developments with ongoing and existing federal assistance, which this development has, may be granted an exemption by the Board and staff recommends that such exemption be granted;

WHEREAS, pursuant to 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of all of three of the undesirable neighborhood characteristics noted in the rule, including a poverty rate that exceeds 55% for Developments located in Region 13, the middle school in the attendance zone of the proposed development failed to achieve a Met Standard rating based on the 2017 Accountability Ratings by the Texas Education Agency ("TEA"), and the subject census tract has a Part I violent crime rate that exceeds 18 per 1,000 per persons annually according to NeighborhoodScout;

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein relating to each undesirable neighborhood characteristic, recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the Uniform Multifamily Rules; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Category 4 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee ("EARAC");

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $1,166,942 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Ambrosio Guillen Apartments, and conditioned upon the following, is hereby approved as presented to this meeting;

1. HACEP or the management company contracted by HACEP is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by December 31, 2018.

2. HACEP is required to designate agreed upon persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which HACEP has the power to exercise control.

3. HACEP is required to ensure that agreed upon persons attend the training listed in (A) and review the webinar trainings listed in (B) below and provide TDHCA with a certification of attendance for (A) and a certification of completion for (B) no later than December 31, 2018.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and
(B) Review the TDHCA Compliance Training webinars:
   (i) 2015 Tenant Selection Criteria Webinar Video;
   (ii) 2015 Tenant Selection Criteria Presentation;
   (iii) 2015 Tenant Selection Criteria- Q and A's;
   (iv) §10.610 – Tenant Selection Criteria;
   (v) 2015 Affirmative Marketing Requirements Webinar Video;
   (vi) 2015 Affirmative Marketing Requirements Presentation;
   (vii) 2015 Affirmative Marketing Requirements- Q and A's.

4. HACEP is required to submit the Written Policies and Procedures for all developments subject to a TDHCA LURA for Department review no later than December 31, 2018.

5. HACEP agrees that for future applications submitted through December 31, 2018, a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted 14 days prior to Board approval.

6. The Executive Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

BACKGROUND

General Information: Ambrosio Guillen Apartments is located at 621 East 9th Avenue, El Paso, El Paso County, and consists of 130 units located on three sites, two of which are contiguous while the third site is located a few blocks away. Given the multiple sites, staff has confirmed the presence of common amenities that will be available on the sites that are sufficient to meet the threshold requirement in the rule. The subject property was originally constructed in 1974, and the units are occupied and operating as public housing.

The property is currently owned by HACEP and is part of the rehabilitation of a three property bond financing, including John Cramer Memorial Apartments and MLK Memorial Apartments, which are also on the Board agenda for consideration of an award today. These properties will be converted from public housing to Section 8 rental assistance through the Rental Assistance Demonstration ("RAD") program administered by HUD. The Development will serve the general population and conforms to current zoning. All of the units will be rent and income restricted at 60% of the Area Medium Family Income. The census tract (0019.00) has a median household income of $13,350, is in the fourth quartile, and has a poverty rate of 58.7%.

Site Analysis: The presence of undesirable neighborhood characteristics under 10 TAC §10.101(a)(3) requires additional site analysis and those characteristics attributable to the Ambrosio Guillen Apartments include a poverty rate above 55%, the middle school in the attendance zone of the development failed to achieve a Met Standard in 2017, and the subject census tract has a Part I violent crime rate that exceeds 18 per 1,000 person annually according to NeighborhoodScout.

<u>Poverty:</u> The development is located in a census tract that has a poverty rate that exceeds the threshold of 55% allowed under 10 TAC §10.101(a)(3). The poverty rate for 2016 was 67.6%, followed by a decrease in 2017 to 60.7%, and followed by another decrease to 58.7% in 2018. The development is located in a downtown neighborhood that is described as being one of the older neighborhoods in El Paso with land use patterns that includes commercial, governmental, and residential. The census tract also contains three other HACEP developments (previously approved by the Department) with a combined total of 317 affordable units. Considering the number of HACEP properties in the census tract, it is likely that the developments are affecting the overall poverty rate; however, even with such developments the poverty rate has decreased by 9% over the past three years.

<u>School:</u> Ambrosio Guillen Apartments is located in the attendance zone of Guillen Middle School ("Guillen") which did not achieve a Met Standard rating based on the 2017 TEA Accountability Rating. The school did not reach the target score for Index 3 (relating to Closing Performance Gaps), missing it by two points and; therefore, failing to achieve the Met Standard rating. Guillen MS achieved a Met Standard rating in 2016 and received an Improvement Required rating in 2015. A new principal with 22 years of experience in EPISD has been hired for the school. Given the one-year Improvement Required status and the slight margin by which the target score was not achieved, staff believes it is reasonable to conclude that the school could return to Met Standard in the subsequent year.

<u>Crime:</u> The threshold for the rate of Part I violent crimes include anything greater than 18 per 1,000 persons annually. According to NeighborhoodScout, the subject census tract has a part I violent crime rate of 19.04 per 1,000 persons annually. The applicant described the census tract located in the downtown area as being sparsely populated with several factors contributing to a disproportionate amount of incidents affecting the crime rate, including the following: an international border crossing located to the south with thousands of

crossings occurring daily, an entertainment and bar district located less than one mile away, and a homeless shelter located approximately one mile from the development. A map of crimes committed within a .5 mile radius of the subject property was submitted to illustrate that the majority of crimes are committed northeast of the development.

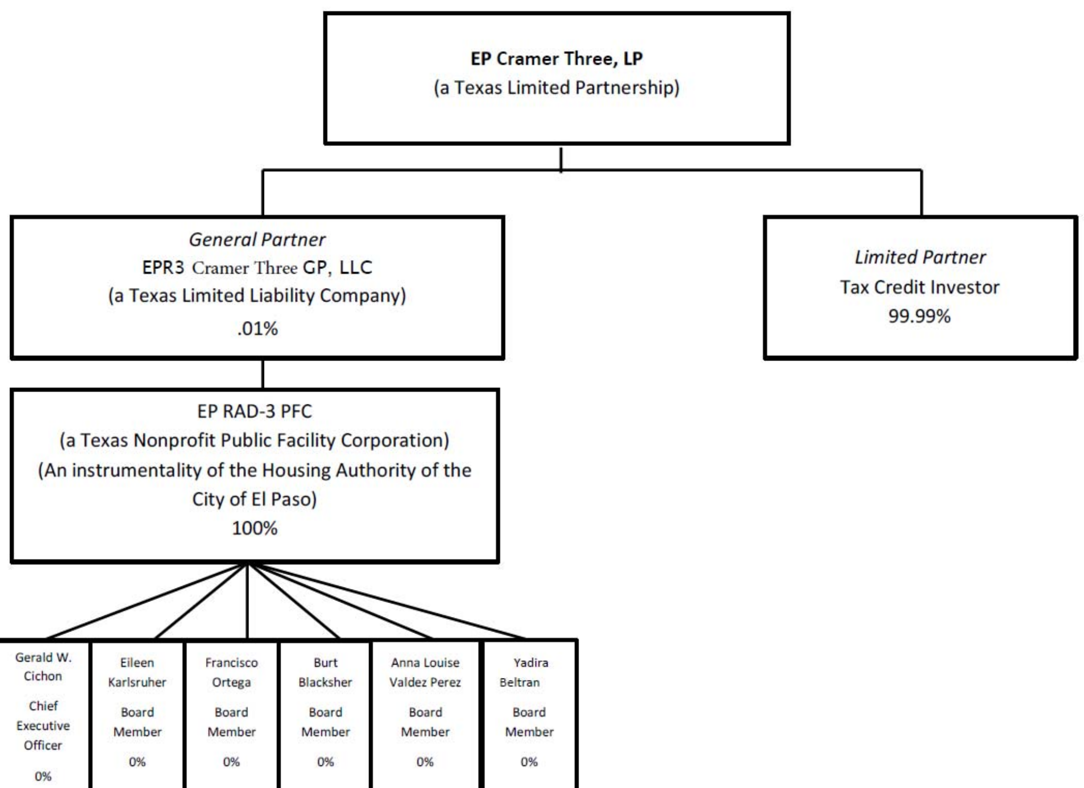
Pursuant to 10 TAC §10.101(a)(3)(B), if a development includes three or more undesirable neighborhood characteristics, the development must be located in an area in which there is a concerted plan of revitalization already in place or that there are private sector economic forces underway that indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. The City of El Paso outlined strategies in the Downtown 2015 Plan to revitalize the surrounding area and address the physical decline of vacant properties, while attracting additional capital. Specifically, the Downtown Management District is focusing on the repair and improvement of facades in the area through a targeted program. Improvements have already been made and there are plans to continue. Although this plan was submitted by the applicant, staff notes that the location of the development is not specifically listed in the area covered by the plan. The development is located just outside the boundaries of the areas covered by the plan; however, it could reasonably be considered part of the downtown area given its proximity and the benefits of the improvements could affect the proposed development. Staff believes this is evident considering the decrease in the poverty rate over the past three years, despite the affordable properties located in the census tract. Based on the mitigation provided and discussed herein relating to each of the undesirable neighborhood characteristics, staff recommends the site be eligible under 10 TAC §10.101(a)(3).

Moreover, there is an undesirable site feature associated with the Ambrosio Guillen development, namely that it is located approximately 150 feet from the closest of several spur tracks used for loading and unloading railcars and railcar storage. Pursuant to 10 TAC §10.101(a)(2) of the Uniform Multifamily Rules related to Undesirable Site Features, Development Sites within 500 feet of a railway may be considered ineligible unless an exemption is requested. The applicant requested such exemption on the basis that the Ambrosio Guillen development has ongoing and existing federal assistance, which conforms to the rule. Staff recommends that such exemption be granted.

Organizational Structure: The Borrower is EP Cramer Three, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered Extra Large Category 4 and the previous participation was deemed acceptable by EARAC, with the aforementioned conditions, after review and discussion.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on Determination Notices for Housing Tax Credits with another Issuer (#18411 MLK Memorial Apartments, El Paso)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for MLK Memorial Apartments, sponsored by the Housing Authority of the City of El Paso ("HACEP"), was submitted to the Department on January 12, 2018;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on June 14, 2018, and will expire on November 11, 2018;

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

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Category 4 and subject to the conditions as noted herein after review and discussion by the Executive Award and Review Advisory Committee ("EARAC");

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $970,330 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for MLK Memorial Apartments, and conditioned upon the following, is hereby approved as presented to this meeting:

1. HACEP or the management company contracted by HACEP is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by December 31, 2018.

2. HACEP is required to designate agreed upon persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which HACEP has the power to exercise control.

3. HACEP is required to ensure that agreed upon persons attend the training listed in (A) and review the webinar trainings listed in (B) below and provide TDHCA with a certification of attendance for (A) and a certification of completion for (B) no later than December 31, 2018.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and
(B) Review the TDHCA Compliance Training webinars:

(i) 2015 Tenant Selection Criteria Webinar Video;
(ii) 2015 Tenant Selection Criteria Presentation;
(iii) 2015 Tenant Selection Criteria- Q and A's;
(iv) §10.610 – Tenant Selection Criteria;
(v) 2015 Affirmative Marketing Requirements Webinar Video;
(vi) 2015 Affirmative Marketing Requirements Presentation;
(vii) 2015 Affirmative Marketing Requirements- Q and A's.

4. HACEP is required to submit the Written Policies and Procedures for all developments subject to a TDHCA LURA for Department review no later than December 31, 2018.

5. HACEP agrees that for future applications submitted through December 31, 2018, a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted 14 days prior to Board approval.

6. The Executive Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

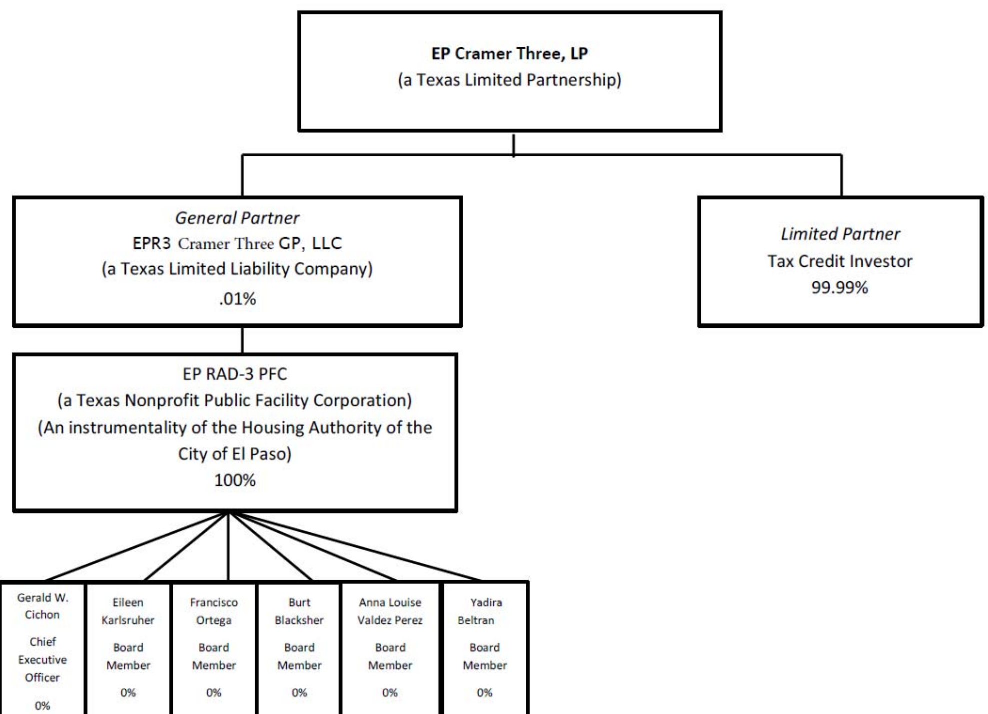
BACKGROUND

General Information: MLK Memorial Apartments is located at 9101 Butternut Street, El Paso, El Paso County, and consists of 152 units. The subject property was originally constructed in 1974, and the units are occupied and operating as public housing. The property is currently owned by HACEP and is part of the rehabilitation of a three property bond financing, along with John Cramer Memorial Apartments and Ambrosio Guillen Apartments, which are also on the Board agenda for consideration of an award today. These properties will be converted from public housing to Section 8 rental assistance through the Rental Assistance Demonstration ("RAD") program administered by HUD. The Development will serve the general population and conforms to current zoning. All of the units will be rent and income restricted at 60% of the Area Medium Family Income. The census tract (0040.03) has a median household income of $30,862, is in the third quartile, and has a poverty rate of 24.8%.

Organizational Structure: The Borrower is EP Cramer Three, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered Extra Large Category 4 and the previous participation was deemed acceptable by EARAC, with the aforementioned conditions, after review and discussion.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



18409 -18411 Cramer 3 - Application Summary

REAL ESTATE ANALYSIS DIVISION
August 30, 2018

PROPERTY IDENTIFICATION	
Application #	18409
Development	John Cramer Memorial Apartments
City / County	El Paso / El Paso
Region/Area	13 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1973)

RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	$3,284,468	$3,284,468	$7,710/Unit	$0.95	
	Amount	Rate	Amort	Term	Lien

KEY PRINCIPAL / SPONSOR		
Housing Authority of the City of El Paso (HACEP)		
Miller Valentine		
Alamito PFC (Related-Party Issuer)		
Affordable Housing Enterprises (Contractor)		
Gerald ("Jerry") W. Cichon		
Related Parties	Contractor - Yes	Seller - Yes

TYPICAL BUILDING ELEVATION/PHOTO

See Individual Summary Pages

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
1	16	4%	30%	-	0%
2	201	47%	40%	-	0%
3	153	36%	50%	-	0%
4	50	12%	60%	426	100%
5	6	1%	MR	-	
TOTAL	426	100%	TOTAL	426	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.19	Expense Ratio	47.6%
Breakeven Occ.	87.0%	Breakeven Rent	$681
Average Rent	$744	B/E Rent Margin	$63
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$4,045/unit	Controllable	$2,690/unit

SITE PLAN

See Individual Summary Pages

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			2.3%
Highest Unit Capture Rate	6%	2 BR/50%	95
Dominant Unit Cap. Rate	6%	2 BR/50%	95
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	426	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	1,056 SF	Density	11.6/acre
Acquisition		$65K/unit	$27,790K
Building Cost	$64.49/SF	$68K/unit	$29,013K
Hard Cost		$93K/unit	$39,523K
Total Cost		$221K/unit	$94,165K
Developer Fee	$10,068K	(25% Deferred)	Paid Year: 7
Contractor Fee	$5,035K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$9K	10%	Finishes/Fixtures	$21K	23%
Building Shell	$40K	43%	Amenities	$7K	8%
HVAC	$6K	6%	Total Exterior	$56K	67%
Appliances	$1K	2%	Total Interior	$28K	33%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
PNC Real Estate	40/40	4.30%	$29,000,000	1.19
TOTAL DEBT (Must Pay)			$29,000,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
HACEP - Seller Note	50/0	3.00%	$27,790,000	1.19
HACEP - Gap Loan	50/0	3.00%	$3,628,627	1.19
CASH FLOW DEBT / GRANTS			$31,418,627	

EQUITY / DEFERRED FEES	
Source	Amount
PNC Real Estate	$31,199,321
Paisano Housing Redevelopment	$2,546,854
TOTAL EQUITY SOURCES	$33,746,174
TOTAL DEBT SOURCES	$60,418,627
TOTAL CAPITALIZATION	$94,164,801

CONDITIONS

1 Receipt and acceptance before Determination Notice:

a: HUD approval of RAD conversion including a commitment to enter into the Housing Assistance Payment contract (or executed CHAP or similar agreement), HUD approved rents and operating budget.

b: Revised Site Work Breakdown Exhibits Certified by Third Party for each site consistent with the increased site work amounts and including certified estimated costs for landscaping. Additionally, if total site work is greater than $15,000 per unit, a CPA statement indicating how much costs should be considered eligible, is also required.

2 Receipt and acceptance by Cost Certification:

a: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

b: Documentation clearing environmental issues contained in the ESA reports as detailed under the ESA section of each individual project. Specifically;

i: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

ii: Should the existing plumbing infrastructure be used, testing for lead in water is recommended.

iii: The Guillen property will require noise mitigation to establish a noise environment below 65 dB in the proposed noise sensitive locations of the development. Additionally, Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

iv: Tract 2 of the Guillen property will require documentation of post-construction Vapor Encroachment Screening and certification that any recommendations of the screening were implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Alamito PFC
Expiration Date	6/24/2018
Bond Amount	$51,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221
% Financed with Tax-Exempt Bonds	61.5%

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

- Cross collateralization
- 10% construction contingency & available
- Minimal lease up risk
- Pro forma based on historical expenses
- 100% rental assistance

WEAKNESSES/RISKS

- Cramer & MLK properties not feasible on their own
- Potential cost overruns associated with rehab
- Deal structure could create management

AERIAL PHOTOGRAPH(s)

See Individual Summary Pages

18409 John Cramer Memorial Apartments - Application Summary

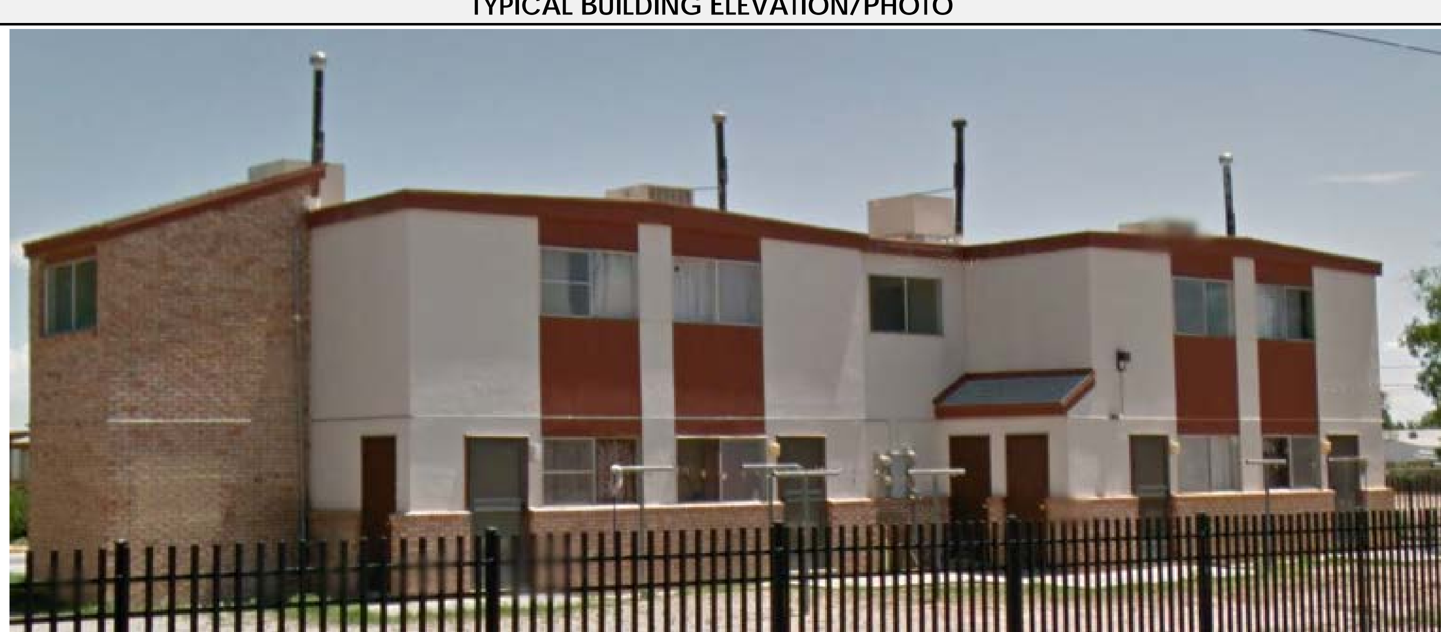
REAL ESTATE ANALYSIS DIVISION
August 30, 2018

PROPERTY IDENTIFICATION	
Application #	18409
Development	John Cramer Memorial Apartments
City / County	El Paso / El Paso
Region/Area	13 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1973)

RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	$1,147,196	$1,147,196	$7,967/Unit	$0.95	
	Amount	Rate	Amort	Term	Lien

KEY PRINCIPAL / SPONSOR		
Housing Authority of the City of El Paso (HACEP) Miller Valentine Alamito PFC (Related-Party Issuer) Affordable Housing Enterprises (Contractor) Gerald ("Jerry") W. Cichon		
Related Parties	Contractor - Yes	Seller - Yes

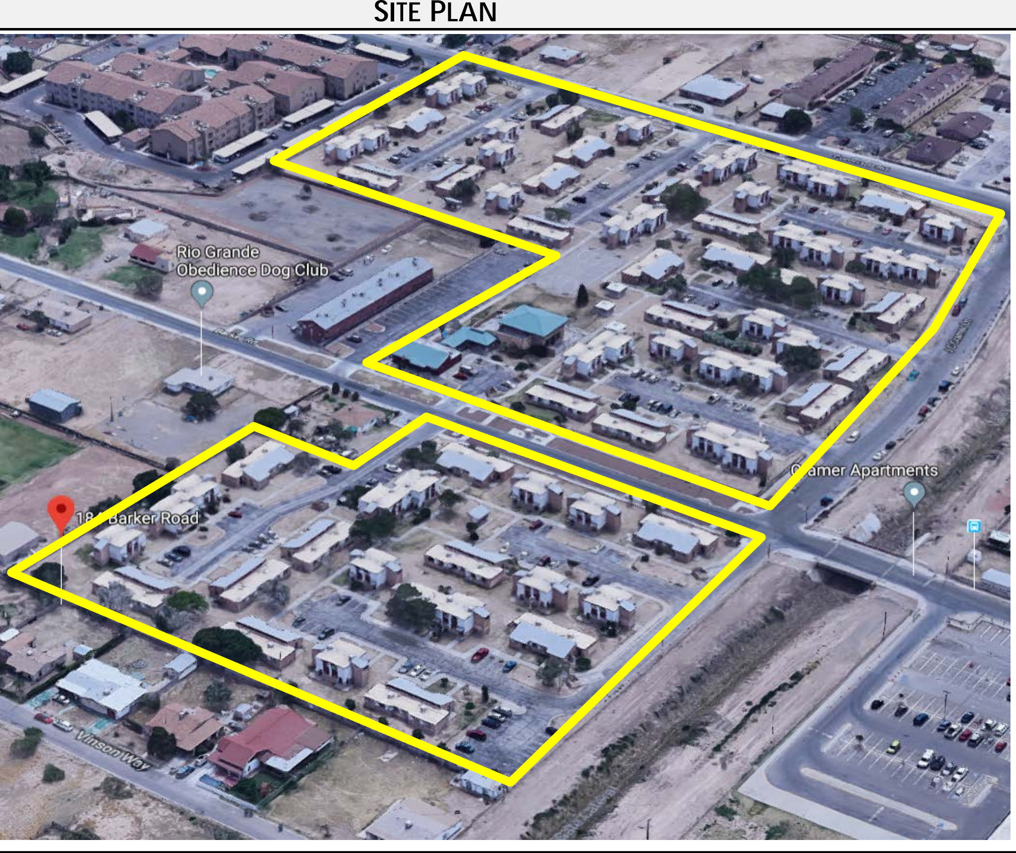
TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	-	0%	40%	-	0%
2	95	66%	50%	-	0%
3	49	34%	60%	144	100%
4	-	0%	MR	-	
TOTAL	144	100%	TOTAL	144	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.09	Expense Ratio	47.6%
Breakeven Occ.	87.0%	Breakeven Rent	$681
Average Rent	$744	B/E Rent Margin	$63
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$523,164/unit	Controllable	$2,690/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			2.3%
Highest Unit Capture Rate	6%	2 BR/50%	95
Dominant Unit Cap. Rate	6%	2 BR/50%	95
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	144	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	943 SF	Density	11.4/acre
Acquisition		$56K/unit	$8,010K
Building Cost	$70.50/SF	$66K/unit	$9,570K
Hard Cost		$92K/unit	$13,190K
Total Cost		$212K/unit	$30,554K
Developer Fee	$3,406K	(0% Deferred)	Paid Year: 7
Contractor Fee	$1,679K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$3K	4%	Finishes/Fixtures	$6K	7%
Building Shell	$14K	15%	Amenities	$2K	3%
HVAC	$2K	2%	Total Exterior	$57K	69%
Appliances	$K	1%	Total Interior	$26K	31%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
PNC Real Estate	40/40	4.30%	$10,146,531	1.09
TOTAL DEBT (Must Pay)			$10,146,531	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
HACEP - Seller Note	50/0	3.00%	$8,010,000	1.09
HACEP - Gap Loan	50/0	3.00%	$776,452	1.09
CASH FLOW DEBT / GRANTS			$8,786,452	

EQUITY / DEFERRED FEES	
Source	Amount
PNC Real Estate	$10,897,272
Paisano Housing Redevelopment	$723,817
TOTAL EQUITY SOURCES	$11,621,089
TOTAL DEBT SOURCES	$18,932,983
TOTAL CAPITALIZATION	$30,554,072

CONDITIONS

1 Receipt and acceptance before Determination Notice:

a: HUD approval of RAD conversion including a commitment to enter into the Housing Assistance Payment contract (or executed CHAP or similar agreement), HUD approved rents and operating budget.

b: Revised Site Work Breakdown Exhibits Certified by Third Party for each site consistent with the increased site work amounts and including certified estimated costs for landscaping. Additionally, if total site work is greater than $15,000 per unit, a CPA statement indicating how much costs should be considered eligible, is also required.

2 Receipt and acceptance by Cost Certification:

a: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not

b: Documentation clearing environmental issues contained in the ESA reports as detailed under the ESA section of each individual project. Specifically;

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Alamito PFC
Expiration Date	6/24/2018
Bond Amount	$16,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221
% Financed with Tax-Exempt Bonds	61.5%

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

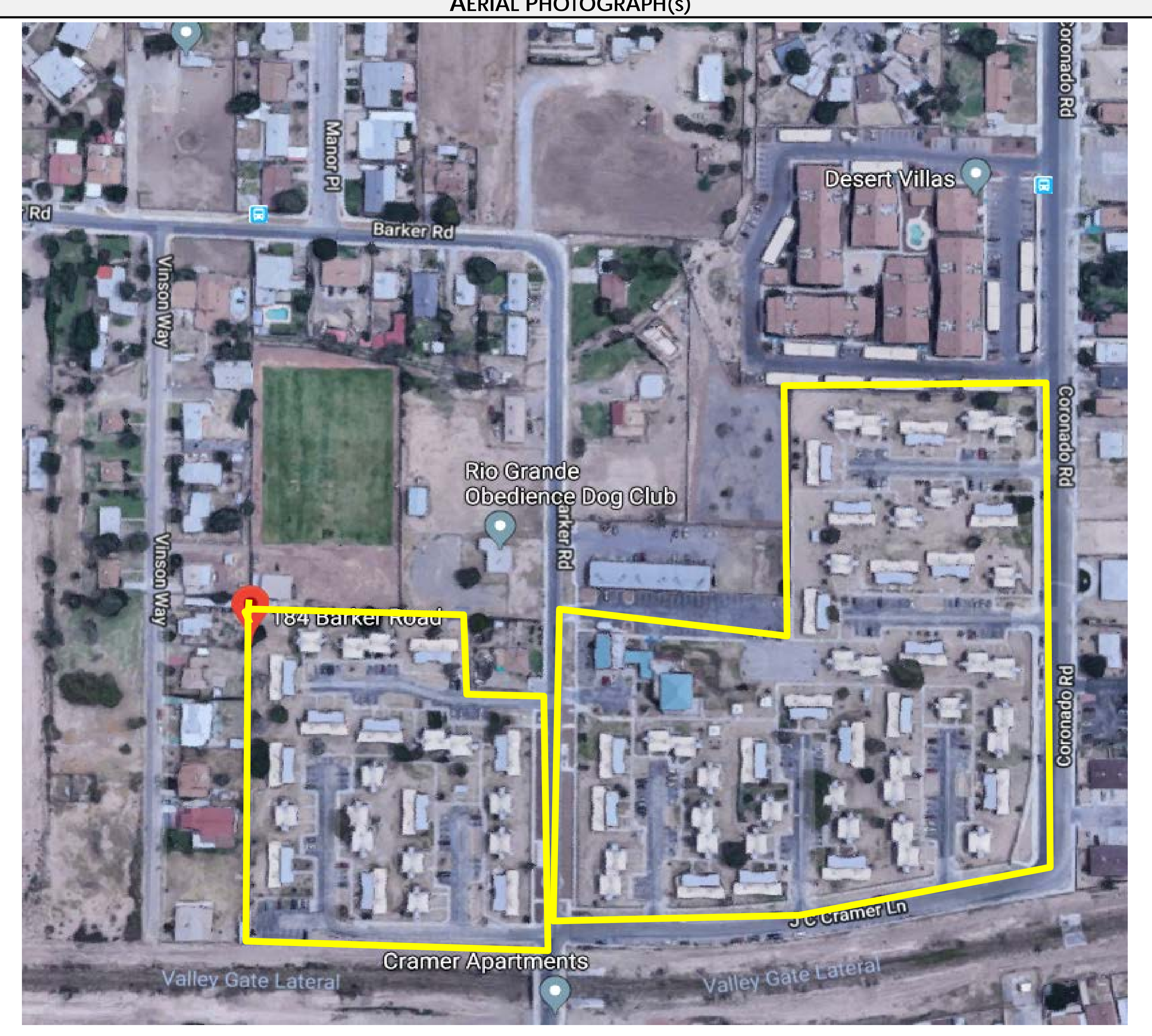
- Cross collateralization
- 10% construction contingency & available
- Minimal lease up risk
- Pro forma based on historical expenses
- 100% rental assistance

WEAKNESSES/RISKS

- Cramer & MLK properties not feasible on their own
- Potential cost overruns associated with rehab
- Deal structure could create management

AREA MAP

AERIAL PHOTOGRAPH(s)



18410 Ambrosio Guillen Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
August 30, 2018

PROPERTY IDENTIFICATION	
Application #	18410
Development	Ambrosio Guillen Apartments
City / County	El Paso / El Paso
Region/Area	13 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1973)

RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	$1,166,942	$1,166,942	$8,976/Unit	$0.95	
	Amount	Rate	Amort	Term	Lien

KEY PRINCIPAL / SPONSOR		
Housing Authority of the City of El Paso (HACEP) Miller Valentine Alamito PFC (Related-Party Issuer) Affordable Housing Enterprises (Contractor) Gerald ("Jerry") W. Cichon		
Related Parties	Contractor - Yes	Seller - Yes

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
1	-	0%	30%	-	0%
2	26	20%	40%	-	0%
3	56	43%	50%	-	0%
4	42	32%	60%	130	100%
5	6	5%	MR	-	
TOTAL	130	100%	TOTAL	130	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.48	Expense Ratio	47.6%
Breakeven Occ.	87.0%	Breakeven Rent	$681
Average Rent	$744	B/E Rent Margin	$63
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$594,775/unit	Controllable	$2,690/unit

SITE PLAN

MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			2.3%
Highest Unit Capture Rate	7%	4 BR+/50%	48
Dominant Unit Cap. Rate	4%	3 BR/50%	56
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	130	100% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	1,242 SF	Density	17.5/acre
Acquisition		$87K/unit	$11,270K
Building Cost	$58.45/SF	$73K/unit	$9,441K
Hard Cost		$93K/unit	$12,041K
Total Cost		$244K/unit	$31,703K
Developer Fee	$3,083K	(0% Deferred)	Paid Year: 7
Contractor Fee	$1,528K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$2K	2%	Finishes/Fixtures	$7K	8%
Building Shell	$12K	13%	Amenities	$2K	2%
HVAC	$2K	2%	Total Exterior	$52K	62%
Appliances	$K	0%	Total Interior	$32K	38%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
PNC Real Estate	40/40	4.30%	$8,703,469	1.48
TOTAL DEBT (Must Pay)			$8,703,469	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
HACEP Seller Loan	50/0	3.00%	$11,270,000	1.48
CASH FLOW DEBT / GRANTS			$11,270,000	

EQUITY / DEFERRED FEES	
Source	Amount
PNC Real Estate	$11,085,949
Paisano Housing Redevelopment	$643,856
TOTAL EQUITY SOURCES	$11,729,805
TOTAL DEBT SOURCES	$19,973,469
TOTAL CAPITALIZATION	$31,703,274

CONDITIONS

1 Receipt and acceptance before Determination Notice:

a: HUD approval of RAD conversion including a commitment to enter into the Housing Assistance Payment contract (or executed CHAP or similar agreement), HUD approved rents and operating budget.

b: Revised Site Work Breakdown Exhibits Certified by Third Party for each site consistent with the increased site work amounts and including certified estimated costs for landscaping. Additionally, if total site work is greater than $15,000 per unit, a CPA statement indicating how much costs should be considered eligible, is also required.

2 Receipt and acceptance by Cost Certification:

a: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should

b: Documentation clearing environmental issues contained in the ESA reports as detailed under the ESA section of each individual project. Specifically;

i: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

ii: Should the existing plumbing infrastructure be used, testing for lead in water is recommended.

iii: The Guillen property will require noise mitigation to establish a noise environment below 65 dB in the proposed noise sensitive locations of the development. Additionally, Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

iv: Tract 2 of the Guillen property will require documentation of post-construction Vapor Encroachment Screening and certification that any recommendations of the screening were implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Alamito PFC
Expiration Date	6/24/2018
Bond Amount	$17,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221
% Financed with Tax-Exempt Bonds	61.5%

RISK PROFILE

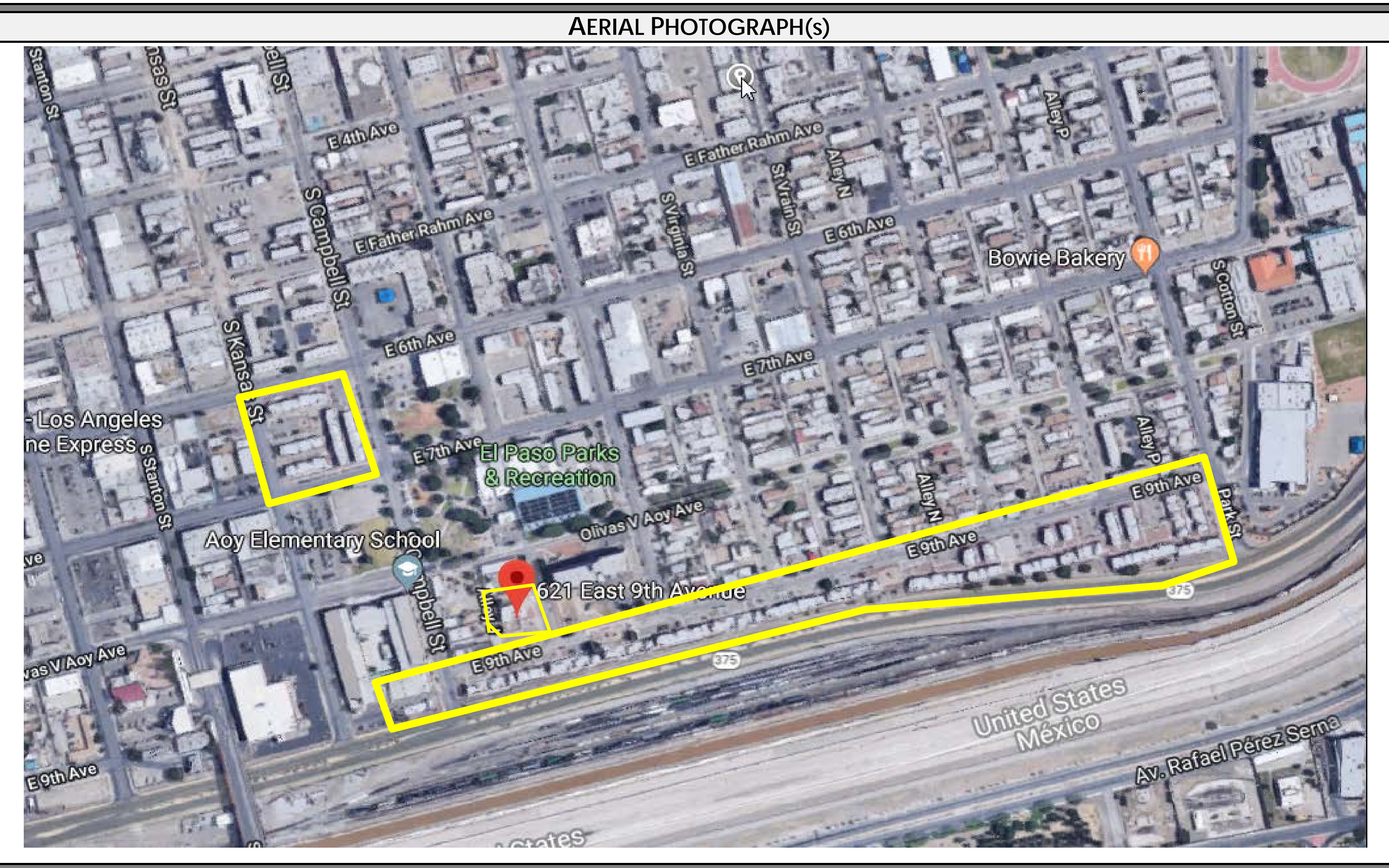
STRENGTHS/MITIGATING FACTORS

- Cross collateralization
- 10% construction contingency & available
- Minimal lease up risk
- Pro forma based on historical expenses
- 100% rental assistance

WEAKNESSES/RISKS

- Cramer & MLK properties not feasible on their own
- Potential cost overruns associated with rehab
- Deal structure could create management

AERIAL PHOTOGRAPH(s)



18411 MLK Memorial Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
August 30, 2018

PROPERTY IDENTIFICATION

Application #	18411
Development	MLK Memorial Apartments
City / County	El Paso / El Paso
Region/Area	13 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1973)

RECOMMENDATION

TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	$970,330	$970,330	#DIV/0!	$0.95	
	Amount	Rate	Amort	Term	Lien

KEY PRINCIPAL / SPONSOR

Housing Authority of the City of El Paso (HACEP)
Miller Valentine
Alamito PFC (Related-Party Issuer)
Affordable Housing Enterprises (Contractor)
Gerald ("Jerry") W. Cichon

Related Parties	Contractor - Yes	Seller - Yes

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION / INCOME DISTRIBUTION

# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	16	11%	40%	-	0%
2	80	53%	50%	-	0%
3	48	32%	60%	152	100%
4	8	5%	MR	-	
TOTAL	152	100%	TOTAL	152	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten	TDHCA's Pro Forma		
Debt Coverage	1.10	Expense Ratio	47.6%
Breakeven Occ.	87.0%	Breakeven Rent	$681
Average Rent	$744	B/E Rent Margin	$63
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$605,375/unit	Controllable	$2,690/unit

SITE PLAN

9101 Butternut Street
MLK Apartments
Pecan Grove Park 1

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			2.3%
Highest Unit Capture Rate	6%	3 BR/50%	48
Dominant Unit Cap. Rate	6%	2 BR/50%	80
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	152	100% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	1,004 SF	Density	9.1/acre
Acquisition		$56K/unit	$8,510K
Building Cost	$65.76/SF	$66K/unit	$10,035K
Hard Cost		$94K/unit	$14,325K
Total Cost		$210K/unit	$31,947K
Developer Fee	$3,585K	(0% Deferred)	Paid Year: 7
Contractor Fee	$1,828K	30% Boost	Yes

REHABILITATION COSTS / UNIT

Site Work	$4K	5%	Finishes/Fixtures	$7K	8%
Building Shell	$14K	15%	Amenities	$3K	3%
HVAC	$2K	2%	Total Exterior	$58K	68%
Appliances	$1K	1%	Total Interior	$28K	32%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
PNC Real Estate	40/40	4.30%	$10,150,000	1.10
TOTAL DEBT (Must Pay)			$10,150,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
HACEP Seller Loan	50/0	3.00%	$8,510,000	1.10
HACEP Gap Loan	50/0	3.00%	$2,852,175	1.10
CASH FLOW DEBT / GRANTS			$11,362,175	

EQUITY / DEFERRED FEES	
Source	Amount
PNC Real Estate	$9,218,135
Paisano Housing Redevelopment	$1,216,425
TOTAL EQUITY SOURCES	$10,434,560
TOTAL DEBT SOURCES	$21,512,175
TOTAL CAPITALIZATION	$31,946,735

CONDITIONS

1 Receipt and acceptance before Determination Notice:

a: HUD approval of RAD conversion including a commitment to enter into the Housing Assistance Payment contract (or executed CHAP or similar agreement), HUD approved rents and operating budget.

b: Revised Site Work Breakdown Exhibits Certified by Third Party for each site consistent with the increased site work amounts and including certified estimated costs for landscaping. Additionally, if total site work is greater than $15,000 per unit, a CPA statement indicating how much costs should be considered eligible, is also required.

2 Receipt and acceptance by Cost Certification:

a: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not

b: Documentation clearing environmental issues contained in the ESA reports as detailed under the ESA section of each individual project. Specifically;

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Alamito PFC
Expiration Date	6/24/2018
Bond Amount	$18,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	FHA 221
% Financed with Tax-Exempt Bonds	61.5%

RISK PROFILE

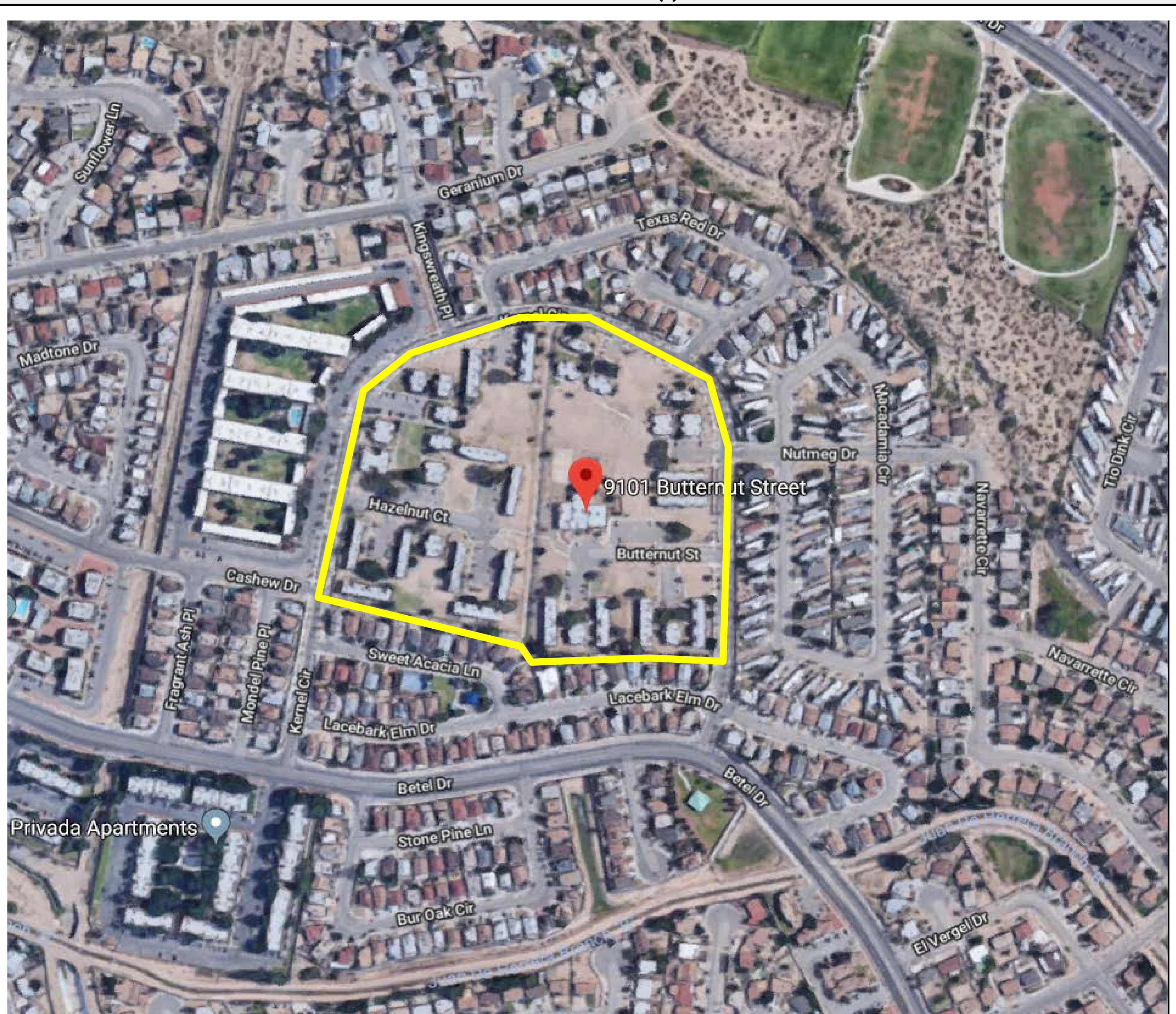
STRENGTHS/MITIGATING FACTORS

- Cross collateralization
- 10% construction contingency & available
- Minimal lease up risk
- Pro forma based on historical expenses
- 100% rental assistance

WEAKNESSES/RISKS

- Cramer & MLK properties not feasible on their own
- Potential cost overruns associated with rehab
- Deal structure could create management

AERIAL PHOTOGRAPH(s)



BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18420 Walnut Creek Apartments, Austin)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Walnut Creek Apartments, sponsored by Jacob Levy, Shaoul Levy, and Aryeh Aslan was submitted to the Department on April 25, 2018;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on June 5, 2018, and will expire on November 2, 2018; and

WHEREAS, the proposed issuer of the bonds is Texas State Affordable Housing Corporation;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of $615,231 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Walnut Creek Apartments is hereby approved as presented to this meeting.

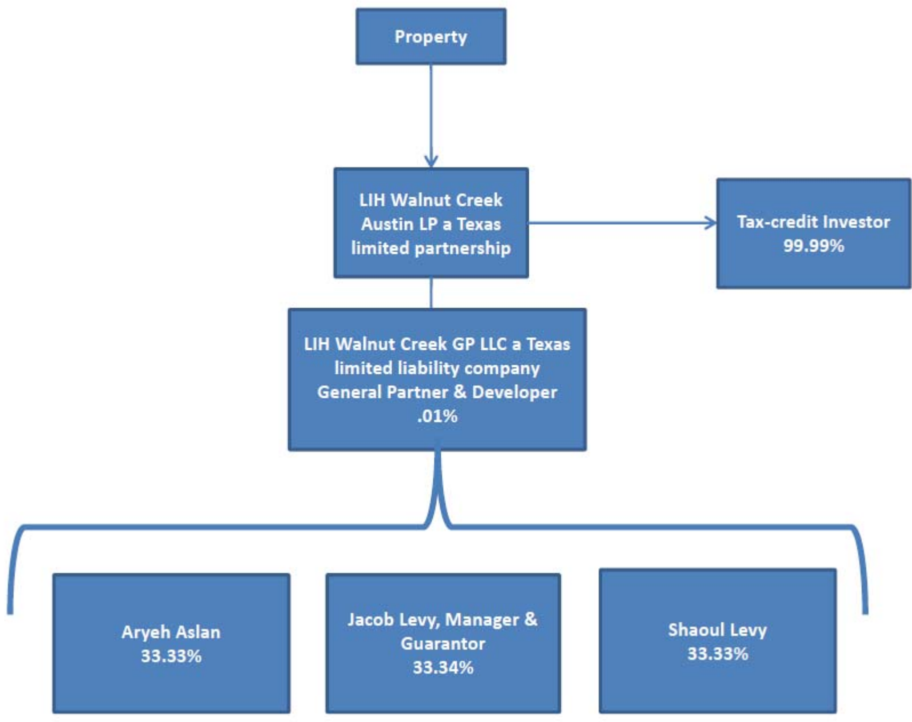
BACKGROUND

General Information: Walnut Creek Apartments, located at 6409 Springdale Road in Austin, Travis County, proposes the acquisition and rehabilitation of 98 units, of which 97 units will be rent and income restricted at 60% of Area Median Family Income ("AMFI"), and the remaining unit will be employee-occupied. There is a Section 8 Housing Assistance Payments contract covering 97 of the units which is anticipated to continue. The development will serve the general population and the site conforms to the current zoning. Walnut Creek was originally built in 1972, and received 4% housing tax credits in 2000 for rehabilitation. The existing land use restriction agreement reflects all of the units serving households at 50% of AMFI. The census tract (0021.08) has a median household income of $38,792, is in the fourth quartile, and has a poverty rate of 36.7%.

Organizational Structure and Previous Participation: The Borrower is LIH Walnut Creek Austin LP, and includes the entities and principals as indicated in Exhibit A. The applicant's portfolio is considered a small Category 1 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



18420 Walnut Creek Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
August 29, 2018

PROPERTY IDENTIFICATION	
Application #	18420
Development	Walnut Creek Apartments
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1972)

RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$615,231	$615,231	$6,278/Unit	$0.91

KEY PRINCIPAL / SPONSOR

Levy Affiliated
Jacob Levy
Sarah Andre (Consultant)

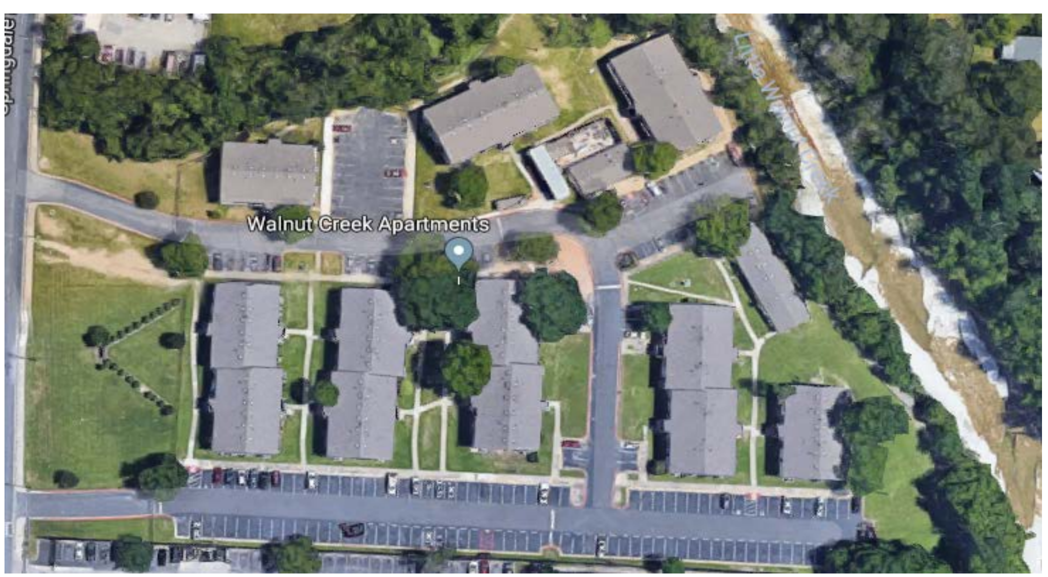
Related Parties	Contractor - Yes	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	36	37%	40%	-	0%
2	44	45%	50%	-	0%
3	18	18%	60%	97	99%
4	-	0%	MR	1	1%
TOTAL	98	100%	TOTAL	98	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.18	Expense Ratio	46.9%
Breakeven Occ.	87.4%	Breakeven Rent	$1,179
Average Rent	$1,283	B/E Rent Margin	$104
Property Taxes	$917/unit	Exemption/PILOT	0%
Total Expense	$6,967/unit	Controllable	$3,868/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			0.7%
Highest Unit Capture Rate	1%	2 BR/50%	44
Dominant Unit Cap. Rate	1%	2 BR/50%	44
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	97	99% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	846 SF	Density	12.8/acre
Acquisition		$94K/unit	$9,250K
Building Cost	$44.74/SF	$38K/unit	$3,711K
Hard Cost		$45K/unit	$4,380K
Total Cost		$188K/unit	$18,409K
Developer Fee	$2,139K	(31% Deferred)	Paid Year: 6
Contractor Fee	$567K	30% Boost	Yes

REHABILITATION COSTS / UNIT					
Site Work	$2K	5%	Finishes/Fixtures	$20K	44%
Building Shell	$13K	28%	Amenities	$K	1%
HVAC	$4K	9%	Total Exterior	$15K	38%
Appliances	$1K	3%	Total Interior	$25K	62%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
CBRE - Freddie TEL Loan	15/35	4.58%	$10,210,000	1.30
Seller Note	35/35	5.00%	$1,000,000	1.18
TOTAL DEBT (Must Pay)			$11,210,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
Operating Cash Flow	0/0	0.00%	$915,137	1.18
CASH FLOW DEBT / GRANTS			$915,137	

EQUITY / DEFERRED FEES	
Source	Amount
Alliant	$5,598,042
LIH Walnut Creek Austin LP	$685,698
TOTAL EQUITY SOURCES	$6,283,740
TOTAL DEBT SOURCES	$12,125,137
TOTAL CAPITALIZATION	$18,408,877

CONDITIONS

: Receipt and acceptance by Cost Certification:

a: Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented by a qualified abatement company; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

b: Documentation that the areas of water intrusion and moisture damage have been repaired by a qualified contractor and the route source identified and repaired accordingly. Confirmation that a Mold and Moisture Management Plan has been implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	rdable Housing Corporation (TSAHC)
Expiration Date	11/1/2018
Bond Amount	$15,000,000
BRB Priority	Priority 3
Close Date	9/20/2018
Bond Structure	Freddie Mac Tax Exempt Loan
% Financed with Tax-Exempt Bonds	96.9%

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

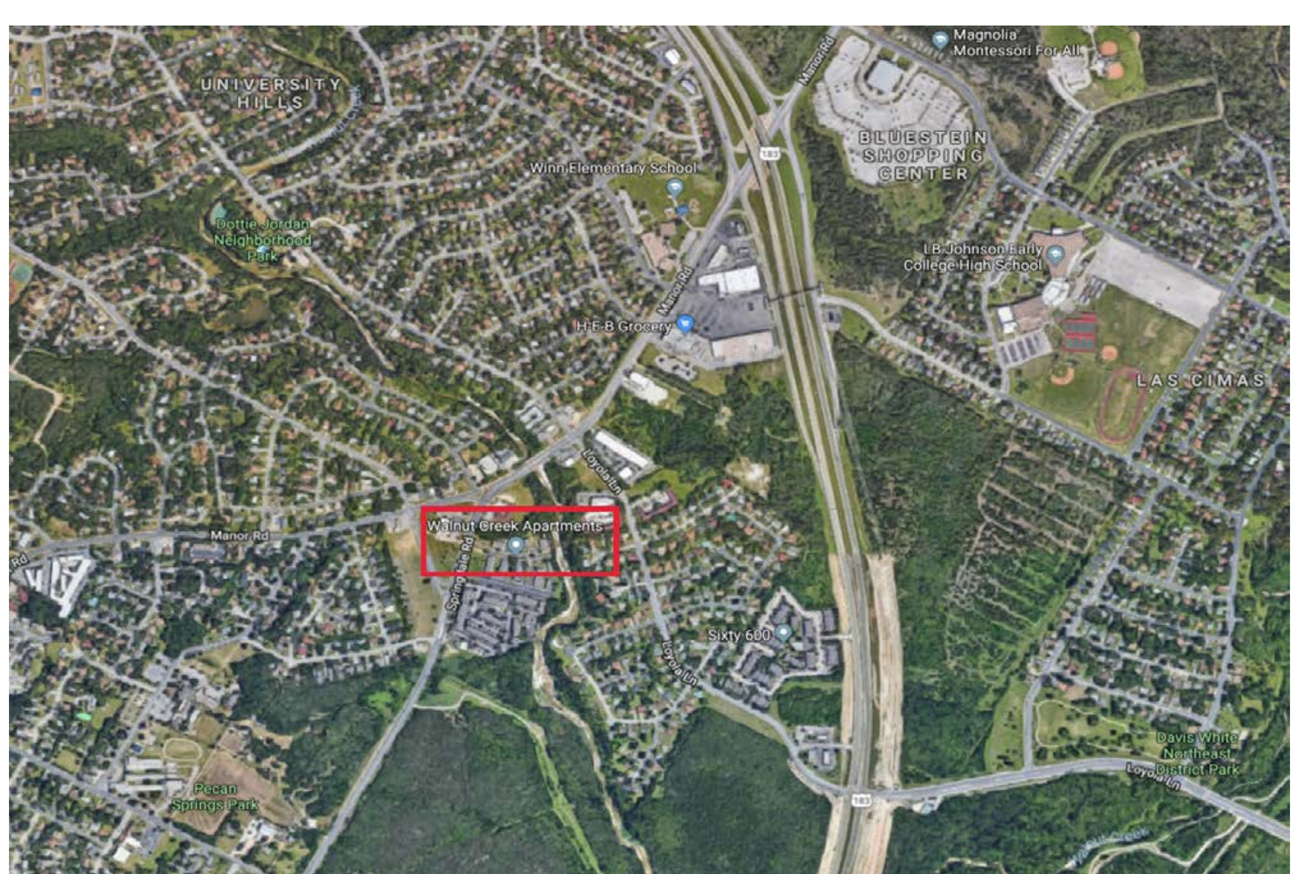
- 100% HAP Contract
- Developer Experience within Affordable Industry
- High HAP contract rents

WEAKNESSES/RISKS

- Historical expenses high for this project

AREA MAP

AERIAL PHOTOGRAPH(s)



BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 6, 2018

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#18422 Elysium Grand, Austin)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Elysium Grand, sponsored by the Austin Affordable Housing Corporation, was submitted to the Department on April 13, 2018;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on July 11, 2018, and will expire on December 8, 2018;

WHEREAS, the proposed issuer of the bonds is Austin Housing Finance Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(2) of the Uniform Multifamily Rules related to Undesirable Site Features, applicants must disclose to the Department if the Development Site is located within the applicable distance of any undesirable site features;

WHEREAS, the applicant disclosed that the proposed Development Site is located within 500 feet of an active railroad track;

WHEREAS, the applicant submitted an ordinance from the City of Austin that regulates proximity to a railroad easement, and staff finds that this is acceptable mitigation under 10 TAC §10.101(a)(2) and, therefore, the site should be considered eligible; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an extra large Category 3 and deemed acceptable by Executive Award and Review Advisory Committee ("EARAC") after review and discussion;

NOW, therefore, it is hereby

RESOLVED, that the site for Elysium Grand is hereby found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of $343,834 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Elysium Grand is hereby approved as presented to this meeting.

BACKGROUND

General Information: Elysium Grand, proposed to be located at 3300 Oak Creek Drive in Austin, Travis County, involves the new construction of 90 units, of which 12 will be rent and income restricted at 30% of

Area Median Family Income ("AMFI"), 40 units will be rent and income restricted at 50% of AMFI, 17 units will be rent and income restricted at 60% of AMFI, and the remaining 21 will be market rate units. Moreover, 25 Project-Based HUD Veterans Affairs Supportive Housing ("VASH") vouchers have been awarded for the project. The development will serve the general population and the site conforms to the current zoning. The census tract (0018.46) has a median household income of $85,764, is in the first quartile, and has a poverty rate of 6.2%.

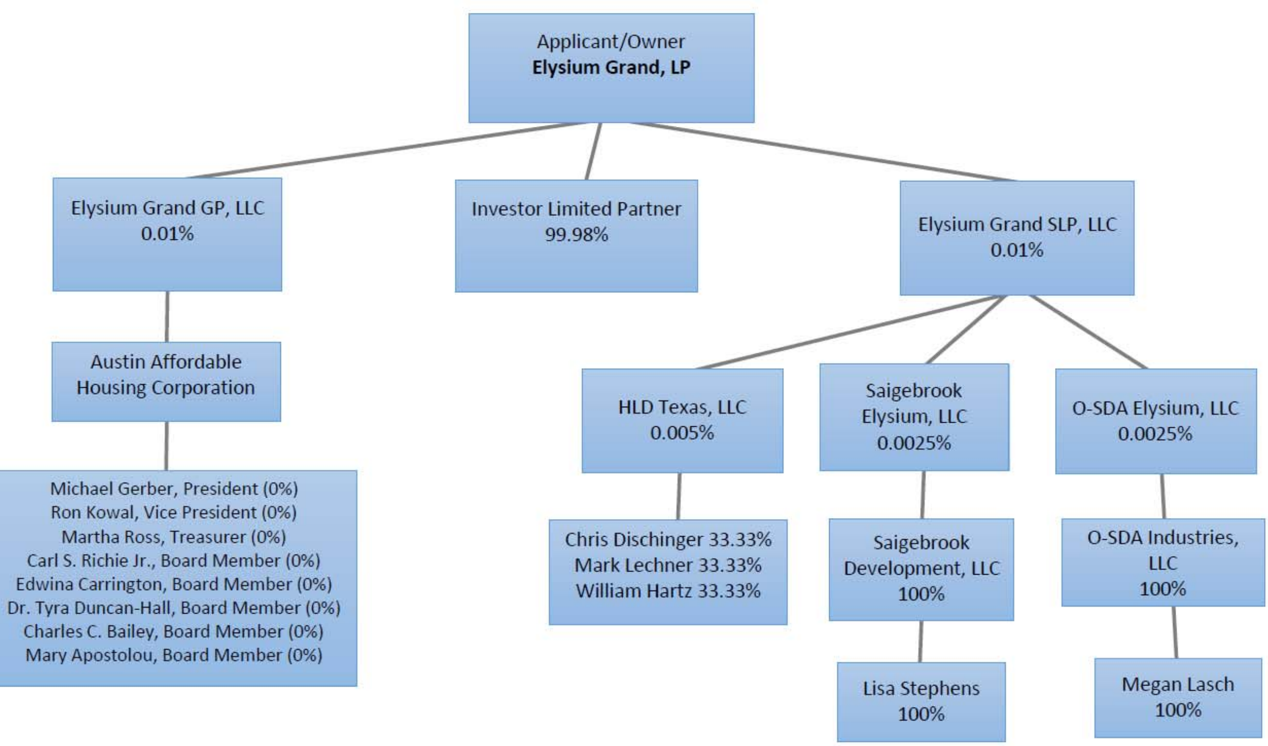
Site Analysis: The presence of an undesirable site feature under 10 TAC §10.101(a)(2)(E) of the Uniform Multifamily Rules requires additional site analysis. Elysium Grand will be located within 500 feet from an active railroad track. An ordinance from the City of Austin was submitted as evidence that the proposed development will adhere to the requirements of the local ordinance. The subject property is located within the boundaries of a conditional overlay combining district that does not allow a building or structure to be constructed within a 400 foot wide setback from the railroad easement.

Under 10 TAC §10.101(a)(2) of the Uniform Multifamily Rules, where there is a local ordinance that regulates the undesirable feature to a multifamily development that has smaller distances than the minimum distances required by the Department, such smaller distances may be used. After reviewing the aforementioned facts relating to the proximity to an active railroad track and the local ordinance regulating the distance, staff believes it leads to a supported conclusion that the development site should be considered eligible under 10 TAC §10.101(a)(2)(E) of the Uniform Multifamily Rules.

Organizational Structure and Previous Participation: The Borrower is Elysium Grand, LP, and includes the entities and principals as indicated in Exhibit A. The applicant's portfolio is considered an Extra Large Category 3 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



18422 Elysium Grand - Application Summary

REAL ESTATE ANALYSIS DIVISION
August 30, 2018

PROPERTY IDENTIFICATION

Application #	18422
Development	Elysium Grand
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION

TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$343,834	$343,834	$3,820/Unit	$0.94

KEY PRINCIPAL / SPONSOR

- Megan Lasch / O-SDA Industries, LLC
- Lisa Stephens / Saigebrooke Development, LLC
- Chris Dischinger / HLD Texas, LLC
- Michael Gerber / Austin Affordable Housing Corp.

Related Parties	Contractor - Yes	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	19	21%
2	53	59%
3	18	20%
4	-	0%
TOTAL	90	100%

INCOME DISTRIBUTION

Income	# Units	% Total
30%	12	13%
40%	-	0%
50%	40	44%
60%	17	19%
MR	21	23%
TOTAL	90	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.18	Expense Ratio	33.2%
Breakeven Occ.	83.1%	Breakeven Rent	$954
Average Rent	$1,064	B/E Rent Margin	$110
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$3,997/unit	Controllable	$2,482/unit

SITE PLAN

N

Bldg. 1

Bldg. 2

Bldg. 3

Detention

Flood Zone X

Flood Zone AE

Oak Creek Dr.

7.101 Acres

SITE NOTES
1. SITE AREA: TOTAL 7.101 ACRES
2. AS INDICATED ON SITE PLAN – FLOOD ZONES X & AE
3. ALL ONSITE CONSTRUCTION IS NEW CONSTRUCTION
4. MINIMUM 8'-0" CEILING HEIGHT
5. PARKING COUNT MEETS THE REQUIREMENTS OF LOCAL JURISDICTION

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			0.4%
Highest Unit Capture Rate	3%	3 BR/50%	8
Dominant Unit Cap. Rate	3%	2 BR/50%	18
Premiums (↑60% Rents)	Yes		$345/Avg.
Rent Assisted Units	25		28% Total Units

DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	905 SF	Density	12.7/acre
Acquisition		$23K/unit	$2,075K
Building Cost	$86.18/SF	$78K/unit	$7,020K
Hard Cost		$97K/unit	$8,720K
Total Cost		$193K/unit	$17,372K
Developer Fee	$1,787K	(12% Deferred)	Paid Year: 2
Contractor Fee	$1,221K	30% Boost	No

DEBT (Must Pay)				
Source	**Term**	**Rate**	**Amount**	**DCR**
Red Stone	16/40	4.99%	$10,607,179	1.18
TOTAL DEBT (Must Pay)			**$10,607,179**	

CASH FLOW DEBT / GRANT FUNDS				
Source	**Term**	**Rate**	**Amount**	**DCR**
Austin Housing Finance Corp.	40/0	0.00%	$3,320,000	1.18
CASH FLOW DEBT / GRANTS			**$3,320,000**	

EQUITY / DEFERRED FEES	
Source	**Amount**
Stratford Capital Group	$3,231,393
Saigebrook Development, LLC	$212,947
TOTAL EQUITY SOURCES	$3,444,340
TOTAL DEBT SOURCES	$13,927,179
TOTAL CAPITALIZATION	**$17,371,519**

CONDITIONS

1 Receipt and acceptance by Cost Certification:

a: Certification from Appraisal District that the property qualifies for property tax exemption.

b: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Austin Housing Finance Corporation
Expiration Date	12/8/2018
Bond Amount	$10,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	71.5%

RISK PROFILE

STRENGTHS/MITIGATING FACTORS

- Gross capture rate under 1%, with highest unit capture rate of 3%
- Attractive design should enhance leasing
- Residential in-fill location
- Developer experience

WEAKNESSES/RISKS

- Market unit rents exceed 60% rents by an average of $253/unit
- Single point of ingress/egress
- Building 2 access is less convenient since parking lot does not form a complete loop
- Proximity to railroad and expressway
- Feasibility depends on full property tax exemption

AREA MAP

Cedar Park
Round Rock
Lago Vista
3300 Oak Creek Drive
Coupland
New Sweden
Lund
Lakeway
The Hills
Manor
Elgin
Littig
Bee Cave
West Lake Hills
Austin
Sunset Valley
Webberville
Sayersville
Dripping Springs
Garfield
Camp Swift
Manchaca
Elroy
Wyldwood
Driftwood
Bastrop

AERIAL PHOTOGRAPH(s)

1e

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for Sandstone Foothills Apartments (HTC #18118)

RECOMMENDED ACTION

WHEREAS, Sandstone Foothills Apartments (the "Development") received an award of 9% Housing Tax Credits ("HTCs") in 2018 for the acquisition and rehabilitation of 40 multifamily units in Mineral Wells, Palo Pinto County;

WHEREAS, a representative for National Church Residences, an affiliate of Sandstone Foothills Senior Housing Limited Partnership (the "Development Owner"), requested approval for a change to the ownership structure of the Development Owner that involves the exit of one of its original members but no new principals;

WHEREAS, due to a conflict with the requirements in the HUD 202 Use Agreement, which prohibits for-profit entities from being part of the general partner, Betco Consulting, LLC, the 5% member of National Church Residences of Sandstone Foothills, LLC (the "General Partner"), will no longer be part of the ownership structure; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for Sandstone Foothills Apartments is approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

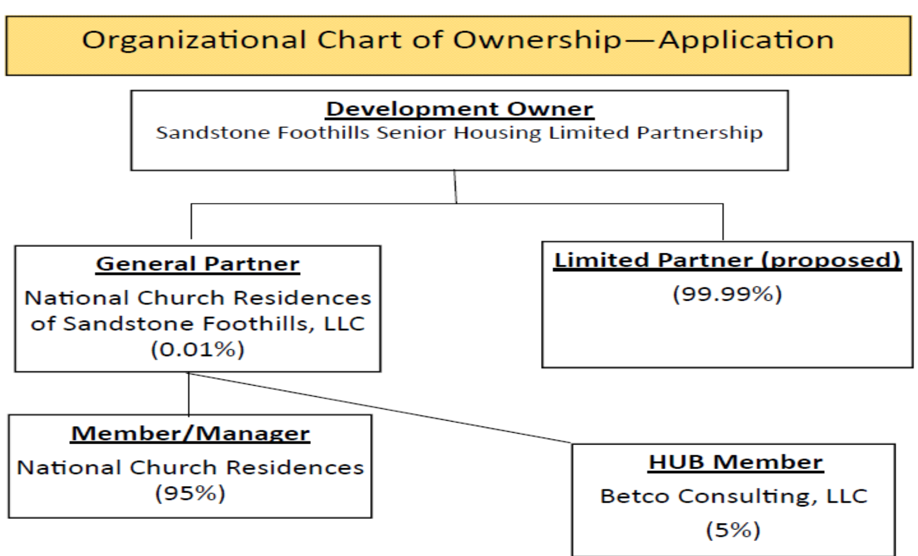
BACKGROUND

Sandstone Foothills Apartments is a development in Mineral Wells, Palo Pinto County, which was originally built in 1990 under the HUD 202 program and was submitted and approved for a 9% HTC award in 2018 for the rehabilitation of its 40 units. The HTC application for the Development proposed Betco Consulting, LLC, a Historically Underutilized Business (the "HUB"), as the 5% member of the General Partner; however, in a letter dated July 27, 2018, a representative of National Church Residences, an affiliate of the Development Owner, requested approval to remove the HUB from the ownership structure of the Development.

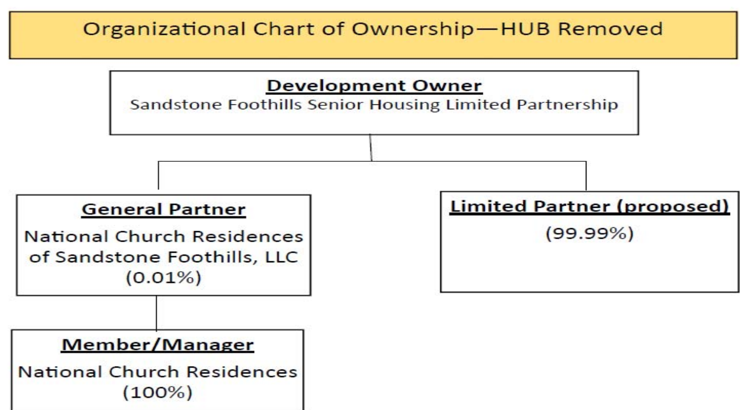
Through a similarly structured 2017 9% HTC Award (Plateau Ridge Apartments) the Applicant came to realize that the HUD 202 Use Agreement does not allow for-profit entities to serve as general partner. The standard HUD 202 Use Agreement requires that ownership of the project at all times be controlled by a nonprofit mortgagor entity or a limited partnership entity of which the general partner is a nonprofit affordable housing provider or a for-profit corporation wholly owned and controlled by one or more non-profit affordable housing provider. In the case of Plateau Ridge Apartments, the Applicant had to remove the HUB from the ownership structure of the Development; that action was presented and approved by the Department's Board in May 2018.

Sandstone is now facing the same situation. National Church Residences Investment Corporation ("NCRIC"), which was originally proposed as the 95% member and manager of the General Partner, would now remain as the sole member of the General Partner. According to the HTC application, NCRIC is a subsidiary of National Church Residences, an Ohio nonprofit corporation and Section 501(c)(3) organization. NCRIC has its 501(c)(3) status through National Church Residences' group 501(c)(3) exemption. Although no new principals are being added to the ownership structure, because this change is occurring prior to issuance of IRS Form(s) 8609, Board approval is required under 10 TAC §10.406(e). Steven T. Bodkin of National Church Residences was used to meet the experience requirement at Application, and this is not changing as a result of this transfer. Additionally, NCRIC was proposed as the sole developer and guarantor, and this is not affected by the HUB's departure. The pre- and post-transfer organization charts for the Development Owner are below.

Ownership Structure Approved at Application



Revised Ownership Structure



The HTC application for Development was submitted under the At-Risk set-aside and scored 153 points, which included two points for having a HUB participate in the ownership structure. Because the At-risk setaside was under-subscribed in 2018, all eligible Applications received an allocation, therefore the loss of points would not impact the outcome of the round. Therefore, even with removing these points, the Development would still have received a 2018 LIHTC award in the At-Risk set-aside with an updated score of 151 points.

Staff recommends approval of the ownership transfer for Sandstone Foothills Apartments as presented.

July 27, 2018

Ms. Marni Holloway
TDHCA

Re: Request to remove HUB
Sandstone, 18118

Ms. Holloway,

We received a 2018 9% LIHTC award for Sandstone Foothills (#18118), and the general partner included a HUB as part of the ownership structure. Sandstone was originally built under the HUD 202 program. As we approached closing on a previous deal this past April for Plateau Ridge #17091, it came to our attention that the HUD 202 Form Use Agreement does not allow for-profit entities to serve as the general partner. We were made aware of the issue after we submitted the full application for Sandstone. Please see, excerpt below from standard HUD 202 New Use Agreement which tracks the language in the federal legislation:

"Ownership of the project will at all times be controlled by a nonprofit mortgagor entity or a limited partnership entity of which the general partner is a: (1) nonprofit affordable housing provider; (2) for profit corporation wholly owned and controlled by one or more non-profit affordable housing provider; or (3) a limited liability company wholly owned and controlled by one or more nonprofit affordable housing provider."

Since the HUD 202 Use Agreement prohibits for-profit entities from being part of the general partner, we must request an Ownership change to remove Betco Consulting from the project's ownership. National Church Residences would remain the sole member of the General Partner. The HUB will also no longer be receiving any proceeds via cash flow. Betco is aware of this proposed change.

Sandstone scored 153 which included 2 points for Sponsorship Characteristics for having a HUB participate in our project. All applications in At-Risk were awarded tax credits in 2018. By removing these 2 points, Sandstone would still have received a 2018 LIHTC award in At-Risk with an updated score of 151.

We request TDHCA staff give a recommendation to the TDHCA Board to approve removing the HUB from Sandstone's ownership entity prior to 8609. Attached is the organizational chart before and after the ownership change. Please let me know if you need any further information.

Regards,

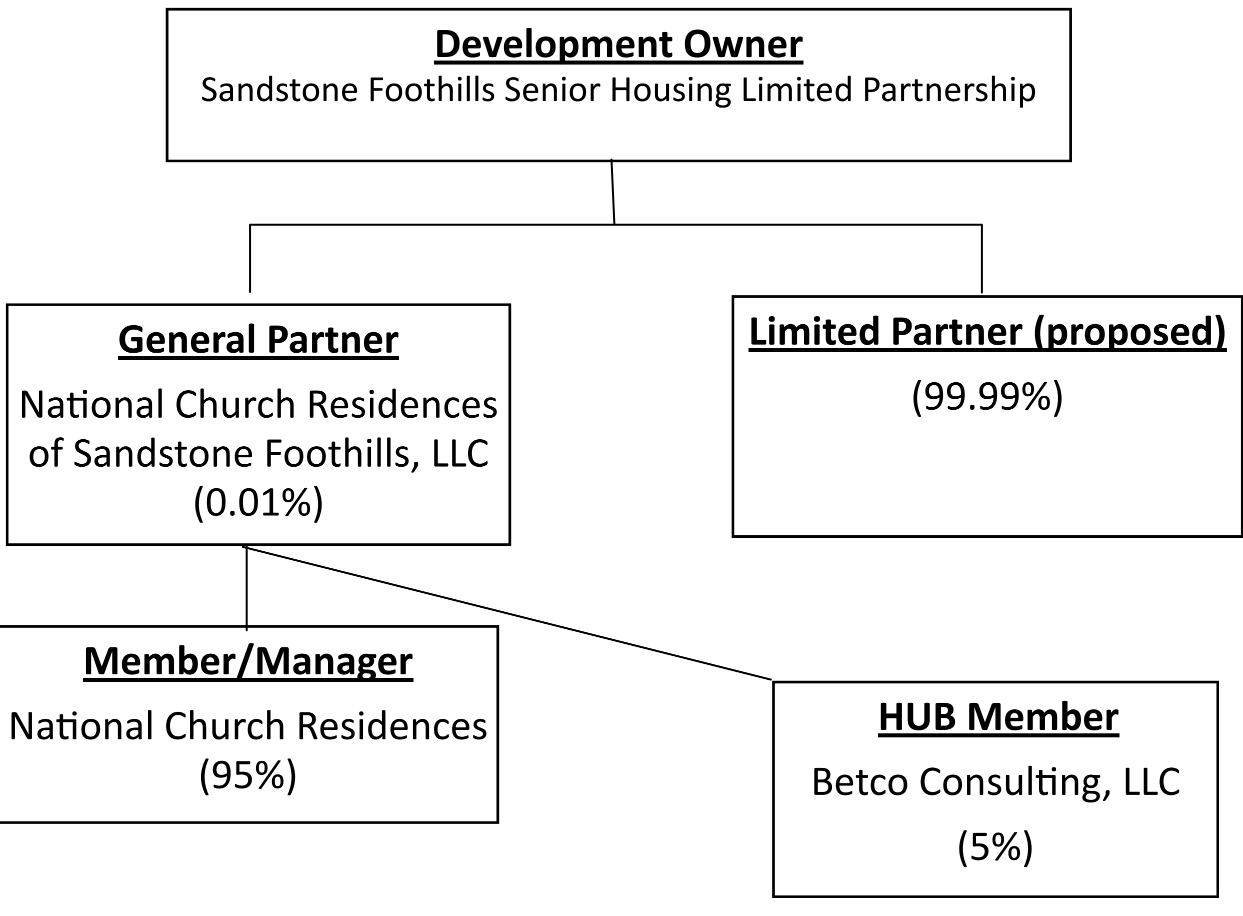
Tracey Fine

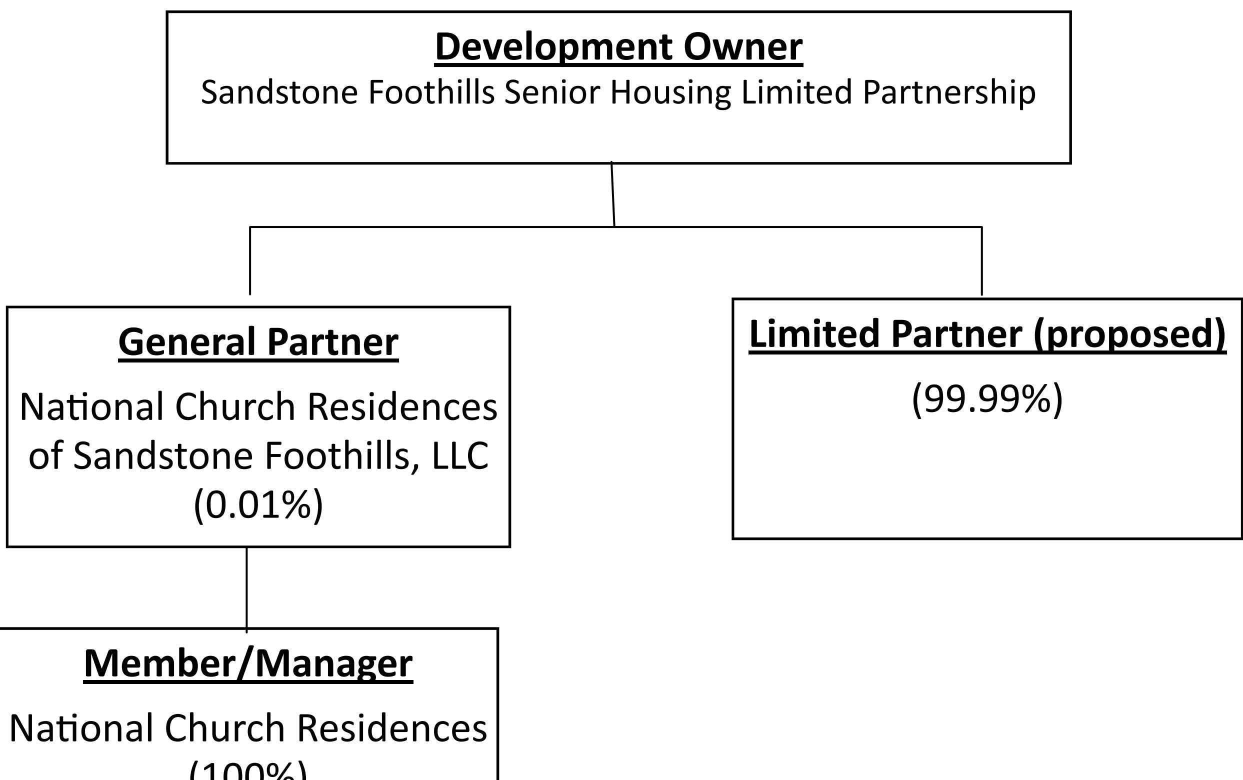
Tracey Fine
Senior Project Leader
773-860-5747

2335 North Bank Drive Columbus, Ohio 43220 Phone: 800.388.2151 Fax: 614.451.0351 www.nationalchurchresidences.org

National Church Residences does not discriminate in any fashion based upon a person's race, color, sex, national origin, handicap status, religion, familial status, source of income, sexual preference, or disability. National Church Residences does not discriminate based upon age for any reason, excluding HUD program/project requirements.

Organizational Chart of Ownership—Application




Organizational Chart of Ownership—HUB Removed
Development Owner
Sandstone Foothills Senior Housing Limited Partnership
General Partner
National Church Residences of Sandstone Foothills, LLC
(0.01%)
Limited Partner (proposed)
(99.99%)
Member/Manager
National Church Residences
(100%)

1f

BOARD ACTION REQUEST

PROGRAM CONTROLS AND OVERSIGHT

SEPTEMBER 6, 2018

Presentation, discussion, and possible action to authorize and delegate signature authority to the General Land Office Land Commissioner to execute any releases of lien for Community Development Block Grant Disaster Recovery Hurricane Rita, Round II, activities.

RECOMMENDED ACTION

WHEREAS, in 2011 Governor Rick Perry directed that the Community Development Block Grant Disaster Recovery ("CDBG DR") Program be transferred from the Texas Department of Housing and Community Affairs ("TDHCA") to the General Land Office ("GLO"), and this was made law by Senate Bill 2 by the 82nd Legislature;

WHEREAS, a Memorandum of Agreement ("MOA") was put in place in September 2011 between TDHCA and the GLO to address certain matters relating to the CDBG DR Program;

WHEREAS, another MOA was authorized by the Board on January 26, 2017, to address specific matters relating to the releases of lien for manufactured housing units ("MHUs") assisted with CDBG DR Hurricane Rita, Round II funds that had achieved the required grant period, and to authorize the GLO to have continued use of the TDHCA Housing Contract System ("TDCHA HCS"); and

WHEREAS, despite the GLO submitting releases of lien to CDBG DR Hurricane Rita, Round II recipients after expiration of the grant period, it happens from time to time that a release of lien was not submitted by the recipient to the appropriate county clerk for recording;

NOW, therefore, it is hereby

RESOLVED, that the Board grant delegated signature authority to the GLO Land Commissioner to execute any new releases of lien to replace previously issued releases of lien that went unrecorded.

BACKGROUND

Effective July 1, 2011, in accordance with a letter from Governor Rick Perry, the GLO was named the lead agency for administration of CDBG DR funds. Upon passage of Senate Bill 2, of the 82nd Legislature, first Special Legislative Session, Section 33, all activities and funding related to the administration of the CDBG DR Program transferred to the GLO. The first MOA was executed to be effective September 1, 2011, to memorialize the transfer of the CDBG DR Program, provide for sub-servicing of single family and multifamily CDBG DR loans, and provide use of the TDHCA HCS and TDHCA HCS technical assistance related to CDBG DR activities. The first MOA was further amended to extend the termination of the MOA to August 31, 2015. A second MOA, approved by the Board on January 26, 2017, to address the remaining activities associated with CDBG DR Hurricane Rita, Round II and the continued use of the TDHCA HCS with a termination date of August 31, 2017, and was further amended to extend the termination date to

September 30, 2018.

In connection with CDBG DR Hurricane Rita, Round II activities, delegated signature authority to the GLO Land Commissioner will allow the GLO to more efficiently and expeditiously prepare and execute any new releases of lien to replace previously issued releases of lien that went unrecorded as the need may arise in the future.

1g

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit ("HTC") Land Use Restriction Agreement ("LURA") for Rosemont of Hillsboro Phase I (HTC #99118)

RECOMMENDED ACTION

WHEREAS, Rosemont of Hillsboro Phase I (the "Development") received a 9% HTC award in 1999 to construct 24 multifamily units in Hillsboro, Hill County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal ("ROFR") to purchase the Development, and the LURA requires a two-year ROFR period;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, the Development Owner requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing which was held as required;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Rosemont of Hillsboro Phase I is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Rosemont of Hillsboro Phase I received a 9% LIHTC award in 1999 for the new construction of 24 HTC multifamily units in Hillsboro, Hill County. In a letter dated July 23, 2018, the Development Owner, Hillsboro Housing, L.P. (Jill Brooks-Garnett), requested approval to amend the HTC LURA related to the ROFR provision.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

The Development Owner requests to amend the HTC LURA to replace the two-year ROFR period with a 180-day ROFR period. The property is currently in the seventeenth year of the twenty-five year Compliance Period specified in the LURA.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2017 Uniform Multifamily Rules, Subchapter E, implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on August 15, 2018, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

July 23, 2018

VIA HAND DELIVERY
Ms. Lee Ann Chancel
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 99118; Hillsboro Gardens Apartments (the "**Property**")

Dear Lee Ann:

The undersigned, being the General Partner (herein so called) of Hillsboro Housing, L.P., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of $2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

GRAND MARAIS, LLC, d/b/a ALDEN GRAND MARAIS, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ______________________
Name: Jill Brooks-Garnett
Title: Chief Operating Officer

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

August 7, 2018

Dear Resident:

Hillsboro Gardens (the "**Community**") is owned by Hillsboro Housing, L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **August 15, 2018, at 12:00 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner's request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

Texas Department of Housing and Community Affairs
Asset Management Division
221 East 11th Street
Austin, Texas 78701

We appreciate that Hillsboro Gardens is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Hillsboro Gardens as your home.

Sincerely,

HILLSBORO HOUSING, L.P.,
a Texas limited partnership

By: Grand Marias, LLC, d/b/a Alden Grand Marais, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ____________________
Name: Jill Brooks-Garnett
Title: COO

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

August 7, 2018

Ms. Diane Wills *(diane.wills@greyco.com)*
Greystone Funding Corporation
150 West 57th Street
60th Floor
New York, NY 10019

Dear Diane:

Hillsboro Housing, L.P. (the "**Owner**") is the owner of Hillsboro Gardens (the "**Community**") which is located at 807 Abbott Avenue, Hillsboro, Texas 76645. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **August 15, 2018** at **12:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

HILLSBORO HOUSING, L.P.,
a Texas limited partnership

By: Grand Marias, LLC, d/b/a Alden Grand Marais, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ______________________
Name: Jill Brooks-Garrett
Title: COO

Rosemont at Hillsboro

TDHCA Meeting

August 15, 2018

On August 15, 2018 the property hosted a meeting per the notice from TDHCA on Rosemont at Hillsboro. The notice was deliver to all the residents was deliver August 9, 2018.

The meeting started at 12:00 p.m. and open to anyone that had questions. There was only one resident, 5-501 Letha Waldrep that came to the meeting. Mrs. Waldrep question was what was going to happen to rent and is the property going to get cable and better internet. I explained that at this time we did not know what the rent would be if we change with the restructure of the property but if the property goes to having more of a market rent all the current residents would still have up to 3 years to be under the Tax Credit program which would be like the rent she is paying now. She understood and would just wait to see what will happen. Then the conversation went into getting cable for the property. It seems the city of Hillsboro cancel the contract with the cable company and has not provided any new company that can come into the city. This is the reason the property has so many satellites. I told her that I could check into the cable issue but the Property Manager, Mary Farmer stated that she has been trying to work with the city for some information but has not been able to get any information for about an year now.

I stayed at the property until 2 p.m. just in case anyone came in with questions but no one inquired about the notice.

If you have any questions, please let me or Mary know.

Debbi Sandridge, Regional Property Manager

Mary Farmer, Community Manager

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit ("HTC") Land Use Restriction Agreement ("LURA") for Rosemont of Hillsboro Phase II (HTC #01001)

RECOMMENDED ACTION

WHEREAS, Rosemont of Hillsboro Phase II (the "Development") received a 9% HTC award in 2001 to construct 52 multifamily units in Hillsboro, Hill County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal ("ROFR") to purchase the Development, and the LURA requires a two-year ROFR period;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, the Development Owner requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing, which was held as required;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Rosemont of Hillsboro Phase II is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Rosemont of Hillsboro Phase II received a 9% HTC award in 2001 for the new construction of 52 HTC multifamily units in Hillsboro, Hill County. In a letter dated July 23, 2018, the Development Owner, Hillsboro Housing, L.P. (Jill Brooks-Garnett), requested approval to amend the HTC LURA related to the ROFR provision.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the fifteenth year of the Compliance Period the owner decides to sell the property.

The Development Owner requests to amend the HTC LURA to replace the two-year ROFR period with a 180-day ROFR period. The property is currently in the seventeenth year of the twenty-five year Compliance Period specified in the LURA.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2017 Uniform Multifamily Rules, Subchapter E, implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on August 15, 2018, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

July 23, 2018

VIA HAND DELIVERY
Ms. Lee Ann Chancel
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 01001; Hillsboro Gardens Apartments – Phase II (the "**Property**")

Dear Lee Ann:

The undersigned, being the General Partner (herein so called) of Hillsboro Housing, L.P., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of $2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to these proposed amendments. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

GRAND MARAIS, LLC, d/b/a ALDEN GRAND MARAIS, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ______________________
Name: Jill Brooks-Garnett
Title: Chief Operating Officer

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

August 7, 2018

Dear Resident:

Hillsboro Gardens Apartments – Phase II (the "**Community**") is owned by Hillsboro Housing, L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **August 15, 2018, at 12:00 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner's request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

Texas Department of Housing and Community Affairs
Asset Management Division
221 East 11th Street
Austin, Texas 78701

We appreciate that Hillsboro Gardens Apartments is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Hillsboro Gardens as your home.

Sincerely,

HILLSBORO HOUSING, L.P.,
a Texas limited partnership

By: Grand Marias, LLC, d/b/a Alden Grand Marais, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ______________________
Name: Jill Brooks-Garnett
Title: CEO

HILLSBORO HOUSING, L.P.
5055 Keller Springs Road, Suite 400
Dallas, Texas 75001

August 7, 2018

Ms. Diane Wills *(diane.wills@greyco.com)*
Greystone Funding Corporation
150 West 57th Street
60th Floor
New York, NY 10019

Dear Ms. Wills

Hillsboro Housing, L.P. (the "**Owner**") is the owner of Hillsboro Gardens Apartments – Phase II (the "**Community**") which is located at 807 Abbott Avenue, Hillsboro, Texas 76645. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **August 15, 2018** at **12:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

HILLSBORO HOUSING, L.P.,
a Texas limited partnership

By: Grand Marias, LLC, d/b/a Alden Grand Marais, LLC,
a Delaware limited liability company

By: Alden Affordable Holdings, LLC,
a Delaware limited liability company,
its sole member

By: ______________________
Name: Jill Brooks-Garnett
Title: COO

Rosemont at Hillsboro

TDHCA Meeting

August 15, 2018

On August 15, 2018 the property hosted a meeting per the notice from TDHCA on Rosemont at Hillsboro. The notice was deliver to all the residents was deliver August 9, 2018.

The meeting started at 12:00 p.m. and open to anyone that had questions. There was only one resident, 5-501 Letha Waldrep that came to the meeting. Mrs. Waldrep question was what was going to happen to rent and is the property going to get cable and better internet. I explained that at this time we did not know what the rent would be if we change with the restructure of the property but if the property goes to having more of a market rent all the current residents would still have up to 3 years to be under the Tax Credit program which would be like the rent she is paying now. She understood and would just wait to see what will happen. Then the conversation went into getting cable for the property. It seems the city of Hillsboro cancel the contract with the cable company and has not provided any new company that can come into the city. This is the reason the property has so many satellites. I told her that I could check into the cable issue but the Property Manager, Mary Farmer stated that she has been trying to work with the city for some information but has not been able to get any information for about an year now.

I stayed at the property until 2 p.m. just in case anyone came in with questions but no one inquired about the notice.

If you have any questions, please let me or Mary know.

Debbi Sandridge, Regional Property Manager

Mary Farmer, Community Manager

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit ("HTC") Land Use Restriction Agreement ("LURA") for Logan's Pointe (HTC #01108)

RECOMMENDED ACTION

WHEREAS, Logan's Pointe (the "Development") received a 9% HTC award in 2001 to construct 100 multifamily units in Mount Vernon, Franklin County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal ("ROFR") to purchase the Development over a two-year ROFR period;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, the Development Owner requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E) and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing, which was held as required;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Logan's Pointe is approved as presented to this meeting and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Logan's Pointe received a 9% HTC award in 2001 for the new construction of 100 multifamily units in Mount Vernon, Franklin County. In a letter dated July 11, 2018, the Development Owner, Bayou Pointe, LTD. (Sandra Watson), requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use

Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of October 27, 2003, as amended by a First Amendment dated October 27, 2003, subsequently corrected by a Correction First Amendment dated effective as of October 27, 2003 (collectively, the "LURA"). At the time of recording, the ROFR provision of the LURA was inadvertently unchecked. The Owner has approved the Department to amend the LURA to include the ROFR provision as required by the 2001 QAP.

As approved in 2001, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the 15th year of the Compliance Period the owner decides to sell the property. The property is currently in the 15th year of the 25-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576 which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2017 Uniform Multifamily Rules, Subchapter E, implemented administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on July 18, 2018, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

BAYOU POINTE, LTD.
4401 North Mesa Street
El Paso, Texas 79902

July 11, 2018

<u>VIA HAND DELIVERY</u>
Mr. Kent Bedell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 01108; Logan's Pointe (the "**Property**")

Dear Kent:

The undersigned is the General Partner (herein so called) of Bayou Pointe, Ltd., a Texas limited partnership (the "**Owner**"), which is the current owner of the Property. This letter constitutes a request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

Background Information and Request

In 2001 the Owner applied for 9% low-income housing tax credits ("**Tax Credits**") in connection with the acquisition and financing of the Property. The Tax Credit application allotted 5 points to the Owner in exchange for a two-year ROFR period as defined in Section 50.7(e)(7) of the 2001 Low Income Housing Tax Credit Program Qualified Allocation Plan and Rules (the "**2001 QAP**"). Upon completion of the Property, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of October 27, 2003, as amended by a First Amendment dated October 27, 2003, subsequently corrected by a Correction First Amendment dated effective as of October 27, 2003 (collectively, the "**LURA**"). At the time of recording, the ROFR provision of the LURA was inadvertently unchecked. The Owner has approved the Department to amend the LURA to include the ROFR provision as required by the 2001 QAP, however; the Owner desires to exercise its rights under Texas Government Code Section 2306.6726 to amend the LURA to allow for a 180-day ROFR period. Section 10.405(b)(2)(E) of the current Uniform Multifamily Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore General Partner, acting on behalf of the Owner, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the Owner, is delivering a fee in the amount of $2500. In addition, the Owner commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials as to this proposed amendment. The Owner will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Owner requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

BAYOU POINTE, LTD.,
a Texas limited partnership

By: Albatross Diversified Holdings, LLC,
a Texas limited liability company,
its general partner

By: Albatross Development, LLC,
a Texas limited liability company,
its sole member

By: [signature]
Name: SANDRA WATSON
Title: Owner / President

BAYOU POINTE, LTD.
4401 North Mesa Street
El Paso, Texas 79902

July 16, 2018

Dear Resident:

Logan's Pointe (the "**Community**") is owned by Bayou Pointe, Ltd. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **Wednesday, July 16, 2018, at 6:00 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner's request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

Texas Department of Housing and Community Affairs
Asset Management Division
221 East 11th Street
Austin, Texas 78701

We appreciate that Logan's Pointe is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Logan's Pointe as your home.

Sincerely,

BAYOU POINTE, LTD.,
a Texas limited partnership

By: Albatross Diversified Holdings, LLC,
a Texas limited liability company,
its general partner

By: Albatross Development, LLC,
a Texas limited liability company,
its sole member

By: Sandra Watson
Name: Sandra Watson
Title: Owner / President

BAYOU POINTE, LTD.
4401 North Mesa Street
El Paso, Texas 79902

July 16, 2018

SunAmerica Housing Fund 1024
777 S. Figueroa Street, 16th Floor
Los Angeles, CA 90017
Attn: Doug Tymins

Dear Mr. Tymins:

Bayou Pointe, Ltd. (the "**Owner**") is the owner of Logan's Pointe (the "**Community**") which is located 101 Logans Pointe Drive, Mount Vernon, Texas 75457. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **Wednesday, July 16, 2018, at 6:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

BAYOU POINTE, LTD.,
a Texas limited partnership

By: Albatross Diversified Holdings, LLC,
a Texas limited liability company,
its general partner

By: Albatross Development, LLC,
a Texas limited liability company,
its sole member

By: Sandra Watson
Name: SANDRA WATSON
Title: Owner / President

Logan's Pointe

Activity Public Meeting

Date 7/18/2018

Time 6:00 PM - 7:11 pm

	Participant Name	Age	Apt#	Phone #
1	SHERRY RHODES			
2	Amber Blevins			
3	Allison Burton			
4	Charles Maull			
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				

Total number of participants: 4

Logan's Pointe

The meeting was held on Wednesday July 18, 2018 from 6:00 PM to 7:11 PM. There were 4 tenants that attended the meeting. Below are the questions asked during the meeting.

- Would the rent increase when the property sales? No
- Would the new owners be able to increase the rents at the end of the current lease? No
- Would the new owners still accept section 8 vouchers? Yes
- Are the units going to be upgraded? Yes
- Can a second swimming pool be installed? No
- Will another meeting be held once the property sales to inform the tenants of the changes? No
- Would management be changing? No

1h

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Trust Fund ("HTF") Land Use Restriction Agreement ("LURA") for Stone Ranch Apartment Homes (HTF #853339)

RECOMMENDED ACTION

WHEREAS, Stone Ranch Apartment Homes (the "Development") received a 9% Housing Tax Credit ("HTC") award in 2003 and an HTF award on July 30, 2003, to construct 152 multifamily units in Killeen, Bell County;

WHEREAS, the application for the Development received points and/or other preferences for agreeing to serve elderly households;

WHEREAS, the HTF Rules in effect at the time the Development received the HTF award defined elderly as a Special Needs household that contains an individual or member that is 60 years of age or older;

WHEREAS, the HTC LURA specifies that the Development will operate as a Qualified Elderly Development that allows households with at least one person 55 years of age or older if at least 80% of the total units are occupied by at least one person who is 55 years of age or older;

WHEREAS, the Development Owner requests to amend the HTF LURA to revise the elderly definition in order for the age restriction to agree with the Qualified Elderly Development definition in the HTC LURA; and

WHEREAS, an amendment to the age restriction in the HTF LURA is deemed a material change requiring Board approval under 10 TAC §10.405(b)(2)(F), and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing, which was held as required;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Stone Ranch Apartment Homes is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Stone Ranch Home Apartments received a 9% Housing Tax Credit ("HTC") award in 2003 and an HTF award on July 30, 2003, to construct 152 multifamily units in Killeen, Bell County. In a letter dated July 23, 2018, Jeffrey Gannon, the representative for the Development Owner, Killeen Stone Ranch Apartment Homes, L.P. (the "Owner"), requests to amend the elderly definition in the HTF LURA dated August 23, 2004, so that the age restriction agrees with the definition in the HTC LURA dated May 6, 2005.

The rules in effect at the time the Development received the HTF award defined elderly as a Special Needs household that contains an individual or member that is 60 years of age or older. However, the HTC LURA specifies that the Development will operate as a Qualified Elderly Development that can include households with at least one person 55 years of age or older if at least 80% of the total units are occupied by at least one person who is 55 years of age or older. Therefore, the Owner requests to revise the age restriction from 60 years or older to 55 years or older in the HTF LURA so that the age restriction will agree with the age restriction allowed in the HTC LURA. It should be noted that at the Board meeting held November 14, 2003, the HTF rules were revised to remove the 60 years or older age restriction from the Person with Special Needs definition. Staff has confirmed with the Owner that that the financing represented in the underwriting report has not changed. Since the permanent first lien is a conventional loan, there are no other financing sources that will impact the age restrictions.

The Development Owner has complied with the amendment and notification requirements under the Department's rule at Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on August 15, 2018, at the Development's onsite management office/clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

KILLEEN STONE RANCH APARTMENT HOMES, L.P.
27000 Kuykendahl Road, Suite C100
Tomball, TX 77375

July 23, 2018

VIA EMAIL
Lee Ann Chance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 03068 – Stone Ranch Apartment Homes (the "**Property**")

Dear Lee Ann:

The undersigned, being the General Partner (herein so called) of Killen Stone Ranch Apartment Homes, L.P., a Texas limited partnership (the "**Partnership**"), and the current owner of the Property, hereby submits this letter as a request for a non-material LURA amendment in accordance with Section 10.405(b) of the Uniform Multifamily Rules (the "**Rules**"). Specifically, the HTF LURA (as defined below) for this Property requires that all of the low-income units at the Property be leased to an individual or a family with at least one adult that is 60 years of age or older. The General Partner, acting on behalf of the Owner, requests the amendment of that age restriction in the HTF LURA for the reasons set forth below.

Background Information and Request

In 2003, the Partnership received an allocation of 9% low-income housing tax credits ("**Tax Credits**") and a Housing Trust Fund loan commitment (the "**HTF Loan**") in connection with the development of the Property. The Partnership and TDHCA entered into a Land Use Restriction Agreement dated as of August 23, 2004 in connection with the closing of the HTF Loan (the "**HTF LURA**") and a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of May 6, 2005 in connection with the issuance of the Tax Credits (the "**Tax Credit LURA**").

Section 2.2(a) of the HTF LURA and the definitions of "Special Needs Individual" and "Special Needs Family" in Section 1.1(o) of the HTF LURA establish an age restriction for all of the low-income reserved units at the Property of 60 years of age or older. There is no support for an age restriction of 60 years or older in TDHCA's QAP. Moreover, the Tax Credit LURA contains an age restriction of 55 years of age or older.

Consequently, the Partnership believes that the age restriction of 60 years of age or older that was included in the HTF LURA is an error and should be amended to match the age restriction of 55 years or older set forth in the Tax Credit LURA. The Partnership received a

deficiency notice from TDHCA dated May 1, 2018 finding the Property in noncompliance with the age restriction in the HTF LURA and providing a corrective action of amending the age restriction in the HTF LURA to align with the requirements of the Tax Credit LURA.. Therefore, it is an appropriate time to correct the drafting error and amend the age restriction set forth in the HTF LURA.

Because the Partnership is requesting TDHCA to correct an error in the HTF LURA, this is a non-material amendment in accordance with Section 10.405(b)(1)(C) and we seek your administrative approval of this request..

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

[Signature Page Follows]

Sincerely,

KILLEEN STONE RANCH APARTMENT HOMES I, L.L.C.,
a Texas limited liability company

By: ______________________
Name: Jeffrey S Gannon
Title: Authorized Agent

Killeen Stone Ranch Apartment Homes, LP

AGENDA FOR PUBLIC HEARING

1. Welcome and Call to Order
2. Introduction of Representatives of Property Owner
3. Reason for Tenant Notice and Public Hearing (Age requirement on HOME LURA)
4. Questions from Tenants
5. Adjournment

MINUTES

Date: August 15, 2018; 4:00 pm
Public Hearing regarding Stone Ranch's' HTF LURA Amendment

The public hearing related to the request to amend the Housing Trust Fund LURA Amendment was held in the Onsite Community Club House. Jeff Gannon and Linda Person were in attendance representing the owner and property manager. There were 18 residents and 1 other interested party in attendance. A summary of the discussion is as follows:

Jeff Gannon conducted the meeting and called it to order at 4:10pm. After introducing himself and Linda Person as representatives, he began by explaining that this meeting was taking place as part of the process to change the Housing Trust Fund Land Use Restriction Agreement as explained in the notifications that they received.

Jeff explained that there are two Land Use Restriction Agreements in place at Stone Ranch because back in 2004 and 2005 the development received funding from a tax credit award and from the Housing Trust Fund to build the property. Furthermore, he explained that the age restriction on the LIHTC LURA was 55+ and the age restriction on the HTF LURA was 60+. He stated that the purpose of this meeting was to notify the residents that the owner is applying to TDHCA to amend the HTF LURA to make these two conflicting age restrictions compatible at 55+.

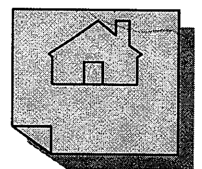
A resident inquired about how this change would affect them and if people between the ages of 55 and 60 would be asked to move out. Jeff explained that if this amendment were approved it would be the opposite, that the property would continue to accept residents that were 55+. The resident followed up by asking what would happen if the request was denied. Jeff stated that he had not heard of any instances where that had happened so he was unable to answer the question at this time, but assured the residents that both the owner and the management company would keep the residents in the loop as the process evolved. Jeff then directed the audience to their notification that contained the contact information for TDHCA and encouraged anyone that was concerned about that possibility to contact TDHCA and make their concerns part of the record.

Another resident asked when and where the TDHCA board meeting was going to be held. Jeff noted that the meeting was in Austin on September 6th and that it was usually held in the capital building. Linda committed to research the exact location and have that information available in the office for concerned residents.

A resident made the comment that she just moved in from a different state and the definition of a senior citizen there was 55 and she stated that she knew for a fact that the federal government's definition was also 55, so she wanted to know why Texas thought it could change the definition to 60. Jeff welcomed the resident to Texas and stated that the answer to that question was above his pay grade, but noted again that the purpose of this meeting was to discuss the amendment that would correct this discrepancy in Stone Ranch's paperwork to ensure that the development can continue to operate as it had since its grand opening.

There were a few questions regarding the pool operating hours and after hours clubhouse access that Jeff requested be discussed once all questions and concerns regarding the LURA amendment were addressed.

There being no additional questions, Jeff Gannon adjourned the meeting at 4:24 p.m.



Texas Post Oak Residential Resources, L.L.C.

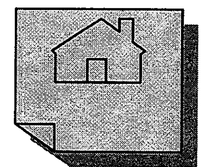
Activities / Stone Ranch

Date: 8/15/18 Place: Public Hearing to Amend Lura

As partial consideration for their services in arranging and otherwise assisting in the Activity, I hereby release, to the fullest extent permitted by law, including acts of negligence, that Stone Ranch Apartments, agents, representatives, employees, and their insurers, from any liability resulting in or arising from this. This includes cancellation of the trip, any accidents or illnesses that may occur during the trip, or the arranging for medical services.

1. [illegible]
2. Marie Pyburn
3. PALMER, CARL E.
4. Pat Boyle
5. [illegible]
6. Renato H. Boso
7. Marge Banta
8. Richard Banta
9. Brenda Marek #3703
10. Sallie Manew #703
11. [illegible] 2904
12. Nadine Overall 3604
13. Susana Gutierrez 3504
14. Georgia Lane - 3704
15. Agnes Kirwan 301
16. Annie Mitchell

4900 Woodway, Suite 970~Houston, Texas 77056~713-877-0100~713-877-0101 fax



Texas Post Oak Residential Resources, L.L.C.

Activities / Stone Ranch

Date: 8/15/18 Place: Public Hearing to Amend Lura

As partial consideration for their services in arranging and otherwise assisting in the Activity, I hereby release, to the fullest extent permitted by law, including acts of negligence, that Stone Ranch Apartments, agents, representatives, employees, and their insurers, from any liability resulting in or arising from this. This includes cancellation of the trip, any accidents or illnesses that may occur during the trip, or the arranging for medical services.

1. Debra Butler - 1803
2. Evelyn Brooks 403
3. ______
4. ______
5. ______
6. ______
7. ______
8. ______
9. ______
10. ______
11. ______
12. ______
13. ______
14. ______
15. ______

4900 Woodway, Suite 970~Houston, Texas 77056~713-877-0100~713-877-0101 fax

from HTF LURA

(l) **"Qualified Tenant"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.

(m) **"Qualifying Unit"** means a Unit that (i) is rented to either a Low Income Family, Very Low Income Family, or Extremely Low Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement.

(n) **"Regulations"** means the Housing Trust Fund Rules set forth in 10 TEX. ADMIN. CODE § 51.1, et seq. and all amendments thereto.

(o) **"Special Needs Individual" or "Special Needs Family"** means an individual or family with at least one adult (a person of at least 18 years of age) member who is considered: (1) elderly (60 years of age or older); (2) victims of domestic violence; (3) a person with HIV/AIDS, and their families; (4) migrant farm workers; or (5) persons with disabilities; (6) persons with alcohol or other drug addiction; or (7) persons living in colonias, or (8) homeless. A person is considered to have a disability if the person has a physical, mental, or emotional impairment that (i) is expected to be of long-continued and indefinite duration; (ii) substantially impedes his or her ability to live independently; and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the person attains age twenty-two; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency, and (v) reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services that are lifelong or extended duration and are individually planned and coordinated.

(p) **"Term"** means the period commencing on the date hereof and ending on the date which is the earlier to occur of the following:

(1) the date upon which there is a change in state or federal law which prevents the Department from enforcing this Agreement; or

(2) the date which is fifty-five (55) years from the effective date of this Agreement.

(q) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.

(r) **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed sixty percent (60%) of area median income in the area in which the Property is located, as determined by the Department in accordance with the Act.

Section 1.2. Generic Terms. Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

from HTF LURA

ARTICLE II
Use and Occupancy of the Property

Section 2.1. Use of the Property. During the Term, Owner will maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis.

Section 2.2. Occupancy Requirements.

(a) Subject to subsection (c), during the Term, Owner will set aside 129 Units of the 152 Unit development to be made continuously available as follows:

A minimum of 115 Units of the 129 Qualifying Units must be set aside for Very Low Income Individuals and Families; and

A minimum of 14 Units of the 129 Qualifying Units must be set aside for Extremely Low Income Individuals and Families;

In addition, all 129 Qualifying Units shall be made available for occupancy by a Special Needs Individual or Special Needs Family that is elderly (60 years of age or older).

In accordance with Section 504 of the Rehabilitation Act of 1973, at least eight (8) Units or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for a Special Needs Individual or Special Needs Family with mobility impairments and at least four (4) Units or two percent (2%) of all Units, whichever is greater, shall be designed to be made accessible for a Special Needs Individual or Special Needs Family with hearing or vision impairments.

(b) (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.

(ii) If the Annual Income of a Qualified Tenant which is an Extremely Low Income Family shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed the applicable income limit for Low Income Families, the Unit shall be counted as occupied by a Qualified Tenant which is a Low Income Family other than a Very Low Income Family during such family's or individual's continuing occupancy of such Unit in accordance with Subsection (b) (iii) below and Owner shall be required to make the next available Qualifying Unit available for occupancy in accordance with Subsection (b) (iv) below.

(iii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a Qualified Tenant which

____. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified HUB.

☒ **Supportive Services**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner has contracted for the provision of the following special supportive services that would not otherwise be available to Tenants: Meals on Wheels, Financial Services Assistance, Utility Assistance and Medical Assistance ____________________.

At the time this Declaration is filed, the organization(s) providing these services is Hill Country Community Action Assoc ____________________.

The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified provider.

☐ **Transitional Housing for the Homeless**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide ____________ number of units set aside for transitional housing for homeless persons, on a non-transient basis, with supportive services designed to assist Tenants in locating and retaining permanent housing.

☒ **Public Housing Waiting Lists**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of Killeen ____________________.

QUALIFIED ELDERLY DEVELOPMENTS[1]

☒ **Qualified Elderly Projects (2000 and later)**

Throughout the Compliance Period, unless otherwise permitted by the Department, this project must conform to the Federal Fair Housing Act and must be a project which:

(i) is intended for, and solely occupied by Persons 62 years of age or older; or

(ii) is intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for persons 55 years of age or older.

[1] Note: The Federal Fair Housing Act requires, generally, that projects which are limited to occupancy by older persons either (i) be restricted to households in which all members are 62 years or older or (ii) to households in which at least one member is 55 years or older. See 24 C.F.R. §§100.300-100.304 for exact requirements. All tax credit projects must comply with these requirements, as applicable under Federal law, in addition to the Declaration.

(11) Housing Finance Division--The division of the Department responsible for the administration of the **Housing Trust Fund**.

(12) Joint Venture--An agreement between a lead applicant and a cooperating entity formed to administer or implement a **Housing Trust Fund** project.

(13) Lead Applicant--An Eligible Applicant designated in a **Housing Trust Fund** application to assume contractual liability and legal responsibility as the Recipient executing the written agreement with the State.

(14) Local Units of Government--A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(15) Low Income Persons and Families--Persons and families earning not more than 80% of the area median income as determined by the United States Department of Housing and Urban Development, with allowances for family size.

(16) Metropolitan and Metro--Areas designated by the Bureau of the Census as metropolitan statistical areas (MSA) or primary metropolitan statistical areas (PMSA) in the most recent decennial census.

(17) Non-metropolitan and Non-Metro--Refers to all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.

(18) Nonprofit Organization--Any public or private, nonprofit organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(C) has a tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, § 501(c), as amended.

(19) Person with Special Needs-An individual who:

(A) is considered disabled under a state or federal law;

(B) is elderly (age 60+);

(C) is designated by the Board as experiencing a unique need for affordable, decent, safe housing that is not being met adequately by private enterprise; or

(D) is legally responsible for caring for an individual described by subparagraphs (A), (B) or (C) of this paragraph and meets the income guidelines of a person of low, very low or extremely low income.

(20) Predevelopment Costs--Reimbursable costs related to a specific eligible housing project including:

(B) has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

(58) **Pre-Application** – A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in §§49.8 and 49.22 of this title.

(59) **Pre-Application Acceptance Period** - That period of time during which Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(60) **Principal** – the term Principal is defined as Persons that will have an ownership interest in, or that will exercise Control over, a partnership, corporation, limited liability company, trust, or any other public or private entity and their Affiliates that will have an ownership interest in, or that will exercise Control over, the Applicant. In the case of:

(A) partnerships, Principals include all General Partners regardless of their percentage interest;

(B) corporations, Principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors or any equivalent governing body as well as all directors and each stock holder having a ten percent or more interest in the corporation; and

(C) limited liability companies, Principals include all members, regardless of their percentage interest.

(61) **Prison Community** – A city or town which is located outside of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was awarded a state prison.

(62) **Property** - The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(63) **Qualified Allocation Plan** (QAP) – A plan adopted by the Board, and approved by the Governor, under this title, and as provided in the Code, § 42(m)(1) (specifically including preference for Developments located in Qualified Census Tracts and the development of which contributes to a concerted community revitalization plan) and as further provided in §§49.1 through 49.24 of this title, that:

(A) provides the threshold and scoring, and underwriting process based on housing priorities of the Department that are appropriate to local conditions; and

(B) gives preference in Housing Credit Allocations to Developments that, as compared to other Developments:

(i) when practicable and feasible based on available funding sources, serve the lowest income tenants; and

(ii) are affordable to qualified tenants for the longest economically feasible period; and

(C) provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the Qualified Allocation Plan.

(64) **Qualified Basis** - With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(65) **Qualified Census Tract** - Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(66) **Qualified Elderly Development** – A Development which meets the requirements of the federal Fair Housing Act and:

(A) is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older.

(67) **Qualified Market Analyst** - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must be a Third Party.

(68) **Qualified Nonprofit Organization** - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the rural developments Set-Aside, the At-Risk Development Set-Aside and the general Set-Aside.

MULTIFAMILY FINANCE PRODUCTION

BOARD ACTION REQUEST
November 14, 2003

Action Items

Final Housing Trust Fund Rules.

Required Action

1. Repeal of Housing Trust Fund Rules, Title 10 Texas Administrative Code, Part 1, Chapter 51.1-51.3, 51.5-51.14, 51.17, and 51.18.

2. Adoption of Proposed New Housing Trust Fund Rules, Title 10 Texas Administrative Code, Part 1, Chapter 51.1-51.12.

Background

At the August 14, 2003 Board Meeting, the Board approved the proposed repeal and proposed new Housing Trust Fund Rules to Title 10, Part 1, Chapter 51– Housing Trust Fund Rules. This draft was posted on the TDHCA website in mid-August. Subsequently, staff realized that there were several administrative revisions to the rule and returned the rule to the Board for approval on September 11. The proposed repeal and new Housing Trust Fund Rules were published in the *Texas Register* on September 26, 2003 for the public to provide comments. In addition to publishing the document in the *Texas Register*, the document was made available to the public upon request. In order to receive additional comments on all proposed rules, Texas Department of Housing and Community Affairs staff held public hearings in the cities of Longview, Dallas, Wichita Falls, Lubbock, San Angelo, El Paso, Austin, San Antonio, Harlingen, Corpus Christi, Waco, Lufkin and Houston. Approximately 250 people attended these hearings.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

M E M O R A N D U M

TO: TDHCA Board Members

FROM: Brooke Boston, Multifamily Finance Production Division

THROUGH: Edwina Carrington, Executive Director

SUBJECT: **2004 Housing Trust Fund Rules – Responses to Public Comments**

DATE: November 6, 2003

On September 26, 2003, the proposed 2004 Housing Trust Fund Rules (HTF) were published in the *Texas Register*. The comment period commenced on September 26, 2003, and ended on October 10, 2003. In addition to publishing the document in the *Texas Register*, a copy of the HTF Rules was published on the Department's web site in August and was made available to the public upon request. The Department held thirteen public hearings across the state to gather feedback on the draft HTF Rules. The public was generally pleased with the draft HTF Rules and with the Department's efforts.

The Department received the majority of comments in writing by email, fax and mail. This memorandum provides the Department's response to all comments received. The comments and responses are divided into the following two sections.

I. Substantive comments on the HTF Rules and Departmental response. (Comments and responses are presented in the order they appear in the HTF Rules).

II. Staff administrative changes to the HTF Rules.

I. SUBSTANTIVE COMMENTS ON THE HTF RULES AND DEPARTMENTAL RESPONSE

§51.3- Definitions.
Comment:
One comment from New Hope Housing, Inc., suggests that the definition of affordable housing be modified to restrict the rent that can be charged to the equivalent of 30% of an area's median income, rather than restricting the percentage of income that can be paid for housing.

Department Response:
Staff concurs with this change to the definition of Affordable Housing.

(2) Affordable Housing-- Housing for which low, very low and extremely low income families are not required to pay more than 30% of an area's median income. ~~monthly adjusted income for the mortgage payment and utilities, or rent and utilities, computed in accordance with the federal regulations for the Section 8 Existing Housing Program set forth in the Code of Federal Regulations, Title 24, Part 5, Subpart F.~~

~~(11) **Housing Finance Division**--The division of the Department responsible for the administration of the Housing Trust Fund.~~

(12) **HUD**—The United States Department of Housing and Urban Development, or its successor.

~~(12) **Joint Venture**--An agreement between a lead applicant and a cooperating entity formed to administer or implement a Housing Trust Fund project.~~

~~(13) **Lead Applicant**--An Eligible Applicant designated in a Housing Trust Fund application to assume contractual liability and legal responsibility as the Recipient executing the written agreement with the State.~~

(13~~14~~) **Local Units of Government**--A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(14~~15~~) **Low Income Persons and Families**-- Families whose annual incomes do not exceed 80% of the median income of the area, as determined by HUD and published by the Department, with adjustments for family size. ~~Persons and families earning not more than 80% of the area median income as determined by the United States Department of Housing and Urban Development, with allowances for family size.~~

~~(16) **Metropolitan and Metro**--Areas designated by the Bureau of the Census as metropolitan statistical areas (MSA) or primary metropolitan statistical areas (PMSA) in the most recent decennial census.~~

~~(17) **Non-metropolitan and Non-Metro**--Refers to all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.~~

(15~~18~~) **Nonprofit Organization**--Any public or private, nonprofit organization that:
(A) is organized under state or local laws;
(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
(C) has a tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, Section 501(c), as amended.

(16) **NOFA**—Notice of Funding Availability, published in the *Texas Register*.

(17~~19~~) **Person with Special Needs**--
(A) persons with disabilities, persons with alcohol or other drug addictions, persons with HIV/AIDS and their families, the elderly, victims of domestic violence, persons living in colonias, and migrant farm workers; and
(B) any persons legally responsible for caring for an individual described by subparagraph (A) and meets the income guidelines of a person of low, very low or extremely low income.
~~An individual who:~~
~~(A) is considered disabled under a state or federal law;~~
~~(B) is elderly (age 60+);~~
~~(C) is designated by the Board as experiencing a unique need for affordable, decent, safe housing that is not being met adequately by private enterprise; or~~
~~(D) is legally responsible for caring for an individual described by subparagraphs (A), (B) or (C) of this paragraph and meets the income guidelines of a person of low, very low or extremely low income.~~

~~(20) **Predevelopment Costs**--Reimbursable costs related to a specific eligible housing project including:~~
~~(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;~~
~~(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees.~~
~~(C) Predevelopment costs do not include general operational or administrative costs.~~

(18) **Public Agency**—A branch of National, State or Local Government.

(19~~21~~) **Public Housing Authority**--A housing authority established under the Texas Local Government Code, Chapter 392.

1i

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for The Savannah at Gateway (HTC #14414)

RECOMMENDED ACTION

WHEREAS, The Savannah at Gateway (the "Development") received an award of 4% Housing Tax Credits ("HTCs") in 2014 for the construction of 292 new multifamily units in Plano, Collin County;

WHEREAS, the attorney for TX Collin Apartments, LP (the "Development Owner") requested approval for a change to the ownership structure of the Development Owner that involves the replacement of the general partner and the addition of a new owner;

WHEREAS, the investor limited partner removed the original general partner and designated an affiliate of the limited partner as the interim general partner, but the interim general partner eventually transferred its ownership interest back to the initial general partner but now with a different ownership structure;

WHEREAS, in addition to the change in general partner, there have been changes to the ownership structure of Belmont Development Company, LLC, the owner of the Class B Special Limited Partner, Belmont Plano Holdings, LLC, that involve the exit of one of its members, Shadow Capital, LLC and the addition of a new member, Smith Real Estate Development, Inc., which is owned by Shawn Smith, a new individual; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for The Savannah at Gateway is approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

The Savannah at Gateway (also known as Villas at Plano Gateway Senior Living) is a development in Plano, Collin County, which was submitted and approved for a 4% HTC award in 2014 for the new construction

of its 292 units. The HTC application for the Development proposed TX Collin Apartments GP, LLC as the General Partner; however, in a letter dated May 4, 2018, the attorney for the Development Owner notified the Department of the removal of the original general partner by the investor limited partner. According to the Owner's attorney, in February 2017, the investor limited partner exercised its rights to remove the general partner, which was solely owned by the Plano Housing Corporation, a nonprofit entity, as a consequence of several defaults under the partnership agreement. The investor limited partner then added its affiliate, 42EP SLP, LLC, as the replacement general partner for a short term period. Under 10 TAC §10.406(a)(2), an involuntary removal of a general partner by the investor limited partner does not require approval, but this change must be reported to the Department.

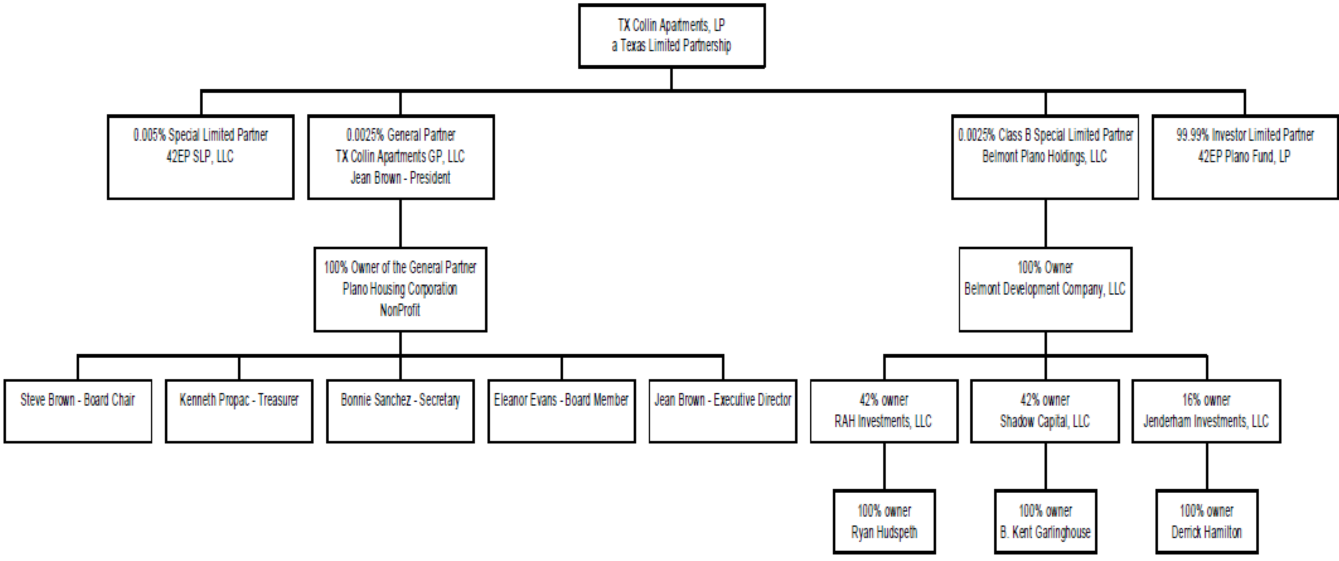
In January 2016, the Department was notified about a change to the ownership structure and guarantors for the Development. Specifically, Belmont Plano Holdings, LLC, which is solely owned by Belmont Development Company, was added as a Class B Special Limited Partner and guarantor. Belmont Development Company, LLC was identified as a co-developer in the Housing Tax Credit application. At the time, Belmont Development Company, LLC was owned by RAH Investments, LLC, Shadow Capital, LLC, and Jenderham Investments, LLC, which are solely owned by Ryan Hudspeth, B. Kent Garlinghouse, and Derrick Hamilton, respectively. No new Principals were entering the ownership structure of the Development, but pursuant to 10 TAC §10.406, the Development Owner was required to notify the Department of changes in ownership.

In a letter dated June 7, 2018, the attorney for the Development Owner requested approval to transfer the general partner interest back to the initial general partner, TX Collin Apartments GP, LLC, which is now owned by Savannah at Gateway GP, LLC, which is owned by the Garland Housing Finance Corporation, a Texas public nonprofit housing finance corporation. The Owner's attorney explained that the partnership has transferred fee simple title to the land on which the project is located to the Garland Housing Finance Corporation for the purpose of obtaining a 100% property tax exemption. There is a ground lease in place between the partnership and the Garland Housing Finance Corporation. Because this change is occurring prior to issuance of IRS Form(s) 8609, Board approval is required under 10 TAC §10.406(e).

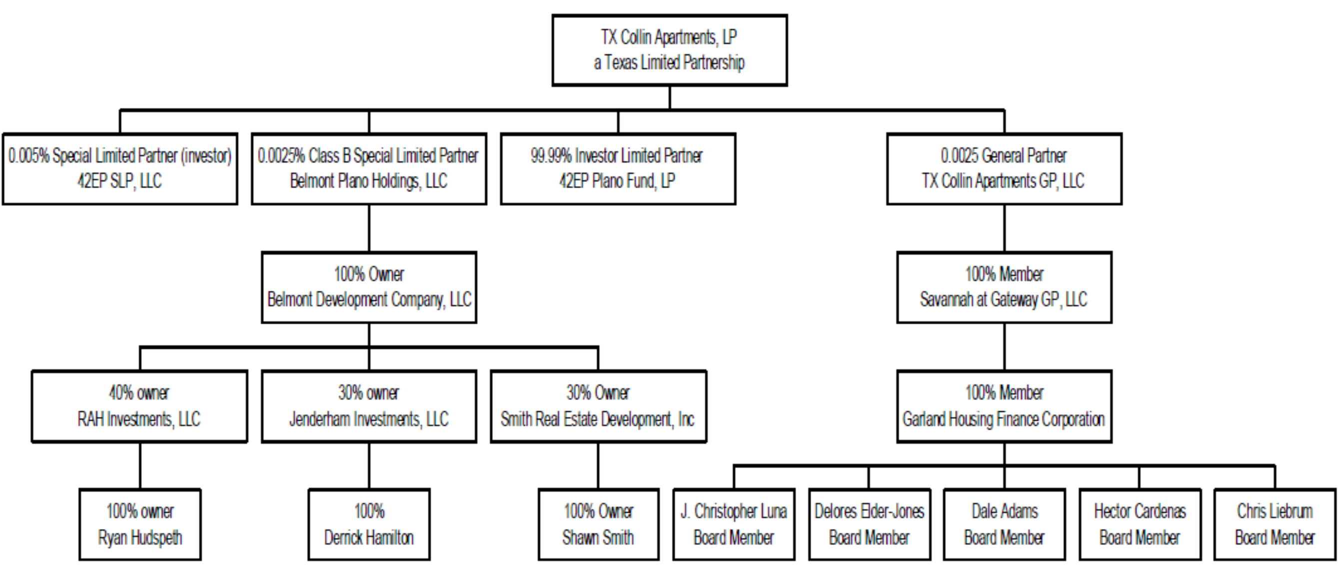
In addition to the change in the general partner, the Owner's attorney notified the Department about changes in the ownership structure of Belmont Development Company, LLC, the owner of Belmont Plano Holdings, LLC, the Class B Special Limited Partner. Smith Real Estate Investments, Inc., a company solely owned by Shawn Smith, was granted a membership interest in Belmont Development Company, LLC, and Shadow Capital, LLC, owned by B. Kent Garlinghouse was eliminated from the ownership structure. According to the Owner's attorney, the Class B Special Limited Partner is a non-controlling entity in the ownership structure of the Development Owner.

The pre- and post-transfer organization charts for the Development Owner are on the pages below.

Previously Approved Ownership Structure



Revised Ownership Structure



Melissa Fisher (formerly Melissa Adami) was used to meet the experience requirement at Application, and this is not changing as a result of this transfer. Plano Housing Corporation was proposed as a 10% co-developer at application, so as a result of their removal as general partner, this entity was also eliminated as a co-developer.

Staff recommends approval of the ownership transfer for The Savannah at Gateway as presented.

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS & COUNSELORS

9201 N. Central Expressway
Fourth Floor
Dallas, Texas 75231
(214) 780-1400 (Main)
(214) 780-1401 (Fax)
www.shackelfordlaw.net

June 7, 2018

Email to asset.management@tdhca.state.tx.us
and Federal Express
Texas Department of Housing and Community Affairs
Asset Management Division
Attn.: Rosalio Banuelos
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA Project No. 14414
Villas at Plano Gateway Senior Living (the "Project")
Our File No. 51236.7

Dear Mr. Banuelos:

Our Firm represents TX Collin Apartments, LP ("Partnership"). On behalf of the Partnership, I hereby request TDHCA approval of changes in the ownership structure of the Project, particularly:

A. Transfer of the land:

Partnership has transferred fee simple title to the land on which the Project is located to the Garland Housing Finance Corporation, a Texas public nonprofit housing finance corporation ("GHFC"), for the purpose of obtaining a 100% property tax exemption. Enclosed please find the Special Warranty Deed, Ground Lease and Right of First Refusal Agreement.

B. Transfer of GP interest:

As you are aware, and is reflected in an accompanying transfer packet, Partnership's investor limited partner involuntarily removed the then-serving general partner and designated its affiliate, 42EP SLP, LLC, to be interim general partner ("Interim GP"). At the time of the land transfer above described, Interim GP transferred its 0.0025% general partnership interest back to the initial general partner that was removed, TX Collin Apartments GP, LLC ("Returning GP"). From and after the time of this transfer, and at all times since, Returning GP was owned, through a subsidiary, by GHFC. Enclosed please find the Assignment and Assumption Agreement between Interim GP and Returning GP.

The "new" ownership structure is required by state law to secure such exemption, more particularly described as follows:

1. GHFC is a body corporate and politic, duly and validly organized as a housing finance corporation under the laws of the State of Texas, and operating pursuant to Chapter 394 of the Texas Local Government Code (the "Local Gov't Code"). Because

it is a political subdivision of the State of Texas, property owned by GHFC is exempt from taxation if the property is used for public purposes. *See* Section 11.11 of the Texas Tax Code (the "Tax Code"). So long as such property continues to be used for the purpose of decent, safe, and sanitary housing for low-income persons, the property will qualify for exempt status under Section 11.11(a) of the Tax Code.

2. Section 394.905 of the Local Gov't Code, specifically provides that the property of a housing finance corporation is exempt, as public property used for public purposes.

3. GHFC owns fee title to the real property upon which the Project is built (the "Property"), and GHFC will be treated as the owner of the Property for state tax purposes. The use restrictions in the Ground Lease requiring that Partnership use the Property for the purpose of a rental project comprised of rental units which shall be rented to lessees so as to qualify for Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code of 1986, as amended, passes on the "public purpose" use of the Property to Partnership.

The above ownership transfers were made for several reasons. First and foremost, Partnership's investor never intended to control Partnership (which it had done since its removal of the prior general partner) on a long-term basis and the development team was charged with locating a replacement general partner as soon as possible. The development team pursued GHFC (through Replacement GP), a replacement general partner who could offer 100% property tax exemption. GHFC was grateful to join the ownership of Partnership, as it furthered its purpose by adding another project under its control. Additionally, the transfers were made contemporaneously with the closing of its permanent financing.

Please be advised that the foregoing transfers are conditioned upon and subject to TDHCA approval in accordance with all applicable rules and regulations of TDHCA. Accordingly, these transfers are revocable and shall be null and void if TDHCA does not approve of the foregoing transfers. I respectfully request on Partnership's behalf such written approval and consent from TDHCA. Documents supporting this request are enclosed in this package.

A check covering the $1,000 (Check No. 1002) transfer request fee is being mailed under separate cover to you.

In addition to the foregoing, we hereby notify you of certain upper-tier ownership transfers with Partnership's non-controlling Class B Limited Partner, Belmont Plano Holdings, LLC ("Class B"). Class B is wholly-owned by Belmont Development Company, LLC ("Belmont"). (1) Smith Real Estate Investments, Inc., a company wholly-owned by Shawn Smith, was granted membership interest in Belmont, effective January 1, 2016. (2) Three existing members of Belmont (i.e., RAH Investments, LLC, Jenderham Investments, LLC, and Smith Real Estate Investments, Inc.) have purchased or will imminently purchase the membership interest of the fourth member (i.e., Shadow Capital, LLC), which will eliminate Shadow Capital, LLC, from Belmont's ownership.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

John C. Shackelford/lgo

John C. Shackelford

cc Ryan Hudspeth *(via email)*
Derrick Hamilton *(via email)*
Shawn Smith *(via email)*
David Petruska *(via email)*
John D. Jacobs *(via email)*
Melissa Fisher *(via email)*
Bill Fisher *(via email)*

L:\51236\7\GHFC Transfer\Tab 1.Letter of Explanation.docx

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May 4, 2018

Email and Federal Express
Texas Department of Housing and Community Affairs
Attn.: Rosalio Banuelos, Sr. Asset Mgr.
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA Project #: 14414; TX Collin Apartments, LP, Villas at Plano Gateway Senior Living (the "Project"); Our File No. 51236.7

Dear Rosalio,

Our Firm represents TX Collin Apartments, LP ("Partnership"). On behalf of Partnership, I hereby notify you of the below-described change in the ownership structure of the Project. The details of the ownership transfers are known by you, but I summarize them as follows:

At the time the Project was awarded housing tax credits and at the time of the loan and tax credit equity closing, Partnership's general partner was Plano Housing Corporation, a Texas nonprofit corporation ("PEH"). PEH was managed by a board of directors consisting of primarily Jean Brown and Steve Brown. The Project was not in the non-profit set-aside, nor did it claim points for its non-profit participation.

In February, 2017, during construction of the Project, Partnership's investor limited partner exercised its right to remove PEH as general partner of Partnership as a consequence of several, incurable and alarming monetary and non-monetary defaults under Partnership's partnership agreement. Partnership's investor limited partner caused its affiliate, 42EP SLP, LLC, a Delaware limited liability company ("Replacement GP"), to be admitted in the place and stead of PEH. Replacement GP assumed PEH's 0.0025% general partner interest in Partnership.

As you are also aware, this removal formed the basis of litigation by PEH, which litigation was ultimately settled and resolved such that Replacement GP was, through permanent loan refinancing (for which an accompanying transfer application is being contemporaneously submitted), Partnership's general partner.

As you are aware, and pursuant to 10 TAC §10.406(a)(2), an involuntary removal of a general partner does not require approval, but this change must be reported.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

John Shackelford / lgo

John C. Shackelford

Ownership Transfer Information

Complete the below information concerning this transfer. Information related to this and other forms in this packet may be found in the Post Award Activities Manual on the Department's Asset Management page.

Property Information

TDHCA ID#: 14414 | Primary Program: 4% Tax Exempt | CMTS#:

Property Name: Villas at Plano Gateway Senior Living | Current Owner: TX Collin Apartments, LP

Type of Transfer: Transfer of GP Interest | Date of Transfer: 10/30/2017 OR [x] Already Occurred

Have Forms 8609 been issued for this property? No | Has construction been completed? Yes

Controlling parties at Application must remain in the structure and retain control. Contact your Asset Manager

Did this property receive points for non-profit participation? No | Will the non-profit change? No

Garland Housing Finance Corporation (GHFC) acquired both (a) fee simple to the land on which the Project is located and (b) control and ownership of the general partner of the limited partnership (via subsidiary entities).

Did this property receive points for a HUB? No | Will the HUB change? No

If the property received points and the HUB will change, the new HUB's involvement in the operation of the Development throughout the Compliance period must be described.

Is this property in or past year 15 of its Compliance Period? No | Does the ROFR process apply? No

Compliance Status

Any uncorrected issues of noncompliance beyond the Corrective Action Period? No

Any Corrective Action for noncompliance items currently in review? No | Date Submitted:

Ownership Transfer Contact Information

Contact Name: Shawn Smith/Derrick Hamilton | Phone: (405) 604 - 5074 | Extension:

Email: ssmith@belmontdev.com | Ownership Transfer Fee Submitted? Yes | Check #: 1002

Property Sale Information *(Only if Property Sale is Occurring with Transfer)*

*Project retained by Partnership. Land transferred. New (permanent) financing obtained.

Title Company: | Title Company Contact:

Email: | Phone: ( ) - | Extension:

Sale will be: | Amount of New Financing (if any): $

Lender (if any): | Terms of New Financing (if any): % Interest

Terms of New Financing (if any): yr Am yr Term

Total Reserves: $ | Amount of Reserves to transfer: $

If HOME, will HOME loan be paid off at time of sale?

New Proposed Owner Information

Proposed Owner: Garland Housing Finance Corporation | Authorized Agent: John D. Jacobs

Was the above or any of its members formed in a state other than Texas? No

Submit Exhibit A - Appropriate documents from the Texas Secretary of State and copies of governing documents.

Proposed Owner Experience Summary

Does the proposed Owner or its members have experience in affordable housing operations or management? Yes

Years of Cumulative Experience as indicated above: 10+

Garland Housing Finance Corporation is a housing finance corporation that owns/controls two other projects financed with housing tax credits. Its board consists of residents of the City of Garland.

New Management Agent Information

N Management Agent will be replaced at the time of Transfer.

Entity: | Taxpayer ID:

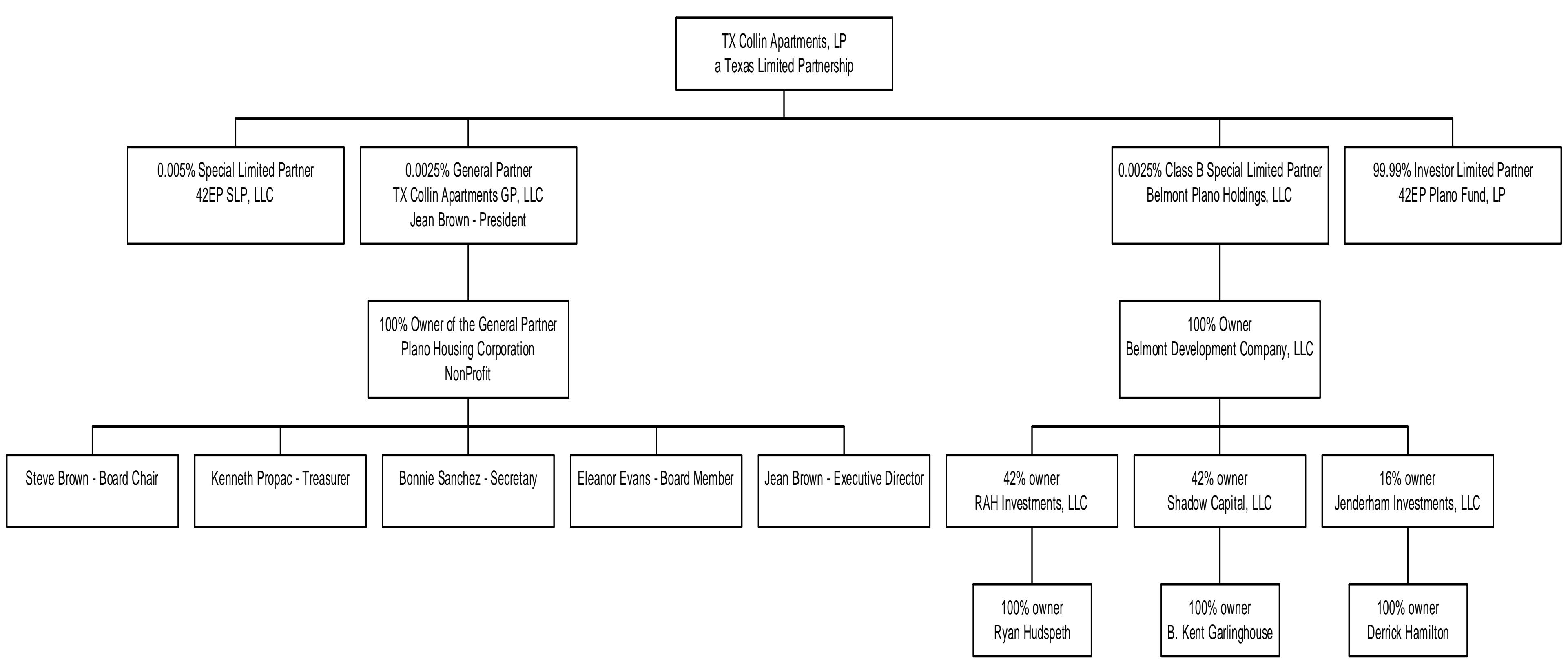
Contact: | Phone: ( ) - | Extension:

Address:

Email:

Pre-Transfer

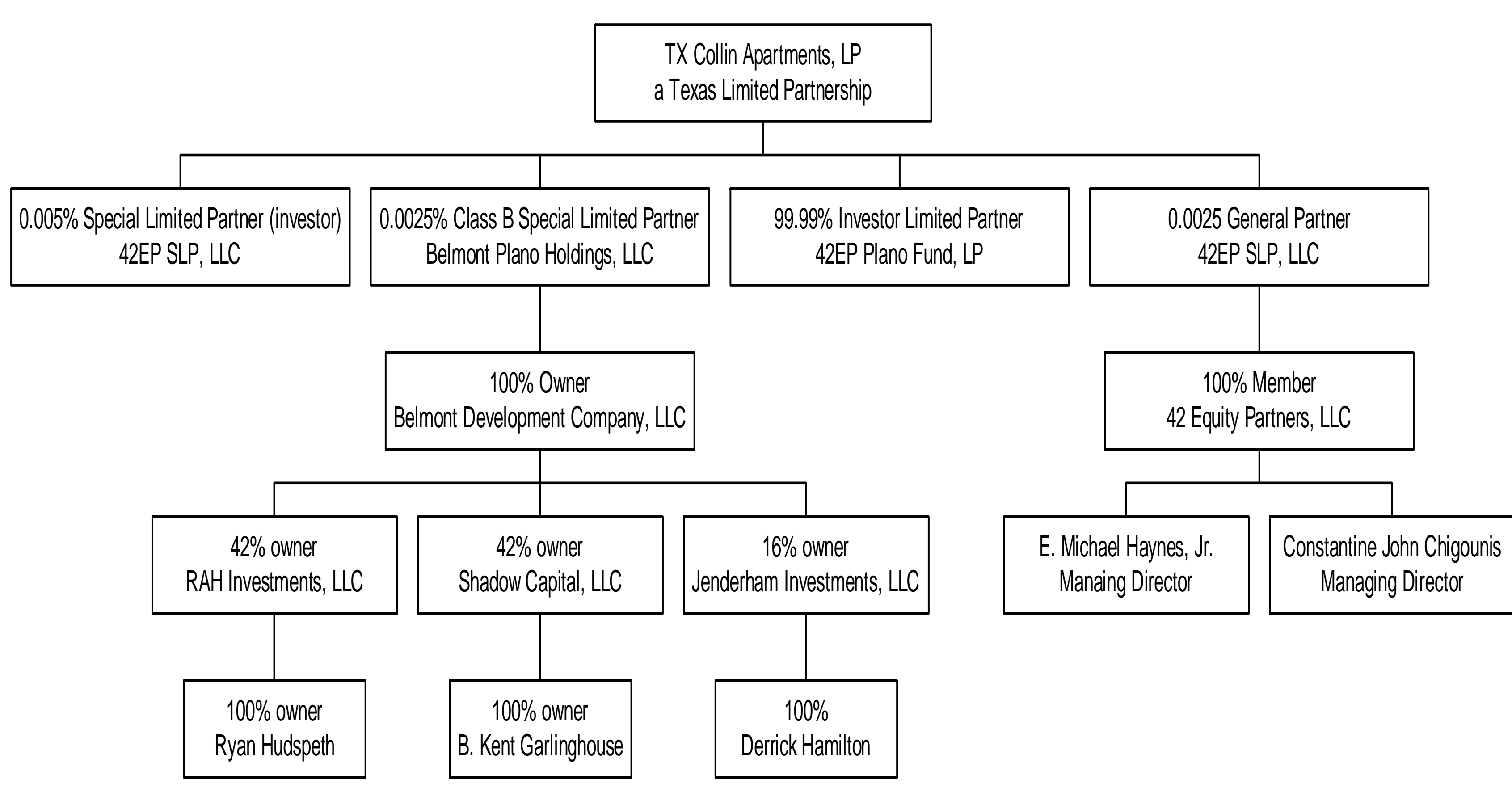
Villas at Plano Gateway Senior Living
Ownership Organization Chart



Temporary ownership structure after removal of original GP by investor limited partner.

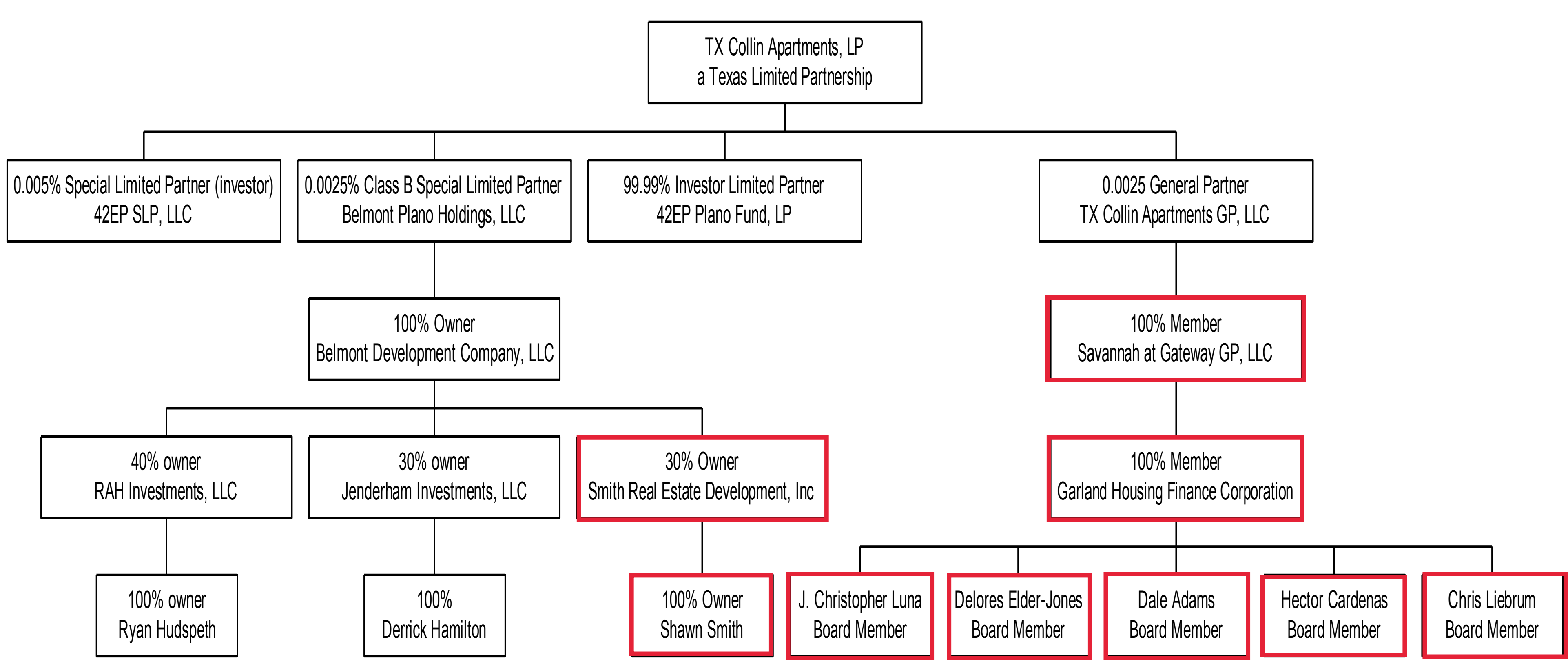
Pre-Transfer

Villas at Plano Gateway Senior Living
Ownership Organization Chart



Post-Transfer

Villas at Plano Gateway Senior Living
Ownership Organization Chart



BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for Reserve at Engel Road (HTC #15303)

RECOMMENDED ACTION

WHEREAS, Reserve at Engel Road (the "Development") received an award of 9% Housing Tax Credits ("HTCs") in 2015 for the construction of 96 multifamily units in New Braunfels, Comal County;

WHEREAS, the legal representative for Reserve at Engel Road, LLC (the "Development Owner") requested approval for a change to the ownership structure of the Development Owner that involves the exit of members but no new principals;

WHEREAS, MV Reserve at Engel Road LLC is the Managing Member of the Development Owner, and the current sole member of the Managing Member is MV Affordable Housing LLC, which is owned by Miller-Valentine Operations, Inc. Under the revised ownership structure, MVAH Holding LLC is proposed to replace the MV Affordable Housing, LLC as sole member of the Managing Member. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman (managing member with a 10% interest), Brian McGeady (managing member with a 10% interest), and Monarch Private Investments (non-controlling investor member with an 80% interest). Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development;

WHEREAS, the departure of Miller-Valentine Operations, Inc. will result in several shareholders and officers departing from the ownership structure of the Development; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for Reserve at Engel Road is approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

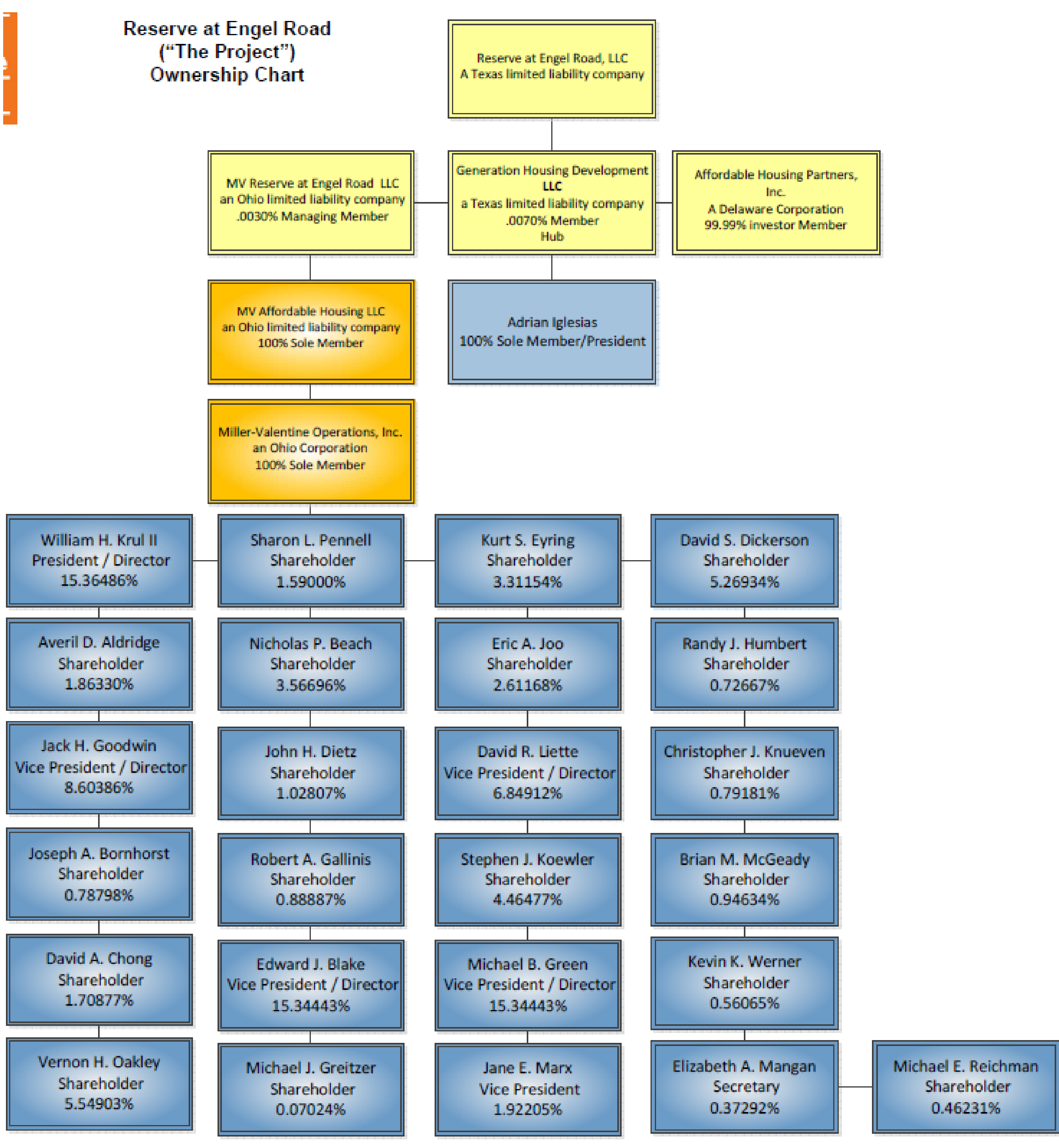
BACKGROUND

Reserve at Engel Road is a 96-unit, new construction, development in New Braunfels, Comal County, which was submitted and approved for a 9% HTC award in 2015. The HTC application for the Development proposed MV Reserve at Engel Road LLC as the Managing Member with a 0.0030% interest, Generation Housing Development, LLC as the HUB Member with a 0.0070% interest, and Affordable Housing Partners, Inc. as the Investor Member with a 99.99% interest. The current sole member of the Managing Member is MV Affordable Housing LLC. In turn, the sole member of MV Affordable Housing LLC is Miller-Valentine Operations, Inc., which was owned by 25 shareholders with varying ownership percentages according to the HTC Application.

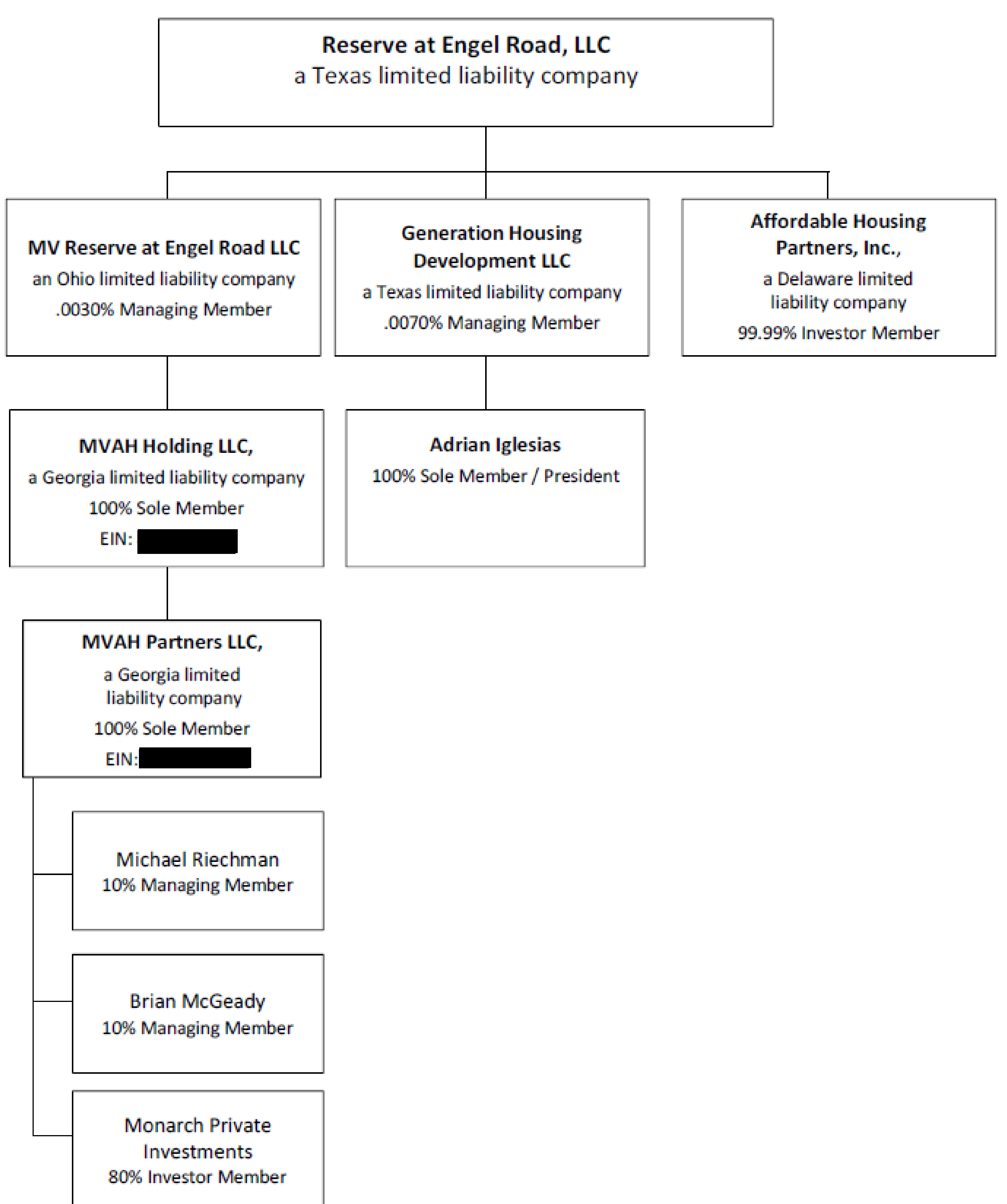
In a letter as of June 13, 2018, Cynthia L. Bast, the attorney for the Development Owner, advised the Department of a change that will be made to the ownership structure of the Development Owner. Under the revised ownership structure, MVAH Holding LLC is anticipated to replace MV Affordable Housing LLC as sole member of MV Reserve at Engel Road LLC. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest, and Monarch Private Investments, a non-controlling investor member with an 80% interest. Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development; therefore, the proposed ownership change will not introduce any new principals into the ownership structure of the Development Owner.

The Owner's attorney explained that Miller Valentine Group ("MVG") is in the process of selling off its affordable housing division. Brian McGeady, who was previously the president of affordable housing for MVG, and Michael Riechman, who was previously the president of investment management for MVG, have created MVAH Partners to take over MVG's affordable housing business and portfolio. Because Mr. McGeady and Mr. Riechman were part of the ownership of MVG identified in the tax credit application for the Development and because no new Controlling Principals are being added in this spin-off transaction, the Owner's attorney felt like only notification to the Department was appropriate. Since Mr. McGeady controlled both the affordable housing division of MVG and will control MVAH, the parties could be deemed Affiliates. However, the HTC Application for the Development did not fully support the argument that only Mr. McGeady and Mr. Riechman had Control. 10 TAC §10.406(e) requires that, prior to the issuance of IRS Forms 8609, parties reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. The pre- and post-transfer organization charts for the Development Owner are on the pages below.

Ownership Structure Approved at Application



Revised Ownership Structure



In addition to the change in the ownership structure, the developers and guarantors will also change. MV Residential Development LLC and Generation Housing Development LLC were proposed as the developers at application, while MV Residential Construction, Inc. and MV Residential Property Management, Inc. were proposed as guarantors at application. MV Residential Development LLC and MV Reserve at Engel Road LLC were later added as guarantors. Under the proposed structure, MVAH Development LLC, which is owned by MVAH Partners LLC, will be the developer, and MVAH Partners LLC will be the guarantor. MVAH Partners LLC is controlled by Brian McGeady and Michael Riechman. Due to the fact that both Mr. McGeady and Mr. Riechman were part of the approved ownership structure at application, this change only requires acknowledgment from the Department.

Finally, there will also be a change in the person used to meet the experience requirement in 10 TAC §10.204(6). David R. Liette was used to meet the experience requirement at Application. While Mr. Liette is not part of the proposed ownership structure of the Development or part of the proposed developer, the Owner's attorney pointed out that Brian McGeady has an experience certificate from the Department. However, it must be noted that Mr. Liette's experience certificate was issued in 2014, while Mr. McGeady's experience certificate was issued in 2018. In accordance with 10 TAC §10.405(a)(3)(B), this change can be approved administratively by the Executive Director.

Staff recommends approval of the ownership transfer, changes to the developer and guarantor, and change in the person used to meet the experience requirement for Reserve at Engel Road as presented.

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Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

June 13, 2018

Via Electronic Delivery
Dee Patience
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78711-3941

RE: Reserve at Engel Road
(TDHCA No. 15303)
Notice of Changes in Ownership Structure

Dear Ms. Patience:

We are submitting this letter on behalf of Reserve at Engel Road, LLC, a Texas limited liability company (the "**Company**") and the owner of the above referenced development, to advise the Department of a change that will be made to the ownership structure of the Company, as further described below.

Exhibit A to this letter reflects the current ownership structure of the Company. This chart shows that the Company is comprised of MV Reserve at Engel Road LLC, an Ohio limited liability company, as the managing member (the "**Managing Member**") with a 0.0030% interest, Generation Housing Development, LLC, a Texas limited liability company, as the HUB member (the "**HUB Member**") with a 0.0070% interest, and Affordable Housing Partners, Inc., a Delaware corporation, as the investor member (the "**Investor Member**"), with a 99.99% interest. The current sole member of the Managing Member is MV Affordable Housing LLC, an Ohio limited liability company (the "**MM Sole Member**"). In turn, the sole member of the MM Sole Member is Miller-Valentine Operations, Inc., an Ohio corporation. ("**MV Operations**").

Under the revised ownership structure, as shown on Exhibit B attached hereto, MVAH Holdings LLC, a Georgia limited liability company, (the "**Incoming MM Sole Member**") is anticipated to replace the MM Sole Member as sole member of the Managing Member upon acknowledgment of this notification and execution of a Transfer and Assignment of Membership Interest (the "**Transfer Agreement**"). A draft of the Transfer Agreement is attached hereto as Exhibit C.

The Incoming MM Sole Member is solely owned by MVAH Partners LLC, a Georgia limited liability company ("**MVAH Partners**"). The members of MVAH Partners are Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest, and Monarch Private Investments, an investor member with an 80% interest. The ownership change described in this letter will not introduce any new principals into the Company's ownership structure. Consequently, we are submitting this letter simply to provide notice to the Department of the change.

If there are any questions or if further discussion is needed regarding the foregoing, please let us know. Otherwise, we trust that the Department will update its records as needed to reflect these changes.

Thank you for your time and consideration.

Sincerely,

Cynthia L. Bast

cc: Gregory, Justin *(via email)*

EXHIBIT A

Current Organizational Chart

Reserve at Engel Road
("The Project")
Ownership Chart

Reserve at Engel Road, LLC
A Texas limited liability company

MV Reserve at Engel Road LLC
an Ohio limited liability company
.0030% Managing Member

Generation Housing Development **LLC**
a Texas limited liability company
.0070% Member
Hub

Affordable Housing Partners, Inc.
A Delaware Corporation
99.99% investor Member

MV Affordable Housing LLC
an Ohio limited liability company
100% Sole Member

Adrian Iglesias
100% Sole Member/President

Miller-Valentine Operations, Inc.
an Ohio Corporation
100% Sole Member

William H. Krul II
President / Director
15.36486%

Averil D. Aldridge
Shareholder
1.86330%

Jack H. Goodwin
Vice President / Director
8.60386%

Joseph A. Bornhorst
Shareholder
0.78798%

David A. Chong
Shareholder
1.70877%

Vernon H. Oakley
Shareholder
5.54903%

Sharon L. Pennell
Shareholder
1.59000%

Nicholas P. Beach
Shareholder
3.56696%

John H. Dietz
Shareholder
1.02807%

Robert A. Gallinis
Shareholder
0.88887%

Edward J. Blake
Vice President / Director
15.34443%

Michael J. Greitzer
Shareholder
0.07024%

Kurt S. Eyring
Shareholder
3.31154%

Eric A. Joo
Shareholder
2.61168%

David R. Liette
Vice President / Director
6.84912%

Stephen J. Koewler
Shareholder
4.46477%

Michael B. Green
Vice President / Director
15.34443%

Jane E. Marx
Vice President
1.92205%

David S. Dickerson
Shareholder
5.26934%

Randy J. Humbert
Shareholder
0.72667%

Christopher J. Knueven
Shareholder
0.79181%

Brian M. McGeady
Shareholder
0.94634%

Kevin K. Werner
Shareholder
0.56065%

Elizabeth A. Mangan
Secretary
0.37292%

Michael E. Reichman
Shareholder
0.46231%

EXHIBIT B

Proposed Organizational Chart

PROPOSED

Reserve at Engel Road, LLC
a Texas limited liability company

MV Reserve at Engel Road LLC
an Ohio limited liability company
.0030% Managing Member

Generation Housing Development LLC
a Texas limited liability company
.0070% Managing Member

Affordable Housing Partners, Inc.,
a Delaware limited liability company
99.99% Investor Member

MVAH Holding LLC,
a Georgia limited liability company
100% Sole Member
EIN: [redacted]

Adrian Iglesias
100% Sole Member / President

MVAH Partners LLC,
a Georgia limited liability company
100% Sole Member
EIN: [redacted]

Michael Riechman
10% Managing Member

Brian McGeady
10% Managing Member

Monarch Private Investments
80% Investor Member

Reserve at Engel Road
("The Project")
Guarantor Organizational Chart

amam - 8/10/2018 12:03pm - RB

Miller-Valentine Operations, Inc.
100% Owner of MVRC & MVRPM

MV Residential Construction, Inc. ("MVRC")
Guarantor/General Contractor

MV Residential Property Management, Inc.("MVRPM")
Guarantor/ Property Manager

William H. Krul II
President /Director
Shareholder

Averil D. Aldridge
Shareholder

Jack H. Goodwin
Vice President / Director
Shareholder

Joseph A. Bornhorst
Shareholder

David A. Chong
Shareholder

Vernon H. Oakley
Shareholder

Sharon L. Pennell
Shareholder

Nicholas P. Beach
Shareholder

John H. Dietz
Shareholder

Robert A. Gallinis
Shareholder

Edward J. Blake
Vice President / Director
Shareholder

Michael J. Greitzer
Shareholder

Kurt S. Eyring
Shareholder

Eric A. Joo
Shareholder

David R. Liette
Vice President / Director
Shareholder

Stephen J. Koewler
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Jane E. Marx
Vice President
Shareholder

David S. Dickerson
Shareholder

Randy J. Humbert
Shareholder

Christopher J. Knueven
Shareholder

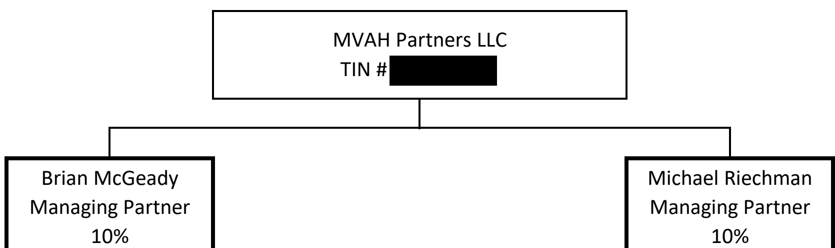
Brian M. McGeady
Shareholder

Kevin K. Werner
Shareholder

Elizabeth A. Mangan
Secretary
Shareholder

Michael E. Reichman
Shareholder

Reserve at Engel Road
Guarantor Org Chart
After Transfer



amam - 8/10/2018 12:03pm - RB

Reserve at Engel Road (“The Project”) Developer Organizational Chart

MV Residential Development LLC (“MVRD”)
Developer

Generation Housing Development LLC
a Texas limited liability company
.0070% Member
Hub

Adrian Iglesias
100% Sole Member/President

Miller-Valentine Operations, Inc. (“MVO")
an Ohio Corporation
100% Sole Member of MVRC

William H. Krul II
President /Director
15.36486%

Averil D. Aldridge
Shareholder
1.86330%

Jack H. Goodwin
Vice President / Director
8.60386%

Joseph A. Bornhorst
Shareholder
0.78798%

David A. Chong
Shareholder
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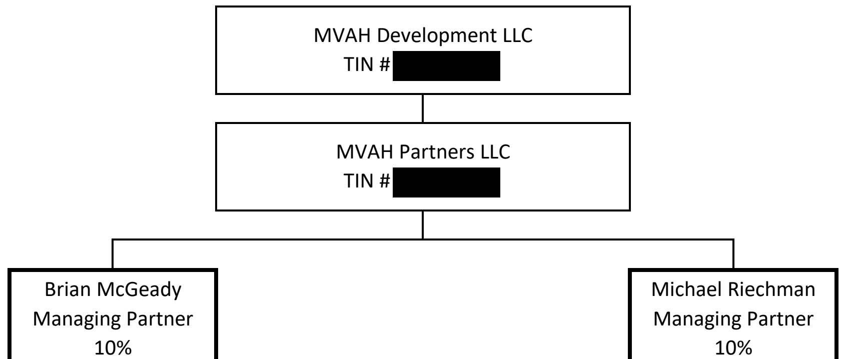
Reserve at Engel Road
Developer Org Chart
After Transfer



BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for Reserve at Quebec (HTC #15407)

RECOMMENDED ACTION

WHEREAS, Reserve at Quebec (the "Development") received an award of 4% Housing Tax Credits ("HTCs") in 2015 for the construction of 296 multifamily units in Fort Worth, Tarrant County;

WHEREAS, the legal representative for Reserve at Quebec, LLC (the "Development Owner") requested approval for a change to the ownership structure of the Development Owner that involves the exit of members but no new principals;

WHEREAS, MV Reserve at Quebec LLC is the Special Member of the Development Owner, and the current sole member of the Special Member is MV Affordable Housing LLC, which is owned by Miller-Valentine Operations, Inc. Under the revised ownership structure, MVAH Holding LLC is proposed to replace the MV Affordable Housing, LLC as sole member of the Special Member. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman (managing member with a 10% interest), Brian McGeady (managing member with a 10% interest), and Monarch Private Investments (non-controlling investor member with an 80% interest). Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development;

WHEREAS, the departure of Miller-Valentine Operations, Inc. will result in several shareholders and officers departing from the ownership structure of the Development; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for Reserve at Quebec is approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

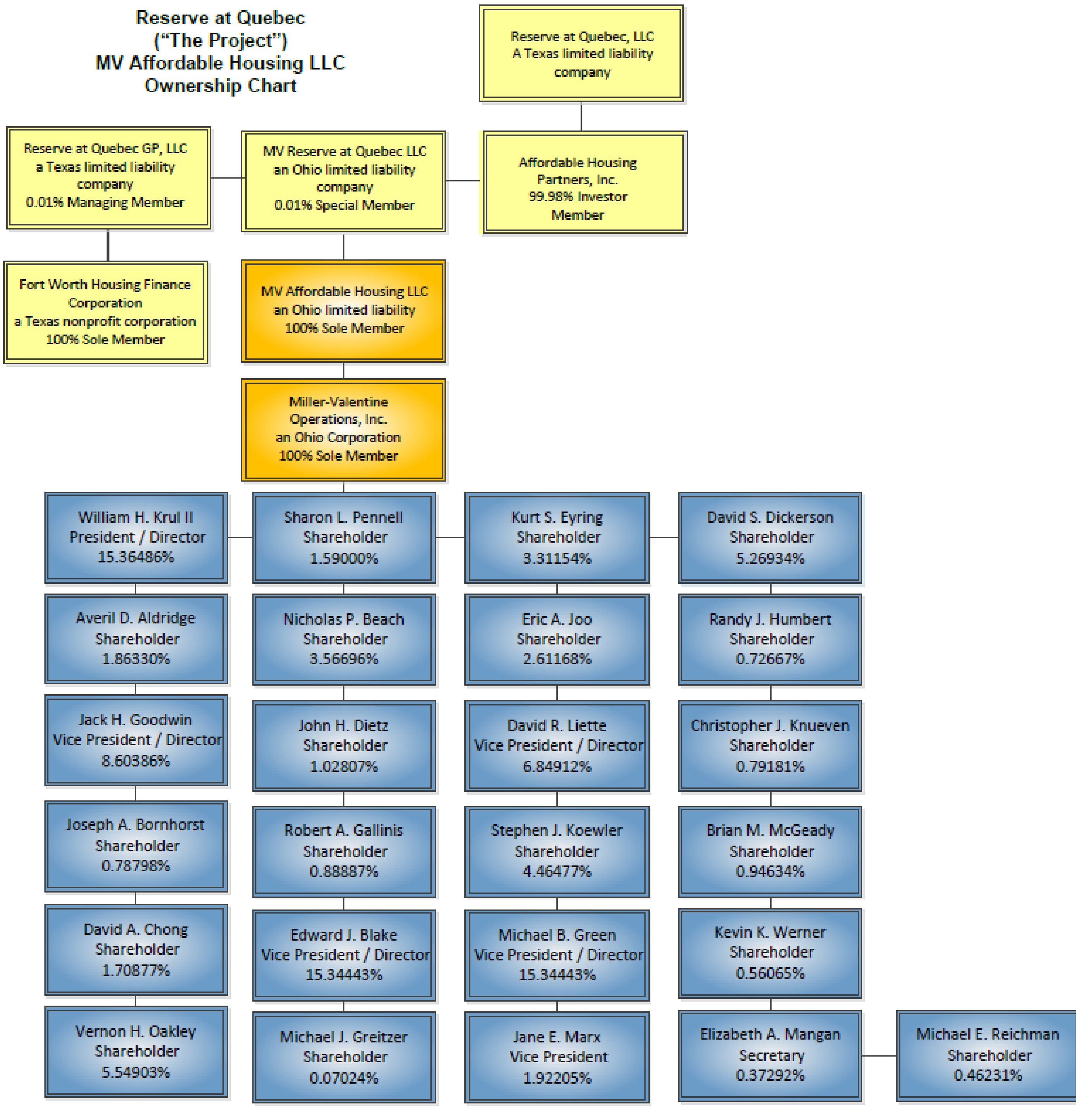
BACKGROUND

Reserve at Quebec is a 296-unit, new construction, development in Fort Worth, Tarrant County, which was submitted and approved for a 4% HTC award in 2015. The HTC application for the Development proposed Reserve at Quebec GP, LLC as the Managing Member with a 0.01% ownership interest, MV Reserve at Quebec LLC as the Special Member with a 0.01% interest, and Affordable Housing Partners, Inc. as the Investor Member with a 99.98% interest. The current sole member of the Special Member is MV Affordable Housing LLC. In turn, the sole member of MV Affordable Housing LLC is Miller-Valentine Operations, Inc., which was owned by 25 shareholders with varying ownership percentages according to the HTC Application.

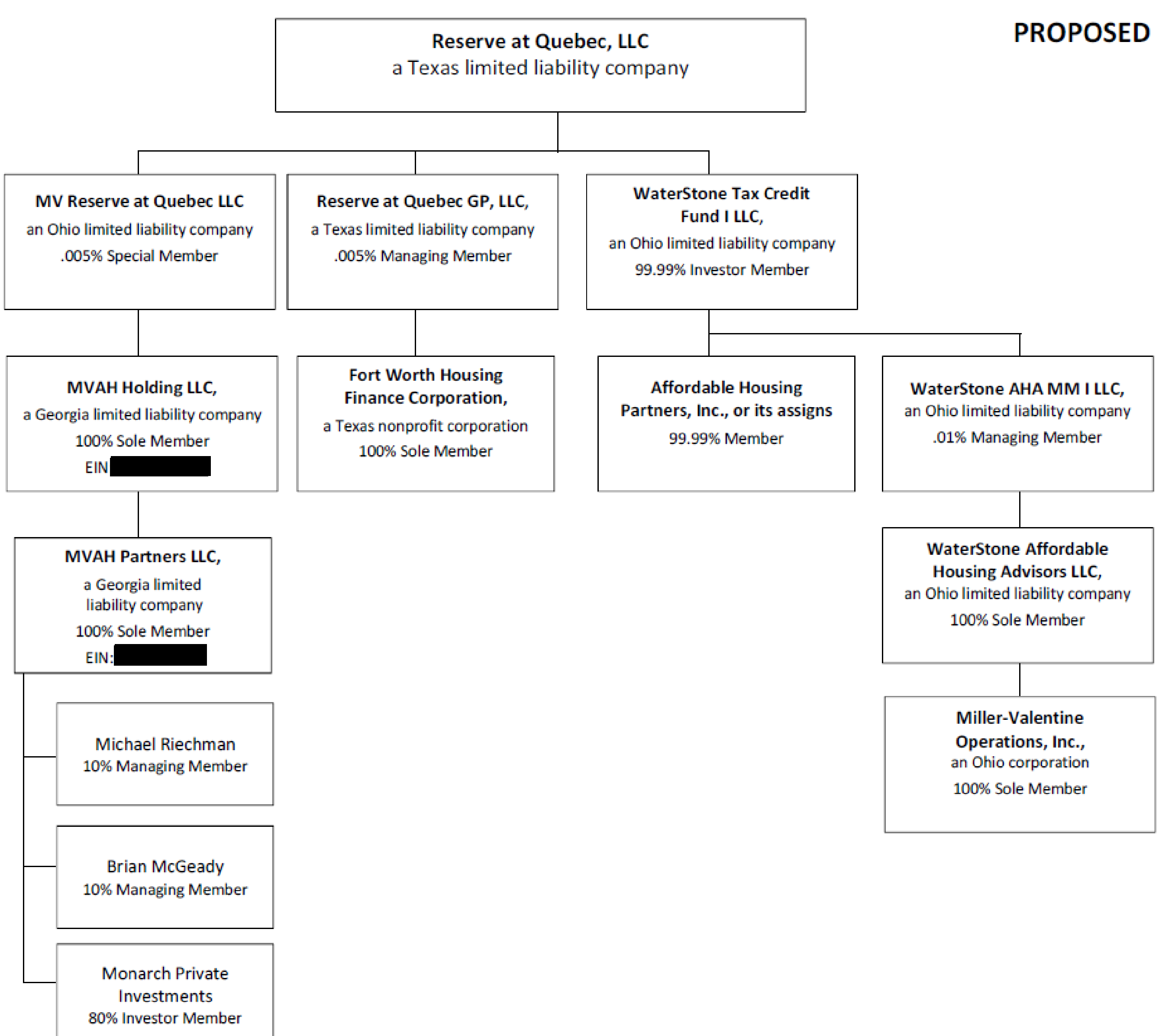
In a letter as of June 13, 2018, Cynthia L. Bast, the attorney for the Development Owner, advised the Department of a change that will be made to the ownership structure of the Development Owner. Under the revised ownership structure, MVAH Holding LLC is anticipated to replace MV Affordable Housing LLC as sole member of MV Reserve at Engel Road LLC. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest, and Monarch Private Investments, a non-controlling investor member with an 80% interest. Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development; therefore, the proposed ownership change will not introduce any new principals into the ownership structure of the Development Owner.

The Owner's attorney explained that Miller Valentine Group ("MVG") is in the process of selling off its affordable housing division. Brian McGeady, who was previously the president of affordable housing for MVG, and Michael Riechman, who was previously the president of investment management for MVG, have created MVAH Partners to take over MVG's affordable housing business and portfolio. Because Mr. McGeady and Mr. Riechman were part of the ownership of MVG identified in the tax credit application for the Development and because no new Controlling Principals are being added in this spin-off transaction, the Owner's attorney felt like only notification to the Department was appropriate. Since Mr. McGeady controlled both the affordable housing division of MVG and will control MVAH, the parties could be deemed Affiliates. However, the HTC Application for the Development did not fully support the argument that only Mr. McGeady and Mr. Riechman had Control. 10 TAC §10.406(e) requires that, prior to the issuance of IRS Forms 8609, parties reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. A comparison between the proposed organization chart for the Development Owner and the Owner's organization chart in the Application revealed a change in the ownership percentages for the members of the Development Owner and a change in the Investor Member from Affordable Housing Partners, Inc. to WaterStone Tax Credit Fund I LLC, which is owned by Affordable Housing Partners, Inc. (99.99% Member) and WaterStone AHA MM I LLC (0.01% Managing Member); however, in accordance with 10 TAC §10.406(b), these changes only require notification to the Department. The pre- and post-transfer organization charts for the Development Owner are on the pages below.

Ownership Structure Approved at Application



Revised Ownership Structure



In addition to the change in the ownership structure, the developers and guarantors will also change. Fort Worth Housing Finance Corporation and MV Residential Development LLC were proposed as the developers at application, while MV Residential Property Management, Inc. and MV Residential Construction, Inc. were proposed as guarantors at application. MV Residential Development LLC, MV Residential Property Management, Inc., and MV Residential Construction, Inc. all were ultimately controlled

by 25 shareholders with varying ownership percentages. Under the proposed structure, MVAH Development LLC, which is owned by MVAH Partners LLC, will be the developer, and MVAH Partners LLC will be the guarantor. MVAH Partners LLC is controlled by Brian McGeady and Michael Riechman. Due to the fact that both Mr. McGeady and Mr. Riechman were part of the approved ownership structure at application, this change only requires acknowledgment from the Department.

Finally, there will also be a change in the person used to meet the experience requirement in 10 TAC §10.204(6). David R. Liette was used to meet the experience requirement at Application. While Mr. Liette is not part of the proposed ownership structure of the Development or part of the proposed developer, the Owner's attorney pointed out that Brian McGeady has an experience certificate from the Department. However, it must be noted that Mr. Liette's experience certificate was issued in 2014, while Mr. McGeady's experience certificate was issued in 2018. In accordance with 10 TAC §10.405(a)(3)(B), this change can be approved administratively by the Executive Director.

Staff recommends approval of the ownership transfer, changes to the developer and guarantor, and change in the person used to meet the experience requirement for Reserve at Quebec as presented.

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Austin, Texas 78701-2748
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www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

June 13, 2018

Via Electronic Delivery
Laura DeBellas
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78711-3941

RE: Reserve at Quebec
(TDHCA No. 15407)
Notice of Changes in Ownership Structure

Dear Ms. DeBellas:

We are submitting this letter on behalf of Reserve at Quebec, LLC, a Texas limited liability company (the "**Company**") and the owner of the above referenced development, to advise the Department of a change that will be made to the ownership structure of the Company, as further described below.

Exhibit A to this letter reflects the current ownership structure of the Company. This chart shows that the Company is comprised of Reserve at Quebec GP, LLC, a Texas limited liability company, as the managing member (the "**Managing Member**") with a 0.05% interest, MV Reserve at Quebec LLC, an Ohio limited liability company, as the special member (the "**Special Member**") with a 0.05% interest, and WaterStone Tax Credit Fund I LLC, an Ohio limited liability company, as the investor member (the "**Investor Member**"), with a 99.99% interest. The current sole member of the Special Member is MV Affordable Housing LLC, an Ohio limited liability company (the "**SM Sole Member**"). In turn, the sole member of the MM Sole Member is Miller-Valentine Operations, Inc., an Ohio corporation. ("**MV Operations**").

Under the revised ownership structure, as shown on Exhibit B attached hereto, MVAH Holdings LLC, a Georgia limited liability company, (the "**Incoming SM Sole Member**") is anticipated to replace the SM Sole Member as sole member of the Special Member upon acknowledgment of this notification and execution of a Transfer and Assignment of Membership Interest (the "**Transfer Agreement**"). A draft of the Transfer Agreement is attached hereto as Exhibit C.

The Incoming SM Sole Member is solely owned by MVAH Partners LLC, a Georgia limited liability company ("**MVAH Partners**"). The members of MVAH Partners are Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest , and Monarch Private Investments, an investor member with an 80% interest. The ownership change described in this letter will not introduce any new principals into the Company's ownership structure. Consequently, we are submitting this letter simply to provide notice to the Department of the change.

If there are any questions or if further discussion is needed regarding the foregoing, please let us know. Otherwise, we trust that the Department will update its records as needed to reflect these changes.

Thank you for your time and consideration.

Sincerely,

Cynthia L. Bast

Cynthia L. Bast

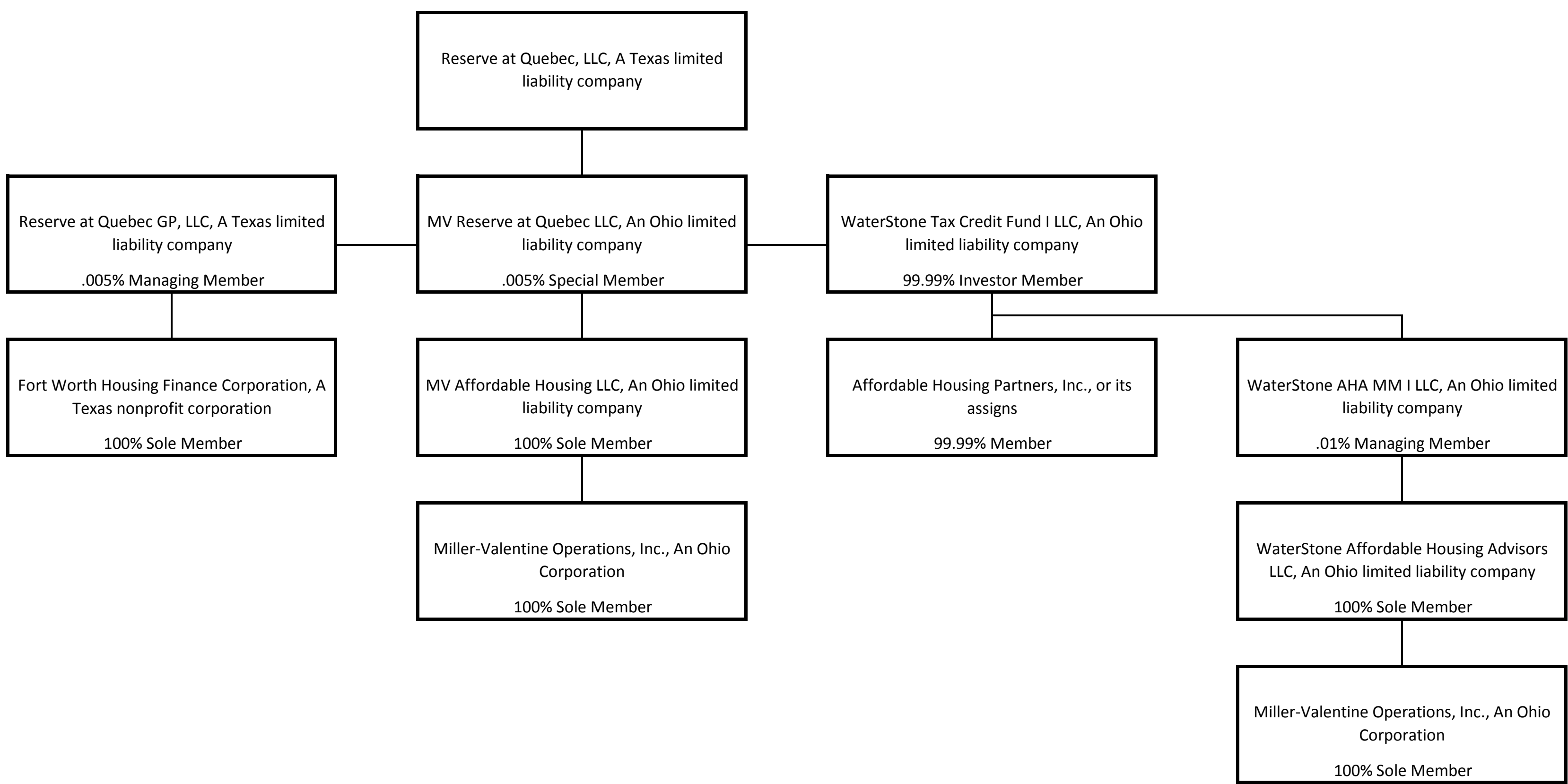
cc: Gregory, Justin *(via email)*

EXHIBIT A

Current Organizational Chart

REVISED

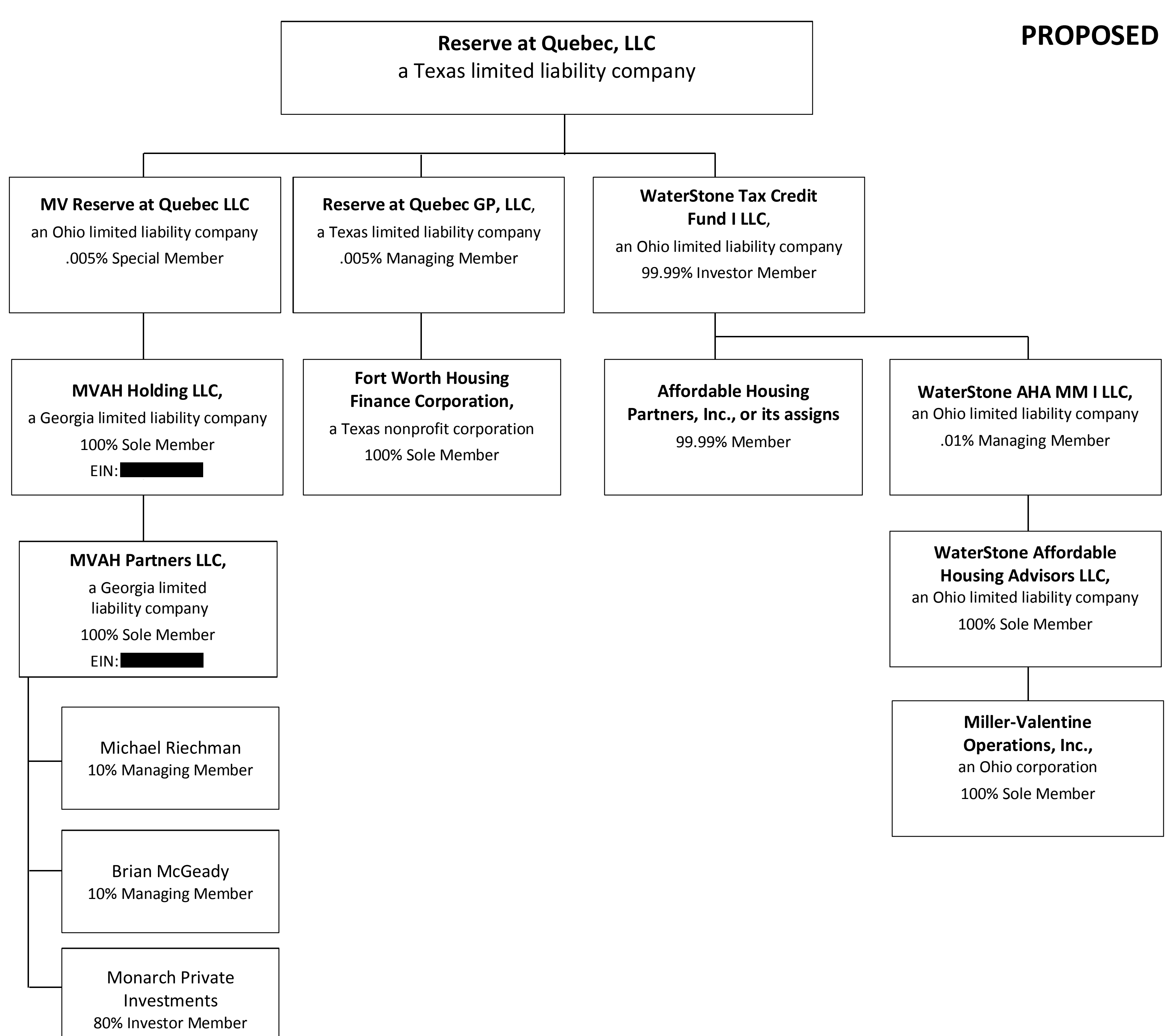
Reserve at Quebec



<u>**EXHIBIT B**</u>

Proposed Organizational Chart

PROPOSED



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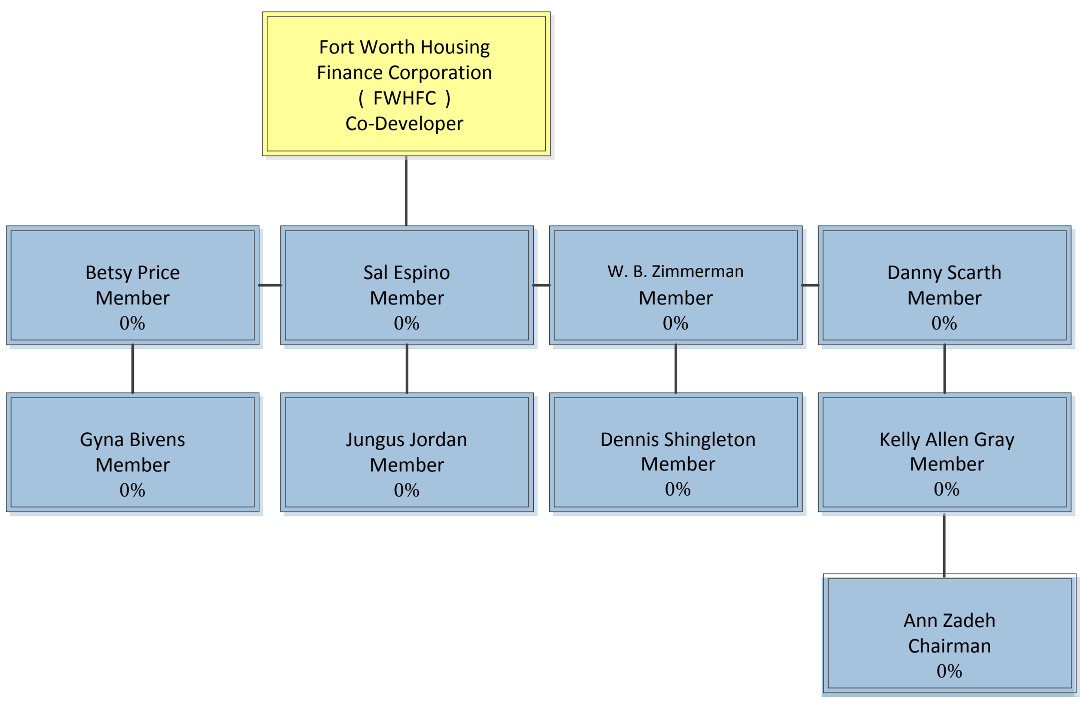
Reserve at Quebec
("The Project")
Fort Worth Housing Finance Corporation
Co-developer Organizational Chart



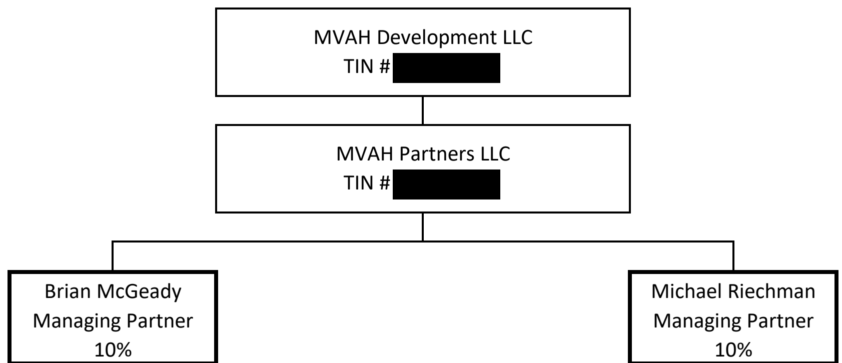
Reserve at Quebec
("The Project")
MV Residential Development LLC
Co-developer Organizational Chart

MV Residential Development LLC
("MVRD")
Co-Developer

Miller-Valentine Operations, Inc.
("MVO")
an Ohio Corporation
100% Sole Member of MVRD

Name	Title	Ownership
William H. Krul II	President /Director	15.36486%
Averil D. Aldridge	Shareholder	1.86330%
Jack H. Goodwin	Vice President / Director	8.60386%
Joseph A. Bornhorst	Shareholder	0.78798%
David A. Chong	Shareholder	1.70877%
Vernon H. Oakley	Shareholder	5.54903%
Sharon L. Pennell	Shareholder	1.59000%
Nicholas P. Beach	Shareholder	3.56696%
John H. Dietz	Shareholder	1.02807%
Robert A. Gallinis	Shareholder	0.88887%
Edward J. Blake	Vice President / Director	15.34443%
Michael J. Greitzer	Shareholder	0.07024%
Kurt S. Eyring	Shareholder	3.31154%
Eric A. Joo	Shareholder	2.61168%
David R. Liette	Vice President / Director	6.84912%
Stephen J. Koewler	Shareholder	4.46477%
Michael B. Green	Vice President / Director	15.34443%
Jane E. Marx	Vice President	1.92205%
David S. Dickerson	Shareholder	5.26934%
Randy J. Humbert	Shareholder	0.72667%
Christopher J. Knueven	Shareholder	0.79181%
Brian M. McGeady	Shareholder	0.94634%
Kevin K. Werner	Shareholder	0.56065%
Elizabeth A. Mangan	Secretary	0.37292%
Michael E. Reichman	Shareholder	0.46231%

Reserve at Quebec
Developer Org Chart
After Transfer



Reserve at Quebec
("The Project")
Guarantor Organizational Chart

MV Residential Property Management, Inc. ("MVRPM")
an Ohio corporation
Guarantor / Management Company

Miller-Valentine Operations, Inc. ("MVO")
an Ohio Corporation
100% Sole Member of MVRC

William H. Krul II, President/ Board Member 15.36486%

David A. Chong Shareholder 1.70877%

John H. Dietz Shareholder 1.02807%

Kurt S. Eyring Shareholder 3.31154%

Michael B. Green Vice President/Board Member 15.34443%

Christopher J. Knueven Shareholder 0.79181%

Michael E. Riechman Shareholder 0.46231%

Averil D. Aldridge Shareholder 1.86330%

Vernon H. Oakley Shareholder 5.54903%

Robert A. Gallinis Shareholder 0.88887%

Eric A. Joo Shareholder 2.61168%

Jane E. Marx Vice President 1.92205%

Brian M. McGeady Shareholder 0.94634%

Jack H. Goodwin Vice President/Board Member 8.60386%

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Stephen J. Koewler Shareholder 4.46477%

Randy J. Humbert Shareholder 0.72667%

Elizabeth A. Mangan Shareholder 0.37292%

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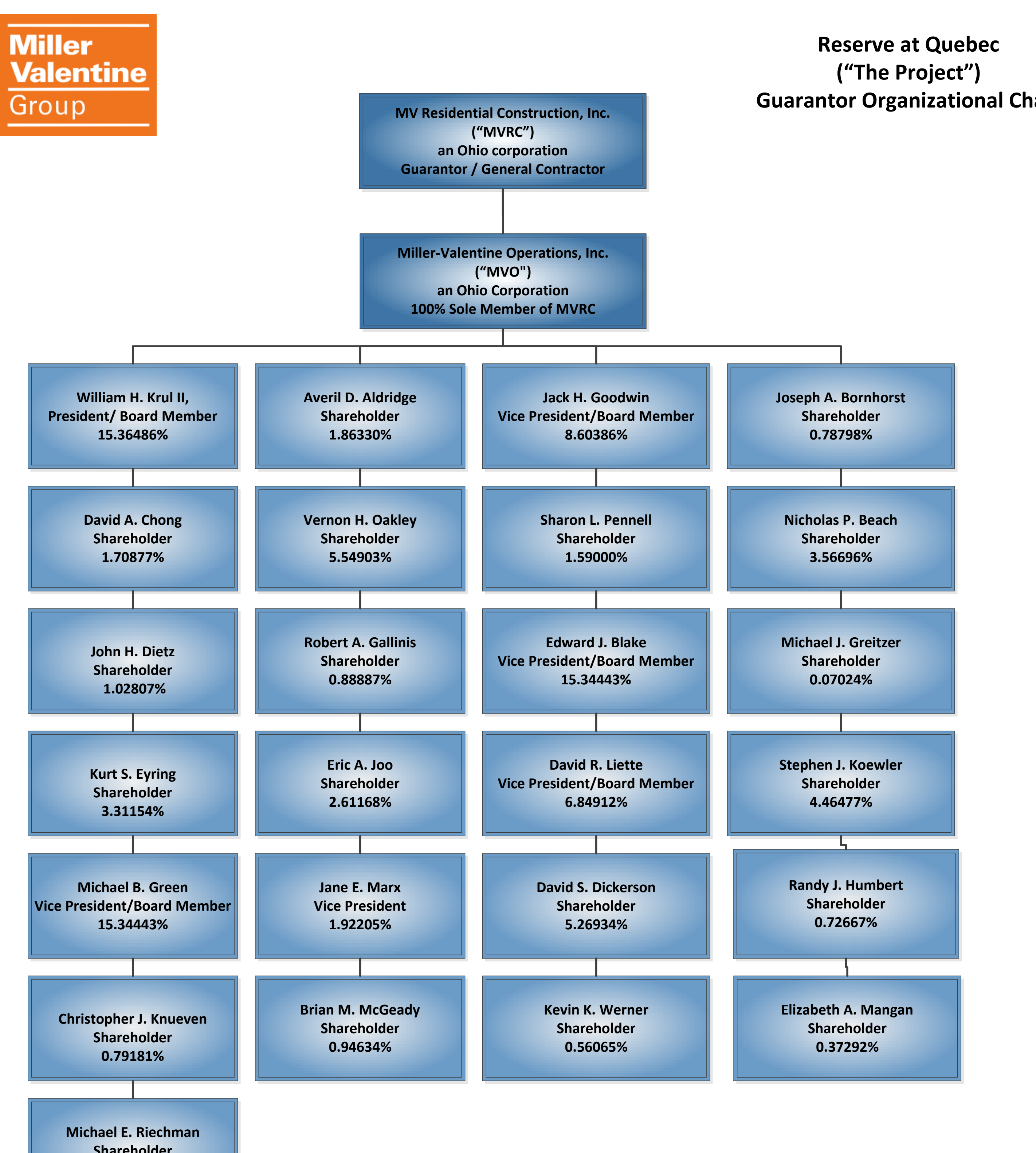
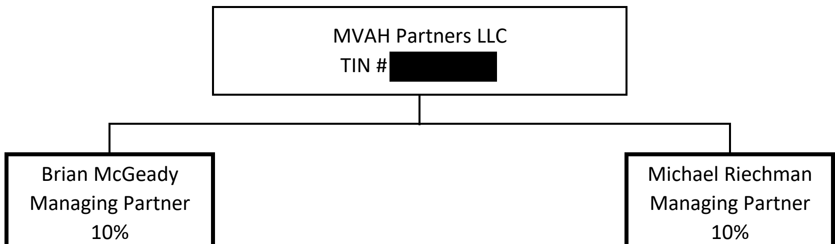
Reserve at Quebec
("The Project")
Guarantor Organizational Chart



Reserve at Quebec
Guarantor Org Chart
After Transfer



BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a change in the ownership structure of the Development Owner prior to issuance of IRS Form(s) 8609 for Reserve at Hagan (HTC #16184)

RECOMMENDED ACTION

WHEREAS, Reserve at Hagan (the "Development") received an award of 9% Housing Tax Credits ("HTCs") in 2016 for the construction of 72 multifamily units in Whitehouse, Smith County;

WHEREAS, the legal representative for Reserve at Hagan, LLC (the "Development Owner") requested approval for a change to the ownership structure of the Development Owner that involves the exit of members but no new principals;

WHEREAS, MV Reserve at Hagan LLC is the Managing Member of the Development Owner, and the current sole member of the Managing Member is MV Affordable Housing LLC, which is owned by Miller-Valentine Operations, Inc. Under the revised ownership structure, MVAH Holding LLC is proposed to replace the MV Affordable Housing, LLC as sole member of the Managing Member. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman (managing member with a 10% interest), Brian McGeady (managing member with a 10% interest), and Monarch Private Investments (non-controlling investor member with an 80% interest). Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development;

WHEREAS, the departure of Miller-Valentine Operations, Inc. will result in several shareholders and officers departing from the ownership structure of the Development; and

WHEREAS, the transfer of ownership is being requested prior to the issuance of IRS Form(s) 8609, and 10 TAC §10.406(e) requires that parties reflected in the Application that have control must remain in the ownership structure and retain such control, unless approved otherwise by the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer for Reserve at Hagan is approved as presented to this meeting, and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Reserve at Hagan is a 72-unit, new construction, development in Whitehouse, Smith County, which was submitted and approved for a 9% HTC award in 2016. The HTC application for the Development proposed MV Reserve at Hagan LLC as the Managing Member with a 0.0030% interest, Albatross Development, LLC as the HUB Member with a 0.0070% interest, and Affordable Housing Partners, Inc. as the Investor Member with a 99.99% interest. The current sole member of the Managing Member is MV Affordable Housing LLC. In turn, the sole member of MV Affordable Housing LLC is Miller-Valentine Operations, Inc., which was owned by 24 shareholders with varying ownership percentages according to the HTC Application.

In a letter as of June 13, 2018, Cynthia L. Bast, the attorney for the Development Owner, advised the Department of a change that will be made to the ownership structure of the Development Owner. Under the revised ownership structure, MVAH Holding LLC is anticipated to replace MV Affordable Housing LLC as sole member of MV Reserve at Hagan LLC. MVAH Holding LLC is solely owned by MVAH Partners LLC, which is owned by Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest, and Monarch Private Investments, a non-controlling investor member with an 80% interest. Both Michael Riechman and Brian McGeady were in the originally approved ownership structure of the Development; therefore, the proposed ownership change will not introduce any new principals into the ownership structure of the Development Owner.

The Owner's attorney explained that Miller Valentine Group ("MVG") is in the process of selling off its affordable housing division. Brian McGeady, who was previously the president of affordable housing for MVG, and Michael Riechman, who was previously the president of investment management for MVG, have created MVAH Partners to take over MVG's affordable housing business and portfolio. Because Mr. McGeady and Mr. Riechman were part of the ownership of MVG identified in the tax credit application for the Development and because no new Controlling Principals are being added in this spin-off transaction, the Owner's attorney felt like only notification to the Department was appropriate. Since Mr. McGeady controlled both the affordable housing division of MVG and will control MVAH, the parties could be deemed Affiliates. However, the HTC Application for the Development did not fully support the argument that only Mr. McGeady and Mr. Riechman had Control. 10 TAC §10.406(e) requires that, prior to the issuance of IRS Forms 8609, parties reflected in the Application as having control must remain in the ownership structure and retain such control, unless approved otherwise by the Board. The pre- and post-transfer organization charts for the Development Owner are on the pages below.

Ownership Structure Approved at Application

Reserve at Hagan
("The Project")
Ownership Chart

Reserve at Hagan, LLC
A Texas limited liability company

MV Reserve at Hagan LLC
an Ohio limited liability company
.0030% Managing Member

Albatross Development, LLC
a Texas limited liability company .0070% Member
HUB

Affordable Housing Partners, Inc.
A Delaware Corporation
99.99% investor Member

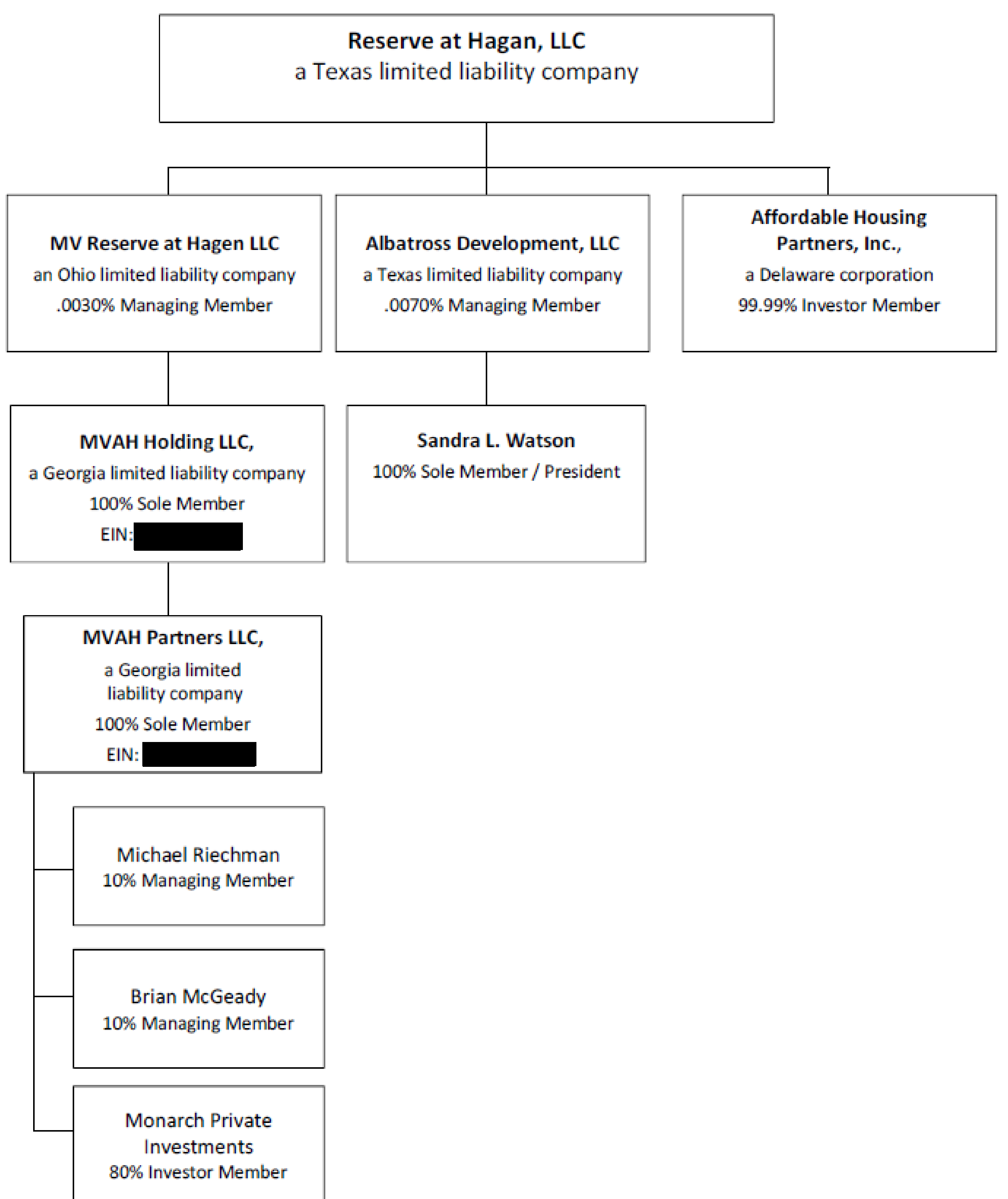
MV Affordable Housing LLC
an Ohio limited liability company
100% Sole Member

Sandra L. Watson
100% Sole Member/President

Miller-Valentine Operations, Inc.
an Ohio Corporation
100% Sole Member

William H. Krul II President /Director 15.37410%	Sharon L. Pennell Shareholder 1.37371%	Kurt S. Eyring Shareholder 3.31353%	David S. Dickerson Shareholder 5.96256%
Averil D. Aldridge Shareholder 1.60884%	Nicholas P. Beach Shareholder 3.56910%	Eric A. Joo Shareholder 2.61325%	Randy J. Humbert Shareholder .83189%
Jack H. Goodwin Vice President / Director 8.60903%	John H. Dietz Shareholder .88812%	David R. Liette Vice President / Director 6.85323%	Christopher J. Knueven Shareholder .83956%
Joseph A. Bornhorst Shareholder .68111%	Robert A. Gallinis Shareholder .76800%	Stephen J. Koewler Shareholder 4.46744%	Brian M. McGeady Shareholder 1.04400%
David A. Chong Shareholder 1.47594%	Edward J. Blake Vice President / Director 15.35365%	Michael B. Green Vice President / Director 15.35365%	Kevin K. Werner Shareholder .61338%
Vernon H. Oakley Shareholder 5.55236%	Michael E. Riechman Shareholder .51250%	Jane E. Marx Vice President 1.92319%	Elizabeth A. Mangan Secretary .41786%

Revised Ownership Structure



In addition to the change in the ownership structure, the developers and guarantors will also change. MV Residential Development LLC and Albatross Development, LLC were proposed as the developers at application, while MV Residential Property Management, Inc. and MV Residential Construction, Inc. were proposed as guarantors at application. MV Residential Development LLC, MV Residential Property Management, Inc., and MV Residential Construction, Inc. were all ultimately owned by 24 shareholders. Under the proposed structure, MVAH Development LLC, which is owned by MVAH Partners LLC, will be the developer, and MVAH Partners LLC will be the guarantor. MVAH Partners LLC is controlled by Brian McGeady and Michael Riechman. Due to the fact that both Mr. McGeady and Mr. Riechman were part of the approved ownership structure at application, this change only requires acknowledgment from the Department.

Finally, there will also be a change in the person used to meet the experience requirement in 10 TAC §10.204(6). David R. Liette was used to meet the experience requirement at Application. While Mr. Liette is not part of the proposed ownership structure of the Development or part of the proposed developer, the Owner's attorney pointed out that Brian McGeady has an experience certificate from the Department. However, it must be noted that Mr. Liette's experience certificate was issued in 2014, while Mr. McGeady's experience certificate was issued in 2018. In accordance with 10 TAC §10.405(a)(3)(B), this change can be approved administratively by the Executive Director.

Staff recommends approval of the ownership transfer, changes to the developer and guarantor, and change in the person used to meet the experience requirement for Reserve at Hagan as presented.

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Austin, Texas 78701-2748
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

June 13, 2018

Via Electronic Delivery
Kent Bedell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78711-3941

RE: Reserve at Hagan
(TDHCA No. 15309)
Notice of Changes in Ownership Structure

Dear Mr. Bedell:

We are submitting this letter on behalf of Reserve at Hagan, LLC, a Texas limited liability company (the "**Company**") and the owner of the above referenced development, to advise the Department of a change that will be made to the ownership structure of the Company, as further described below.

Exhibit A to this letter reflects the current ownership structure of the Company. This chart shows that the Company is comprised of MV Reserve at Hagan LLC, an Ohio limited liability company, as the managing member (the "**Managing Member**") with a 0.0030% interest, Albatross Development, LLC, a Texas limited liability company, as the HUB member (the "**HUB Member**") with a 0.0070% interest, and Affordable Housing Partners, Inc., a Delaware corporation, as the investor member (the "**Investor Member**"), with a 99.99% interest. The current sole member of the Managing Member is MV Affordable Housing LLC, an Ohio limited liability company (the "**MM Sole Member**"). In turn, the sole member of the MM Sole Member is Miller-Valentine Operations, Inc., an Ohio corporation. ("**MV Operations**").

Under the revised ownership structure, as shown on Exhibit B attached hereto, MVAH Holdings LLC, a Georgia limited liability company, (the "**Incoming MM Sole Member**") is anticipated to replace the MM Sole Member as sole member of the Managing Member upon acknowledgment of this notification and execution of a Transfer and Assignment of Membership Interest (the "**Transfer Agreement**"). A draft of the Transfer Agreement is attached hereto as Exhibit C.

The Incoming MM Sole Member is solely owned by MVAH Partners LLC, a Georgia limited liability company ("**MVAH Partners**"). The members of MVAH Partners are Michael Riechman, a managing member with a 10% interest, Brian McGeady, a managing member with a 10% interest , and Monarch Private Investments, an investor member with an 80% interest. The ownership change described in this letter will not introduce any new principals into the Company's ownership structure. Consequently, we are submitting this letter simply to provide notice to the Department of the change.

If there are any questions or if further discussion is needed regarding the foregoing, please let us know. Otherwise, we trust that the Department will update its records as needed to reflect these changes.

Thank you for your time and consideration.

Sincerely,

Cynthia L. Bast

Cynthia L. Bast

cc: Gregory, Justin *(via email)*

EXHIBIT A

Current Organizational Chart

Rec'd 10/21/2016 4:16 PM - EH

**Reserve at Hagan
("The Project")
Ownership Chart**

Reserve at Hagan, LLC
A Texas limited liability company

MV Reserve at Hagan LLC
an Ohio limited liability company
.0030% Managing Member

Albatross Development, LLC
a Texas limited liability
company .0070% Member
HUB

Affordable Housing Partners, Inc.
A Delaware Corporation
99.99% investor Member

MV Affordable Housing LLC
an Ohio limited liability company
100% Sole Member

Sandra L. Watson
100% Sole Member/President

Miller-Valentine Operations, Inc.
an Ohio Corporation
100% Sole Member

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David A. Chong Shareholder 1.47594%	Edward J. Blake Vice President / Director 15.35365%	Michael B. Green Vice President / Director 15.35365%	Kevin K. Werner Shareholder .61338%
Vernon H. Oakley Shareholder 5.55236%	Michael E. Riechman Shareholder .51250%	Jane E. Marx Vice President 1.92319%	Elizabeth A. Mangan Secretary .41786%

EXHIBIT B

Proposed Organizational Chart

PROPOSED

Reserve at Hagan, LLC
a Texas limited liability company

MV Reserve at Hagen LLC
an Ohio limited liability company
.0030% Managing Member

Albatross Development, LLC
a Texas limited liability company
.0070% Managing Member

Affordable Housing Partners, Inc.,
a Delaware corporation
99.99% Investor Member

MVAH Holding LLC,
a Georgia limited liability company
100% Sole Member
EIN: [redacted]

Sandra L. Watson
100% Sole Member / President

MVAH Partners LLC,
a Georgia limited liability company
100% Sole Member
EIN: [redacted]

Michael Riechman
10% Managing Member

Brian McGeady
10% Managing Member

Monarch Private Investments
80% Investor Member

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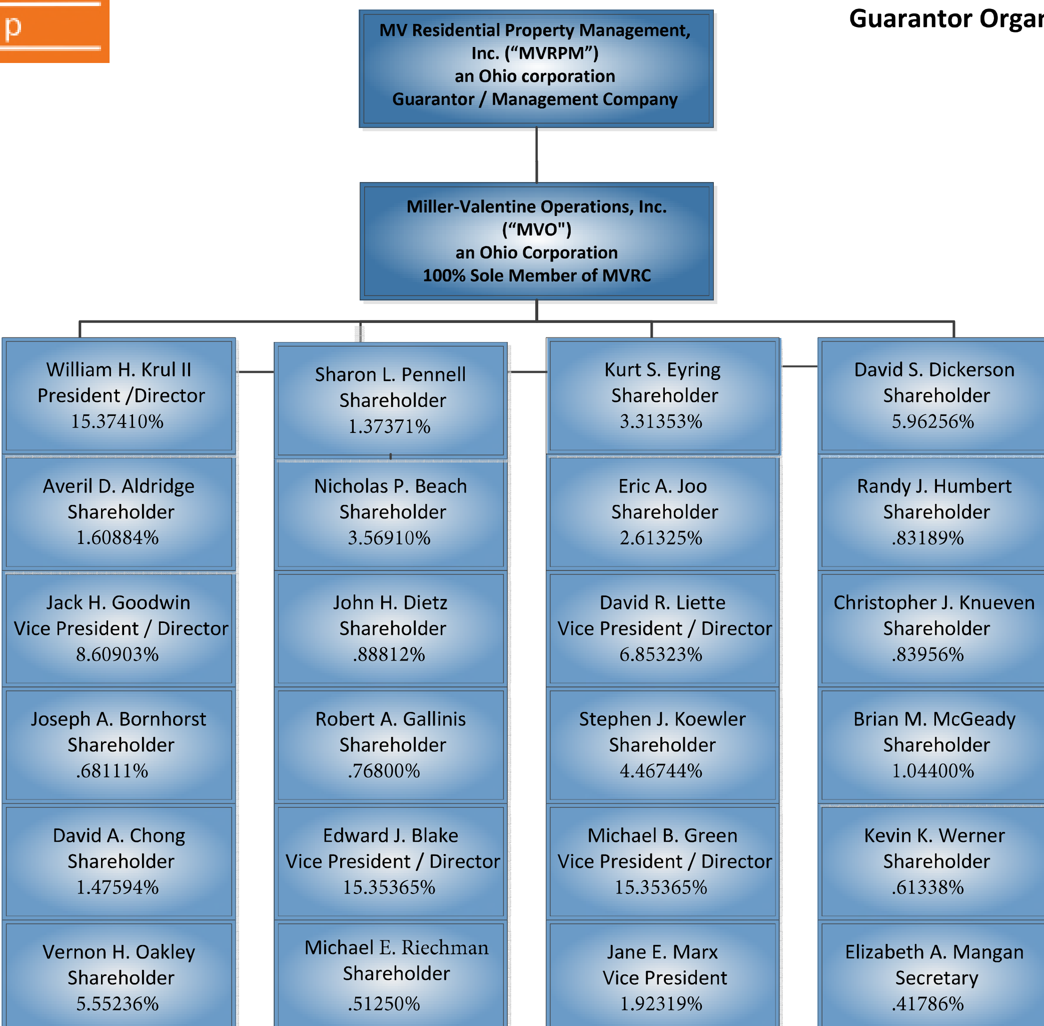
Project
Guarantor Organizational Chart



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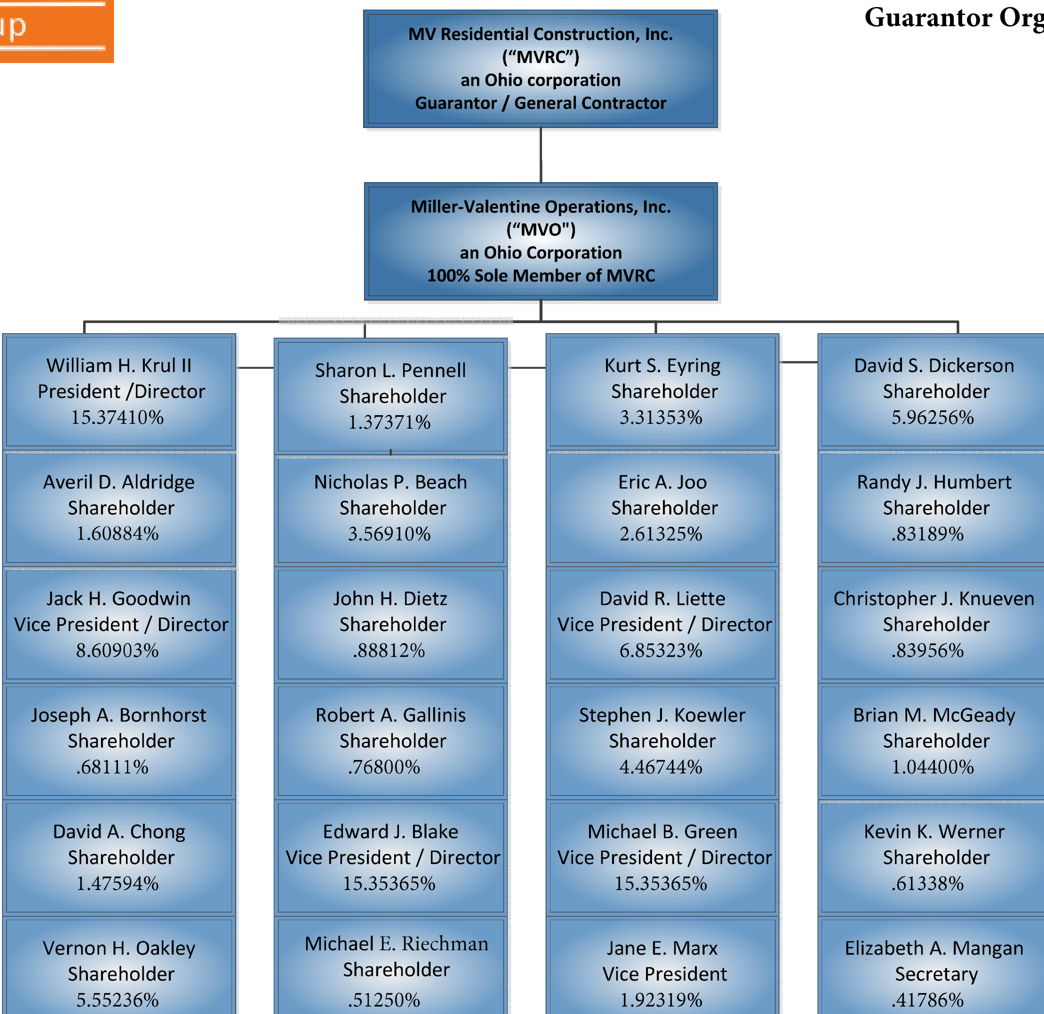
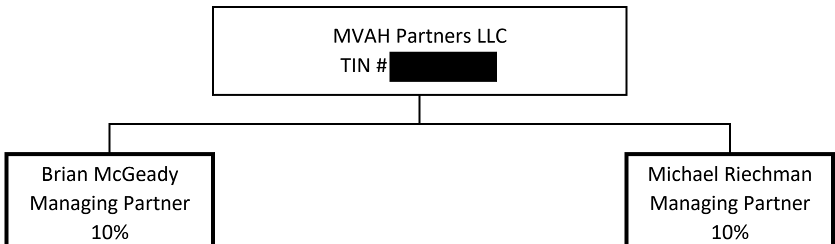
Project
Guarantor Organizational Chart



Reserve at Hagan
Guarantor Org Chart
After Transfer



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MV Residential Development LLC
("MVRD")
Developer
95% Developer Fee

Albatross Development, LLC
a Texas limited liability company
5% Developer Fee
Hub

Miller-Valentine Operations, Inc.
("MVO")
an Ohio Corporation
100% Sole Member of MVRD

Sandra L. Watson
100% Sole Member/President

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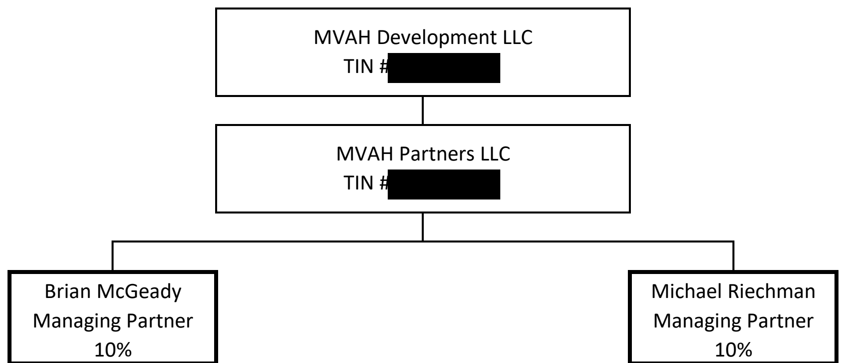
Reserve at Hagan
Developer Org Chart
After Transfer



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BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit ("HTC") Application for Cardinal Point (HTC #15232)

RECOMMENDED ACTION

WHEREAS, Cardinal Point (the "Development") received an award of 9% Housing Tax Credits in 2015 for the construction of 120 multifamily units in Austin, Travis County;

WHEREAS, on December 28, 2015, the Development Owner received approval of their request for nonmaterial amendments to the original site plan in the Application that included an increase in the common area from 7,010 to 9,477 square feet, an increase of 35.19% or 2,467 square feet;

WHEREAS, the Development Owner now requests approval for the final as built common area of 7,493 square feet, representing a reduction of 20.93% or 1,984 square feet from the prior approved amendment;

WHEREAS, Board approval is required for a reduction of three percent or more in the square footage of the common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and

WHEREAS, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the requested application amendment for Cardinal Point is approved as presented at this meeting and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Cardinal Point was approved during the 2015 competitive 9% HTC cycle to construct 120 multifamily units in Austin, Travis County. On December 28, 2015, the Department approved an amendment to the Application for nonmaterial changes to the site plan requested by the Development Owner that included an increase in the common area from 7,010 square feet to 9,477 square feet, an increase of 35.19%. On July 17, 2018, Walter Moreau, Executive Director of Foundation Communities, Inc., the manager/member of the General Partner, submitted a request for approval of a material amendment for the reduction of the square footage of the common area approved in their first amendment. Specifically, information provided in the cost certification package revealed that the square footage of the as-built common areas was reduced from 9,477 to 7,493 square feet, a reduction of 20.93% from the prior approved amendment. Mr. Moreau explains that revised site plan drawings submitted with the previous amendment included design changes that were required due to the topography of the site. As a result, they proposed increasing the Learning Center from 4,291 square feet to 7,119 square feet. However, the plans were still in the schematic design phase and had not been priced. After the plans were priced and the value engineering process was completed, it was determined that a reduction to the Learning Center from 7,119 square feet to 5,135 square feet would generate an approximate savings of $207,000 for the project. Mr. Moreau states that the as-built size of the Learning Center is comparable to the average size of their other Learning Centers, and it is larger than the original design proposed at Application. Mr. Moreau further states that the reduction in size does not impact the successful operation of the Learning Center.

Material Alterations as defined in Tex. Gov't Code §2306.6712(c)(4) and 10 TAC §10.405(a)(4)		
Application	**1st Amendment**	**Current Amendment**
Common Areas Square Footage:	**Common Areas Square Footage:**	**Reduction of 3%+ in square footage of common areas**
Learning Center - 4,291	Learning Center - 7,119	Learning Center - 5,135
Leasing Office - 1,846	Leasing Office - 1,688	Leasing Office - 1,688
Maintenance Office - 421	Maintenance Office - 433	Maintenance Office - 433
Laundry Room - 452	Laundry Room - 237	Laundry Room - 237
Total: 7,010	**Total: 9,477**	**Total: 7,493**

Also, an amendment memo to the underwriting report dated December 7, 2015, indicated that the Net Rentable Area ("NRA") would increase from 113,496 square feet to 114,846 square feet. A review of the cost certification indicates the as-built NRA is 117,168 square feet, an increase of 2.02%. The increase is due to a change in the design of the 54 one-bedroom units from 787 square

feet to 830 square feet. The change to the NRA did not significantly increase the cost of the development and is considered a Notification Item under 10 TAC §10.405(a)(2)(C).

Staff has reviewed the original application, the underwriting report, and the cost certification and has concluded that the reduced square footage of the common area and minor increase in the NRA would not have impacted the scoring of the application, and do not significantly affect the total development costs or affect the tax credit allocation awarded.

Staff recommends approval of the material amendment request as presented.

3036 South First Street
Austin, TX 78704

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

www.foundcom.org

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follow us on twitter

July 17, 2018

Lee Ann Chance
Texas Department of Housing Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Material Application Amendment #2 to LIHTC#15232 – Cardinal Point Apartments

The change requested

Please accept this request for a second Material Application Amendment for Cardinal Point Apartments LIHTC# 15232 regarding a reduction in common area by greater than 3%. Although the common area square footage increased from Application, it decreased from the first board approved Material Application Amendment. As such, a material amendment is required per the Post Award Activities Manual.

The reason the change is necessary

The design submitted at application included 7,010 SF of conditioned common area, which included a learning center that was 4,291 SF. This initial site plan was based on an older topographic survey and preliminary environmental assessments of cave sizes and locations.

After tax credits were awarded, we contracted an updated survey which revealed a depression that effectively split the site in two. As such, the site plan was revised to accommodate the challenging topography. The revised site plan shifted the location of the residential buildings and increased the common area square footage from 7,010 SF at application to 9,477 SF. The Learning Center size increased to 7,119 SF.

As part of the carryover review process, we notified TDHCA of a revised site plan and staff informed us that the changes were significant enough to require board approval. The board approved this first Material Application Amendment on December 28, 2015 in which we presented the need for significant modifications to the site plan. The drawings submitted for the Material Amendment were still in the Schematic design phase and had not been priced. Several months later, as part of our value engineering process, the common area in the final design was reduced to 7,493. See below for breakdown.

	Application	Amendment #1	As-built
Learning Center	4,291	7,119	5,135
Leasing Office	1,846	1,688	1,688
Maintenance Office	421	433	433
Laundry Room	452	237	237
TOTAL	**7,010**	**9,477**	**7,493**

Financial information

Once the drawings were priced, we went through a value engineering process in April 2016. As part of that process, we reduced the size of the Learning Center from 7,119 SF to 5,135 SF. With input from Learning Center staff from our other properties, we agreed that eliminating the 5th classroom, the small study room, the food storage room, the 4th stall in each bathroom, and replacing the computer lab with laptops and mobile computer workstations were not huge impacts on the successful operation of the Learning Center. The final design generated approximately $207,000 in savings.

The good cause for the change

Foundation Communities takes a lot of pride in the design of our Learning Centers and consider them to be the heart of our communities. The average size of our learning centers is approximately 5,000 SF. The Learning Center contemplated at application was 4,291 SF, which is slightly below average. When the topography of the site forced us to change up the site plan, we decided to go for a larger Learning Center of 7,119 SF. In the end we decided that a 5,135 SF learning center at Cardinal Point would achieve our goals for programming and fit our budget. The final size is still larger than what was submitted at Application which we consider a positive.

The Cardinal Point Learning Center has four spacious classrooms, a food pantry, a large gathering room, a kitchen, Learning Center Coordinator office, and bathrooms. This learning center provides the space needed for Foundation Communities' year-round afterschool and summer program for children aged 4 - 18, a weekly food pantry, exercise classes, and adult classes for computer skills, English as a Second Language, and healthy cooking. Pictures are attached.

An explanation of whether the necessity of the amendment was reasonably foreseeable at the time of application.

Our development team was aware that a material amendment was required for a 3%+ reduction in common area, but we were comparing the common area from the final design (7,493 SF) to the schematic design submitted at application (7,010 SF). TDHCA staff have advised that, due to the change from the 1st amendment, we need to request a 2nd amendment to the common area. Therefore, we are requesting approval to reduce the common area SF from the 1st amendment after construction has been completed. Attached are pictures of the Cardinal Point learning Center, and drawings from Application, Amendment #1, and As-builts.

Sincerely,

Walter Moreau

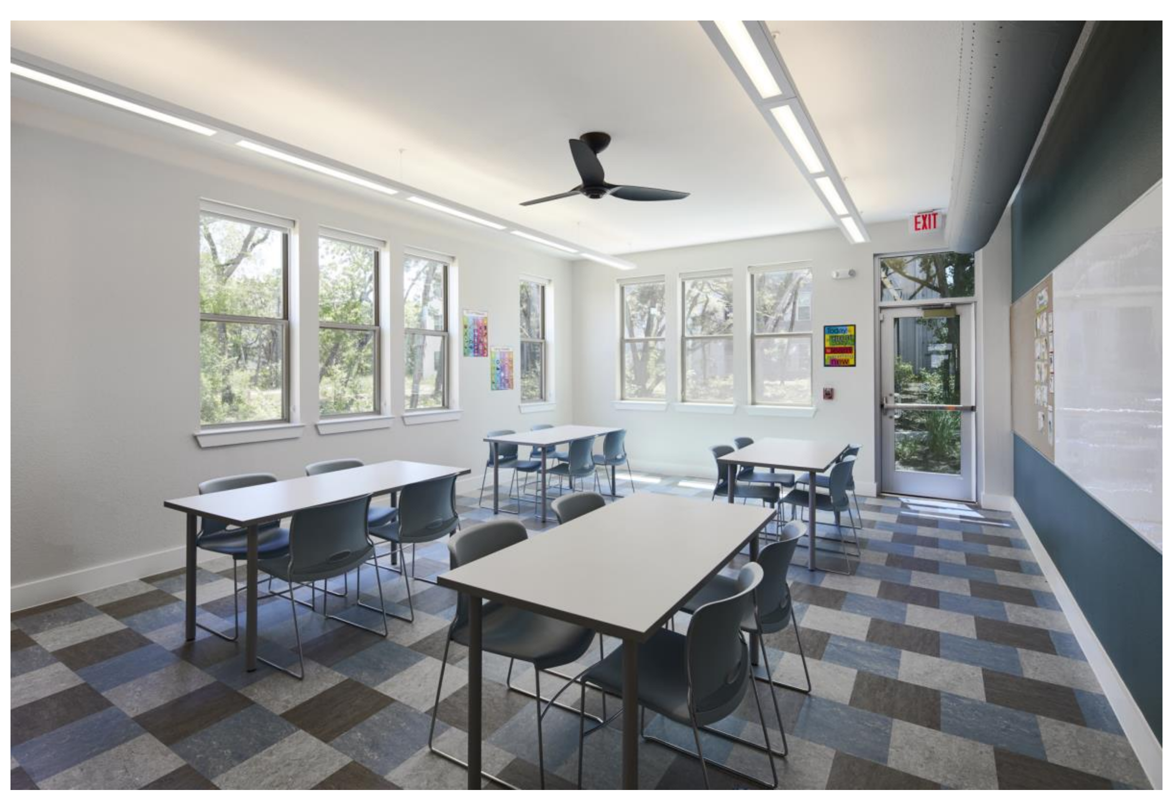
Walter Moreau
Executive Director
Foundation Communities

a Partner Agency of
United Way
United Way for Greater Austin

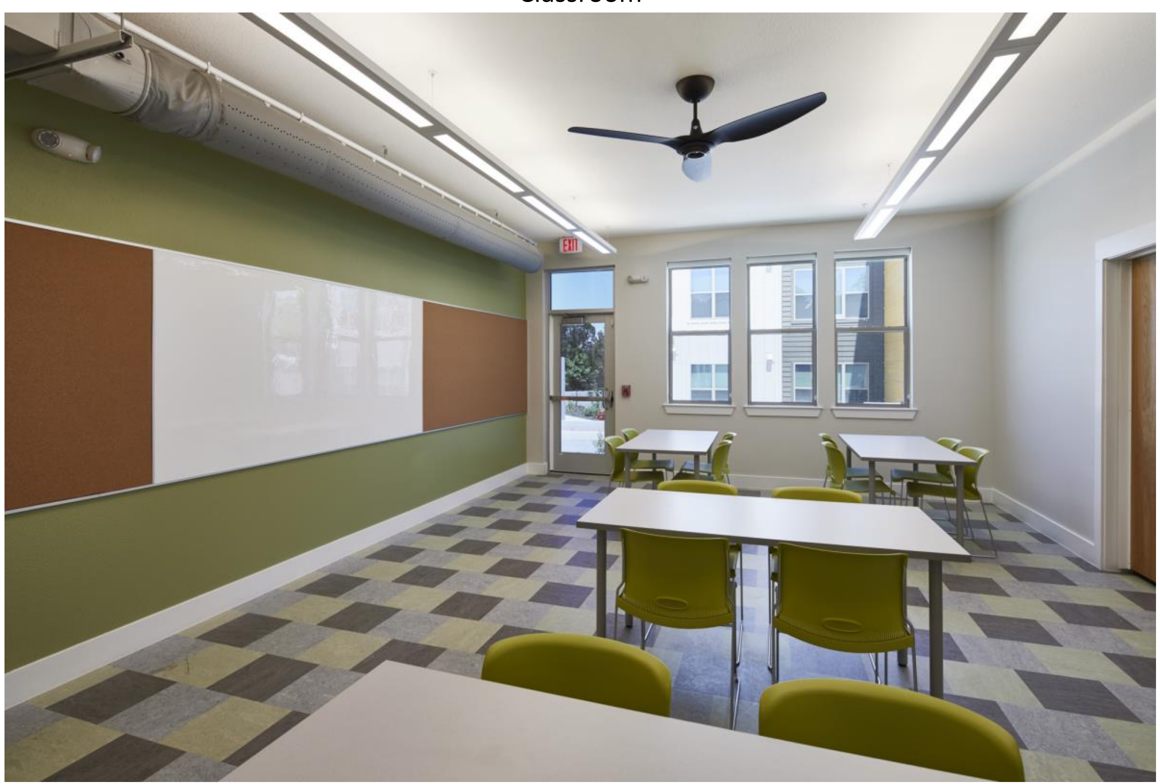
Learning Center Pictures

Back Patio

Main Room and Kitchen

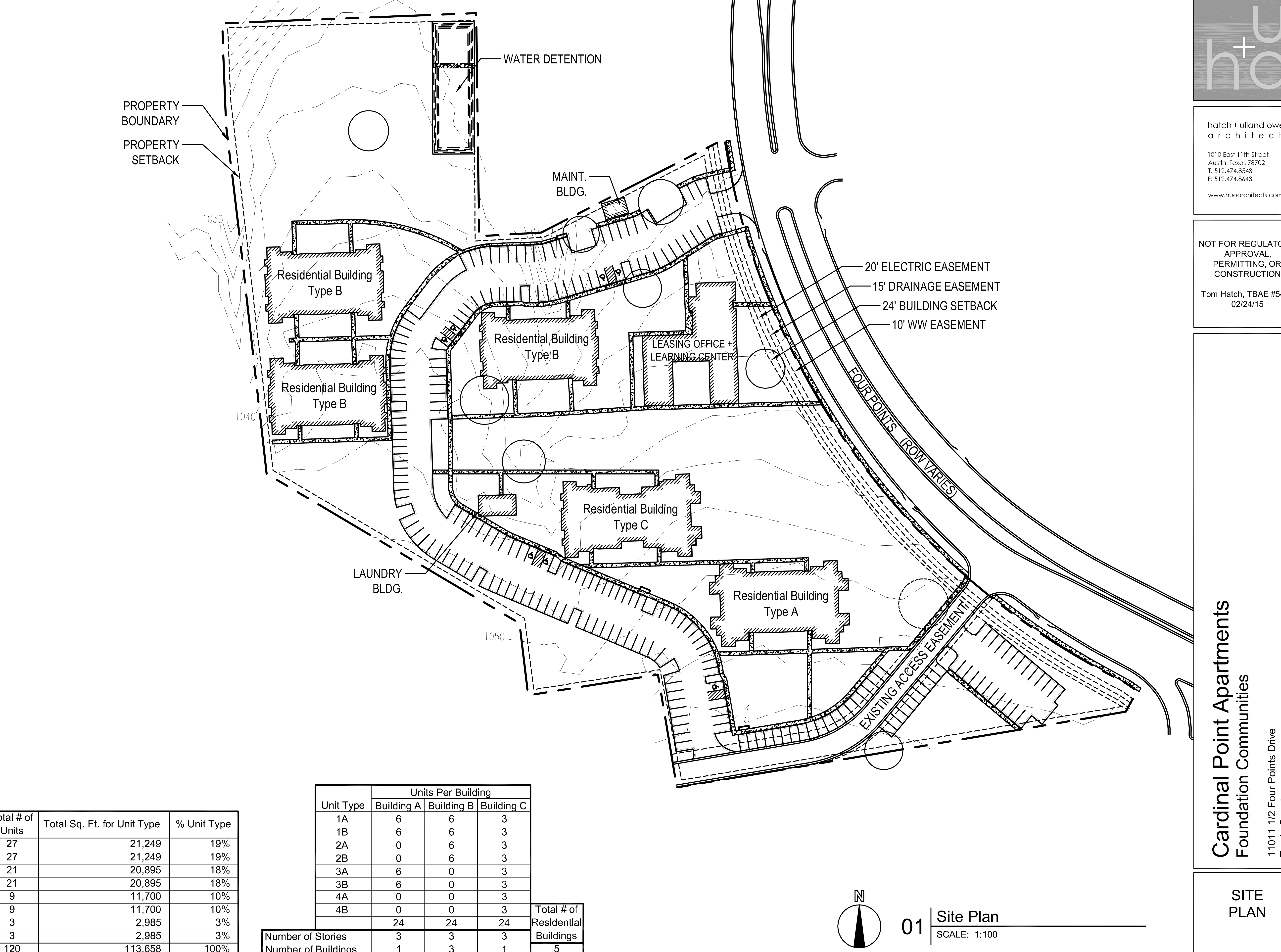


Classroom



Classroom

Drawings – Application



Parking Calculations

Parking Required:
1 bedroom units (54) = 1.5 per unit = 81
2 bedroom units (48) = 2.0 per unit = 96
3 bedroom units (18) = 2.5 per unit = 45
Total Parking Required: 222 spaces

Total Parking Provided: 1-Level Surface Parking
Total = 222 Spaces Provided

7 ADA Spaces
66 Compact Spaces (<30% total)
149 Standard Spaces

Unit Label	# of Bedrooms	# of Baths	# of Sq. Ft. Per Unit	Total # of Units	Total Sq. Ft. for Unit Type	% Unit Type
1A	1	1	787 S.F.	27	21,249	19%
1B	1	1	787 S.F.	27	21,249	19%
2A	2	2	995 S.F.	21	20,895	18%
2B	2	2	995 S.F.	21	20,895	18%
3A	3	2	1300 S.F.	9	11,700	10%
3B	3	2	1300 S.F.	9	11,700	10%
4A	2	2	995 S.F.	3	2,985	3%
4B	2	2	995 S.F.	3	2,985	3%
			Totals	120	113,658	100%

Unit Type	Units Per Building			
	Building A	Building B	Building C	
1A	6	6	3	
1B	6	6	3	
2A	0	6	3	
2B	0	6	3	
3A	6	0	3	
3B	6	0	3	
4A	0	0	3	
4B	0	0	3	Total # of Residential Buildings
	24	24	24	
Number of Stories	3	3	3	
Number of Buildings	1	3	1	5

01 Site Plan
SCALE: 1:100

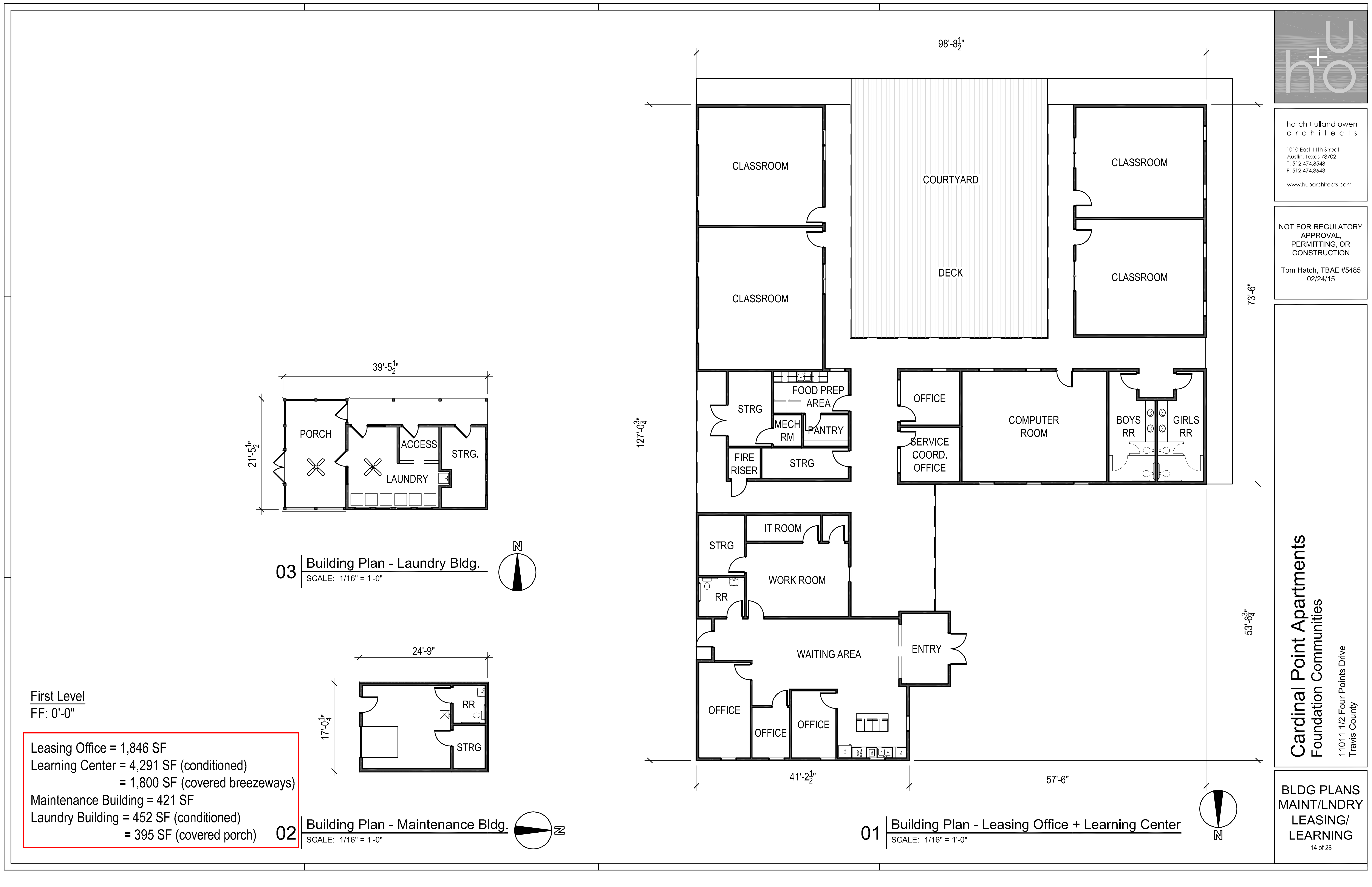
hatch + ulland owen architects
1010 East 11th Street
Austin, Texas 78702
T: 512.474.8548
F: 512.474.8643
www.huoarchitects.com

NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION

Tom Hatch, TBAE #5485
02/24/15

Cardinal Point Apartments
Foundation Communities
11011 1/2 Four Points Drive
Travis County

SITE PLAN



98'-8 1/2"
CLASSROOM
COURTYARD
DECK
CLASSROOM
CLASSROOM
CLASSROOM
73'-6"
127'-0 3/4"
STRG
FOOD PREP AREA
MECH RM
PANTRY
FIRE RISER
STRG
OFFICE
SERVICE COORD. OFFICE
COMPUTER ROOM
BOYS RR
GIRLS RR
STRG
IT ROOM
WORK ROOM
RR
WAITING AREA
ENTRY
OFFICE
OFFICE
OFFICE
53'-6 3/4"
41'-2 1/2"
57'-6"
39'-5 1/2"
21'-5 1/2"
PORCH
ACCESS
STRG.
LAUNDRY
03 Building Plan - Laundry Bldg.
SCALE: 1/16" = 1'-0"
N
24'-9"
17'-0 1/4"
RR
STRG
First Level
FF: 0'-0"
Leasing Office = 1,846 SF
Learning Center = 4,291 SF (conditioned)
= 1,800 SF (covered breezeways)
Maintenance Building = 421 SF
Laundry Building = 452 SF (conditioned)
= 395 SF (covered porch)
02 Building Plan - Maintenance Bldg.
SCALE: 1/16" = 1'-0"
N
01 Building Plan - Leasing Office + Learning Center
SCALE: 1/16" = 1'-0"
N
h+o
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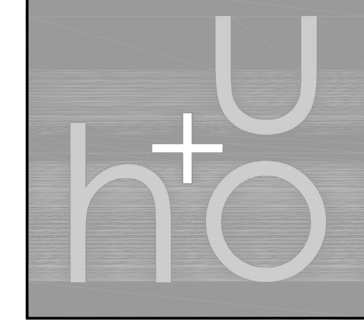
02/24/15
Cardinal Point Apartments
Foundation Communities
11011 1/2 Four Points Drive
Travis County
BLDG PLANS MAINT/LNDRY LEASING/ LEARNING
14 of 28

Drawings – Amendment #1



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512.872.5059

Landscape Architect:
Studio Balcones
702 San Antonio Street
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512.383.8815

CARDINAL POINT APARTMENTS

11011 1/2 Four Points Dr.
Austin, TX 78730

FOUNDATION COMMUNITIES

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ISSUE DATES:
10.16.15 100% SD SET

ARCHITECTURAL SITE PLAN

A1.01

01 SITE PLAN

SCALE: 1:40

Detention Pond
BUILDING #5 TYPE B
Learning Center
BUILDING #4 TYPE A
BUILDING #3 TYPE B
Sport Court
BUILDING #2 TYPE C
Play Area
Rain Garden
Leasing/ Laundry
BUILDING #1 TYPE B
Field
FOUR POINTS (90' R.O.W. 10335/198)

Parking Calculations

Parking Required:
1 bedroom units (54) = 1.5 per unit = 81
2 bedroom units (48) = 2.0 per unit = 96
3 bedroom units (18) = 2.5 per unit = 45
Total Parking Required: 222 spaces

Total Parking Provided: 1-Level Surface Parking
Total = 222 Spaces Provided

12 ADA Spaces
63 Compact Spaces (<30% total)
147 Standard Spaces

Unit Label	# of Bedrooms	# of Baths	# of Sq. Ft. Per Unit	Total # of Units	Total Sq. Ft. for Unit Type	% Unit Type
1A	1	1	787 S.F.	27	21,249	22%
1B	1	1	787 S.F.	27	21,249	22%
2.1A	2	2	1015 S.F.	21	21,315	18%
2.1B	2	2	1015 S.F.	21	21,315	18%
2.2A	2	2	1053 S.F.	3	3,159	3%
2.2B	2	2	1053 S.F.	3	3,159	3%
3A	3	2	1300 S.F.	9	11,700	7%
3B	3	2	1300 S.F.	9	11,700	7%
			Totals	120	114,846	100%

Unit Type	Units Per Building			
	Building A	Building B	Building C	
1A	6	6	3	
1B	6	6	3	
2.1A	0	6	3	
2.1B	0	6	3	
2.2A	0	0	3	
2.2B	0	0	3	
3A	6	0	3	
3B	6	0	3	Total # of Residential Buildings
	24	24	24	
Number of Stories	3	3	3	
Number of Buildings	1	3	1	5

FIN WALL - 12" CMU W/ STUCCO

PANTRY
FRZ.
STORAGE
ENTRY
CLASSROOM

01 ENTRY CONDITION OPTION 1
SCALE: 1/8" = 1'-0"

LOW SIGN WALL

PANTRY
FRZ.
STORAGE
ENTRY
CLASSROOM

01 ENTRY CONDITION OPTION 2
SCALE: 1/8" = 1'-0"

FLAGPOLE

PANTRY
FRZ.
STORAGE
ENTRY
CLASSROOM

01 ENTRY CONDITION OPTION 3
SCALE: 1/8" = 1'-0"

8'-0" 18'-0" 20'-0" 20'-0" 20'-0" 18'-11 1/2" 21'-6" 20'-0"

25'-0" 38'-8" 30'-0"

CISTERN
PANTRY
FRZ. REF.
STORAGE
ENTRY
CLASSROOM
CLASSROOM
CLASSROOM
CLASSROOM
CLASSROOM
BOYS RR
GIRLS RR
COMPUTERS
STUDY AREA
OFFICE
FOOD PREP STOR.
MECHANICAL
REF.
FOOD PREP
NOOK
NOOK
INDOOR GATHERING AREA
OUTDOOR GATHERING AREA
CISTERN
CISTERN

First Level
FF: 0'-0"

Conditioned Area = 7,119 SF
Unconditioned Area (porch and walkways) = 1,622 SF
Total Area = 8,741 SF

01 FLOOR PLAN
SCALE: 1/8" = 1'-0"

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NOT FOR REGULATORY APPROVAL, PERMITTING OR CONSTRUCTION
10.16.15

ISSUE DATES:	
10.16.15	100% SD SET
....	....
....	....
....	....
....	....
....	....
....	....
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LEARNING CENTER FLOOR PLAN

A2.1L

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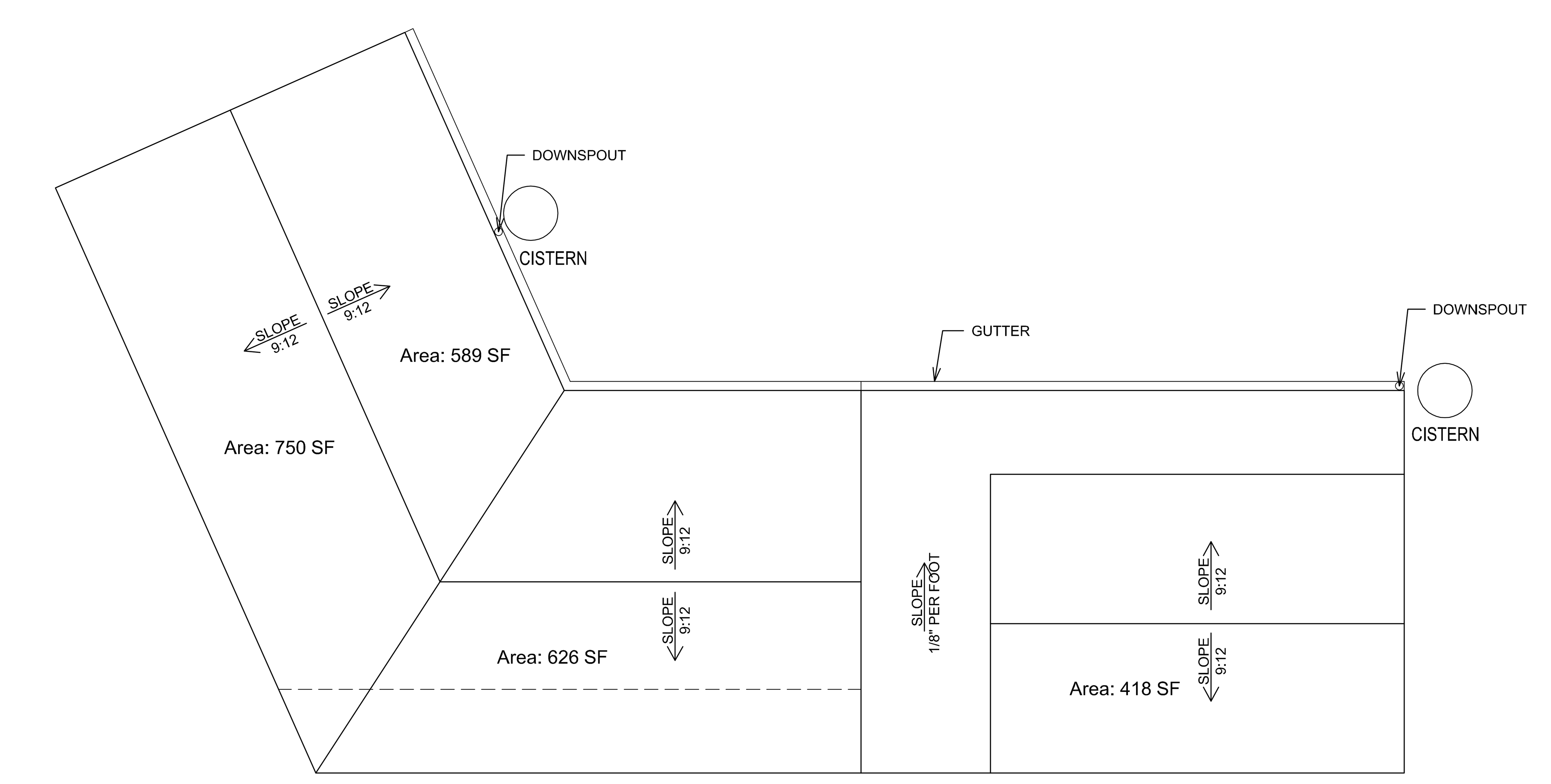
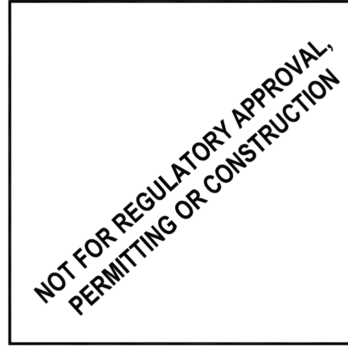
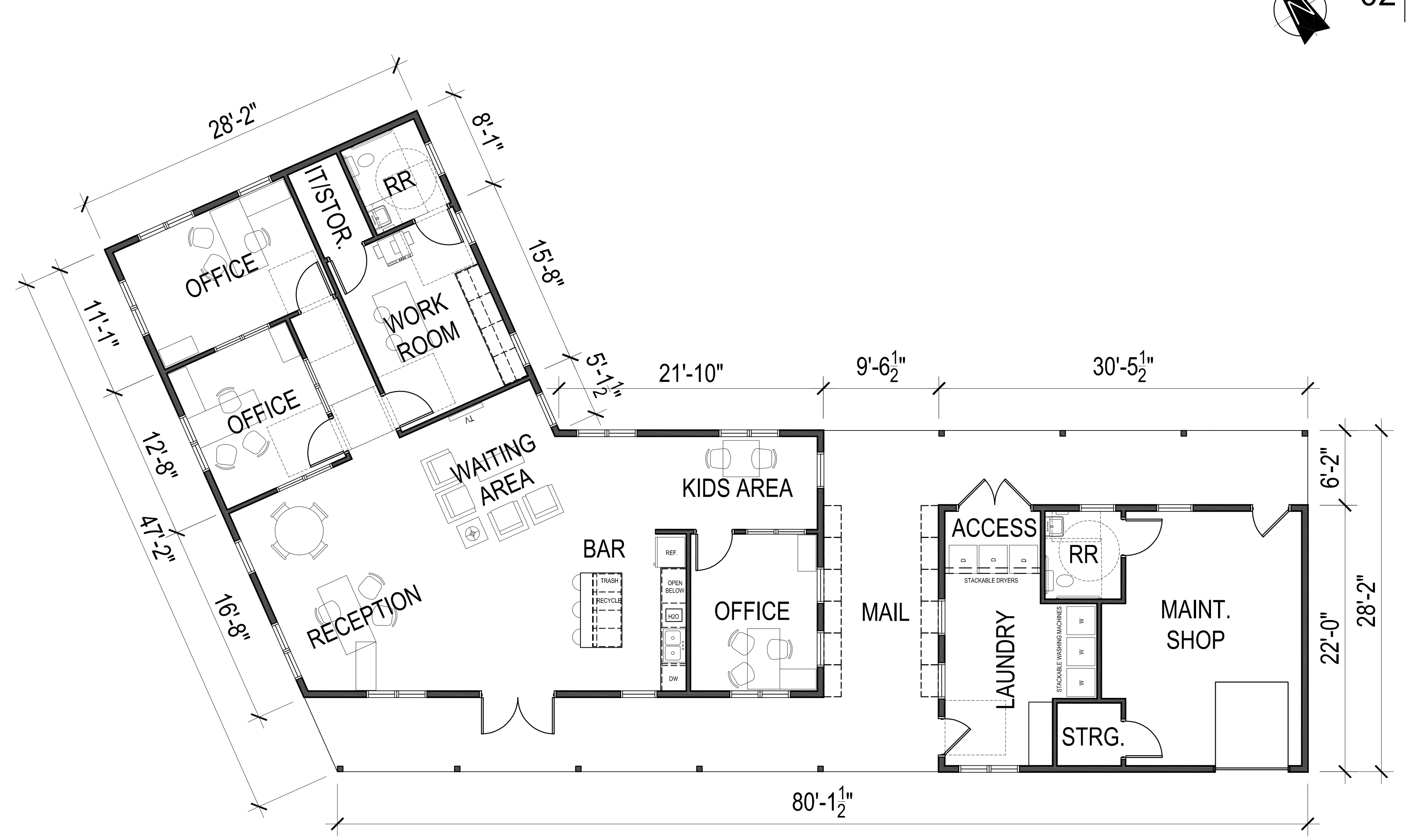


02 ROOF PLAN
SCALE: 1/8" = 1'-0"

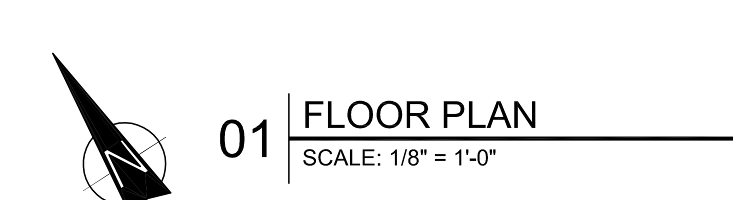
CARDINAL POINT APARTMENTS
11011 1/2 Four Points Dr.
Austin, TX 78730





First Level
FF: 0'-0"

Leasing Office = 1,688 SF
Laundry Room = 237 SF
Maintenance Shop = 433 SF
Covered Breezeways and Porches = 712 SF
Total = 3,070 SF



01 FLOOR PLAN
SCALE: 1/8" = 1'-0"

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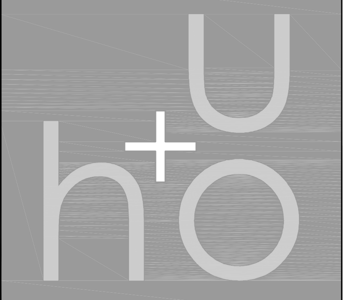
ISSUE DATES:	
10.16.15	100% SD SET

LEASING/LAUNDRY PLANS

A2.3L

Drawings – As-built



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512.383.8815

CARDINAL POINT APARTMENTS

11015 & 11017 Four Points Dr.
Austin, TX 78726

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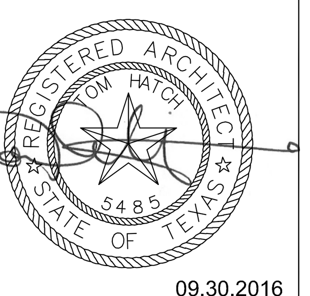


09.30.2016

ISSUE DATES:	
01.18.16	Plan Review
02.05.16	Pricing Set
03.01.16	COA Update #1
07.25.16	COA Update #2
08.16.16	Construction Set
09.30.16	ASI #1

ARCHITECTURAL SITE PLAN

A1.01

General Notes:

1. Refer to Civil Drawings for site information and dimensional control.
2. Refer to Electrical Drawings for locations of site lighting.
3. Refer to building plans for location of unit types.
4. All property amenities have an accessible route provided to them.
5. Refer to structural drawings for the design of the covered bike parking slab and structure.

Legend:

- Uncovered Bicycle Parking for 10 Bikes
- Transformer
- Retaining or Drystack Wall
- Accessible Route
- Fence
- Accessible Dumpster Enclosure

WATER QUALITY POND

BUILDING 3 TYPE B

BUILDING 6 CLUBHOUSE (NOT IN THIS PERMIT PACKAGE)

BUILDING 2 TYPE A

BUILDING 5 TYPE B

BUILDING 4 TYPE C

BUILDING 1 TYPE B

"8" SPORT COURT

COVERED BIKE PARKING (34 BIKES)

MONUMENT SIGNAGE (OUTSIDE OF EASEMENTS)

PLAYGROUND

LEASING

LAUNDRY/ MAINT.

HILL COUNTRY ROADWAY CORRIDOR

FOUR POINTS DR

N89°55'52"E 266.16'

N88°52'35"E 65.07'

N04°16'37"W 248.77'

N57°09'52"W 307.64'

S04°38'29"E 75.86'

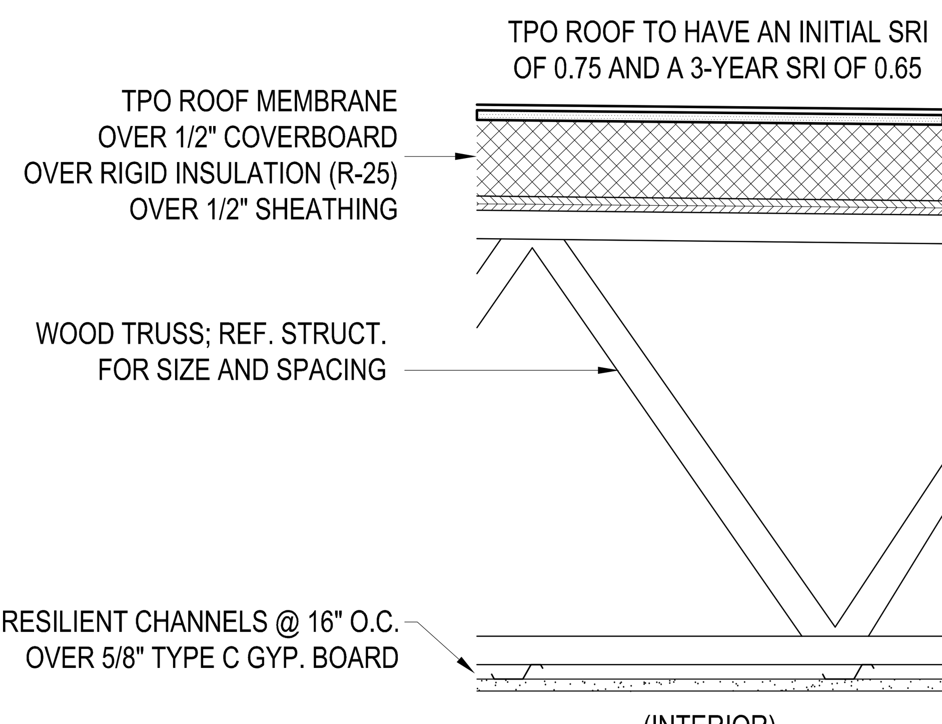
N83°08'01"E 137.55'

N07°17'52"W 119.72'

S37°52'24"E 604.62'

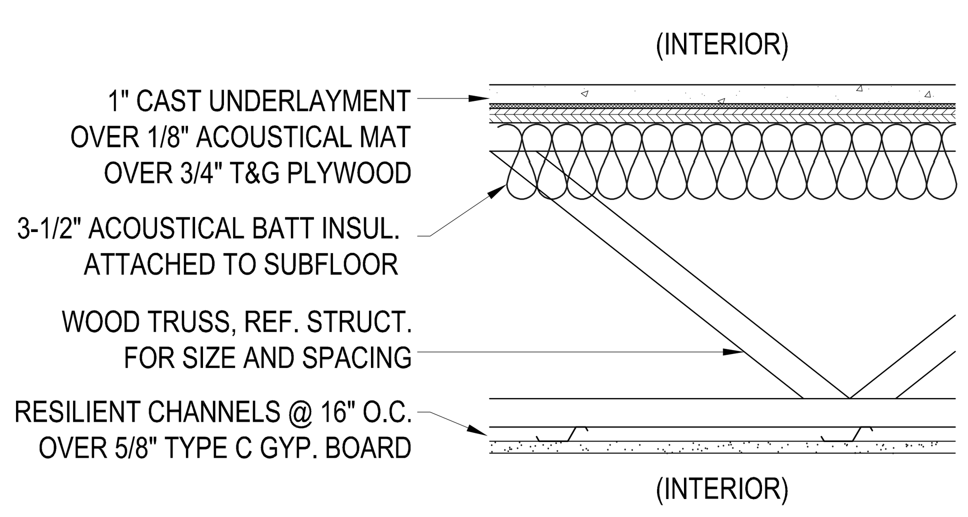
S82°38'50"W 476.65'

01 SITE PLAN
SCALE: 1:40



TYPICAL ROOF ASSEMBLY

1 HOUR RATED
UL DESIGN: P522



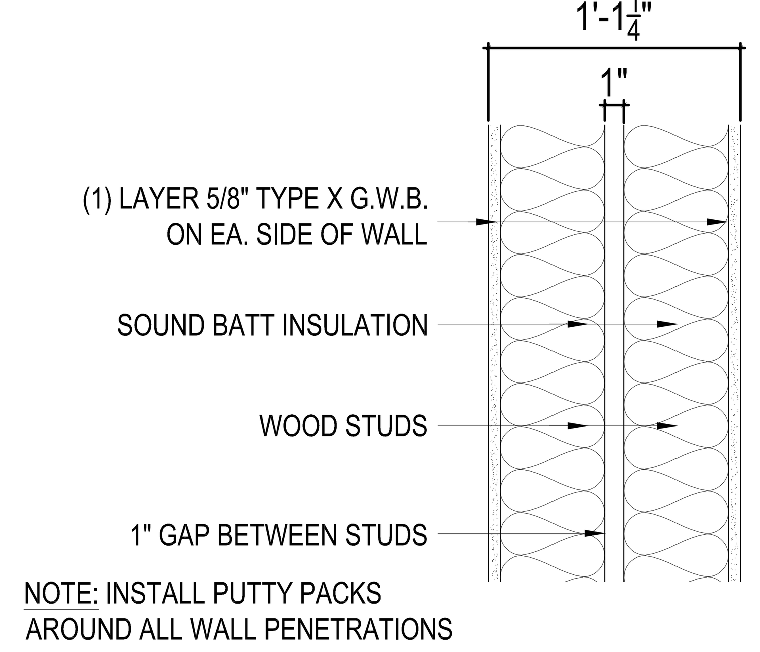
TYPICAL FLOOR ASSEMBLY

1 HOUR RATED
UL DESIGN: L550
STC: 55 (TEST #: 100528151CRT-002G)
IIC: 53 (TEST #: 100528151CRT-001M)

3" LIGHTWEIGHT CONCRETE OVER 60 MIL SHEET WATERPROOF MEMBRANE OVER 3/4" T&G PLYWOOD
(EXTERIOR)
WOOD JOISTS; REF. STRUCT. FOR SIZE AND SPACING
5/8" FIRE-RATED MOLD AND MOISTURE RESISTANT EXTERIOR GYPSUM BOARD
(EXTERIOR)

FLOOR ASSEMBLY AT CORRIDORS

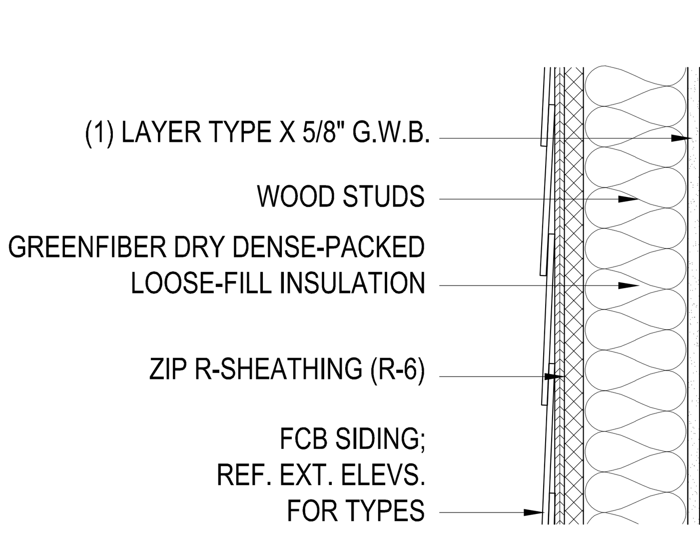
1 HOUR RATED
UL DESIGN: L501



NOTE: INSTALL PUTTY PACKS AROUND ALL WALL PENETRATIONS

TYPICAL TENANT SEPARATION PARTITION

1 HOUR FIRE RATED INTERIOR WALL
UL DESIGN: U341
STC: 56



EXTERIOR WALL ASSEMBLY (FCB)

1 HOUR FIRE RATED EXTERIOR WALL
UL DESIGN: V302

ZONING & CODE INFORMATION

PROJECT DESCRIPTION
NEW CONSTRUCTION OF FIVE (5) THREE-STORY APARTMENT BUILDINGS AND A ONE-STORY LEASING CENTER WITH ASSOCIATED PARKING AND UTILITY IMPROVEMENTS; A ONE-STORY CLUBHOUSE (BUILDING 6) IS ALSO PROPOSED FOR THIS SITE AND IS SHOWN ON THE SITE PLAN, BUT WILL BE PERMITTED SEPARATELY.

ADDRESS
11015 FOUR POINTS DRIVE, AUSTIN, TX 78730 (BUILDINGS 1, 2, 3, 6, AND LEASING CENTER)
11017 FOUR POINTS DRIVE, AUSTIN, TX 78730 (BUILDINGS 4 AND 5)

LEGAL DESCRIPTION
LOT 6 BLK B FOUR POINTS CENTRE REPLAT OF LOTS 4-6 BLK B & LOT 1 BLK C

ZONING
FOUR POINTS CENTRE PUD

APPLICABLE CODES
2012 IBC, 2012 IECC, 2014 NEC, 2012 IFC, 2012 UMC, 2012 UPC, & CITY OF AUSTIN AMENDMENTS TO AFOREMENTIONED CODES.

TDLR REGISTRATION NUMBER
EABPRJB6807507

LOT AREA: 372,711 SF (8.556 ACRES)

SETBACKS
- FRONT YARD: 25'-0"
- STREET YARD: 15'-0"
- INT. SIDE YARD: 5'-0"
- REAR YARD: 5'-0"

MAXIMUM HEIGHT
- ALLOWED: 40'-0"
- PROPOSED: 40'-0" (APTS)

BUILDING COVERAGE
- ALLOWED: N/A as allowed by the PUD base zoning
- PROPOSED: 16.5% (61,335 SF)

IMPERVIOUS COVER
- ALLOWED: 44.76% (166,835 SF)
- PROPOSED: 43.90% (163,627 SF)

FLOOR AREA RATIO
- ALLOWED: 0.25 IN AREAS WITH 0-15% SLOPE
- PROPOSED: 0.21 IN AREAS WITH 0-15% SLOPE

DWELLING UNITS
- ALLOWED: N/A as allowed by the PUD base zoning
- PROPOSED: 120

OFFSTREET PARKING
- REQUIRED: 222 (5 ACCESSIBLE)
- PROPOSED: 222 (142 STANDARD, 66 COMPACT, 14 ACCESSIBLE)

ONSTREET PARKING
- REQUIRED: 0
- PROPOSED: 0

BICYCLE PARKING
- REQUIRED: 34 (15% OF 222 SPACES PER AEGB)
- PROVIDED: 40

APARTMENT UNIT CALCULATIONS

TYPE	#	AREA	SUBTOTAL
1 (1 BEDROOM)	54	830 SF	44,820 SF
2.1 (2 BEDROOM)	42	1,015 SF	42,630 SF
2.2 (2 BEDROOM)	6	1,053 SF	6,318 SF
3 (3 BEDROOM)	18	1,300 SF	23,400 SF
TOTAL	120		117,168 SF

PARKING CALCULATIONS

TYPE	#	SPACES PER UNIT	SUBTOTAL
1 BEDROOM	54	1.5	81 SPACES
2 BEDROOM	48	2.0	96 SPACES
3 BEDROOM	18	2.5	45 SPACES
TOTAL SPACES REQUIRED			222 SPACES

PARKING PROVIDED: 1-LEVEL SURFACE PARKING

TYPE	# PROVIDED
STANDARD SPACE	142
ADA SPACE	14
COMPACT SPACE	66
TOTAL	222 SPACES PROVIDED

TOTAL UNITS PER BUILDING

BUILDING #	UNIT TYPE: 1	2.1	2.2	3	TOTAL
BUILDING 1	12	12	0	0	24
BUILDING 2	12	0	0	12	24
BUILDING 3	12	12	0	0	24
BUILDING 4	6	6	6	6	24
BUILDING 5	12	12	0	0	24
TOTAL	54	42	6	18	120

ACCESSIBLE UNITS
MOBILITY ACCESSIBLE: 1101, 2103, 2105, 3101, 3103, 4102, 4106, 4108, 5103
MOBILITY ACCESSIBLE AND HEARING+VISUAL IMPAIRED: 1103, 2101, 5101

APARTMENT BUILDINGS	CLASSIFICATION	2012 IBC
OCCUPANCY GROUP	R2	310.4
CONSTRUCTION TYPE	VA	TABLE 601
HEIGHT ALLOWED	3 STORY (50'-0")	TABLE 503
WITH INCREASE FOR SPRINKLERS	4 STORY (70'-0")	504.2
HEIGHT PROPOSED	3 STORY (40'-0")	
ALLOWABLE FLOOR AREA	12,000 SF	TABLE 503

PROPOSED FLOOR AREAS (GROSS)

BLDGS 1, 3, 5 (TYPE B)		
1ST FLOOR		7,380 SF
2ND FLOOR		7,380 SF
3RD FLOOR		7,380 SF
	TOTAL	22,140 SF
BLDG 2 (TYPE A)		
1ST FLOOR		8,520 SF
2ND FLOOR		8,520 SF
3RD FLOOR		8,520 SF
	TOTAL	25,560 SF
BLDG 4 (TYPE C)		
1ST FLOOR		8,396 SF
2ND FLOOR		8,396 SF
3RD FLOOR		8,396 SF
	TOTAL	25,188 SF

FIRE SPRINKLERS	NFPA 13R	903.2.8
FIRE ALARM	YES	
SMOKE ALARM	IN & OUT OF EACH BED.	907.2.11.2
EXIT ACCESS TRAVEL DISTANCE	200 FT	TABLE 1016.2
COMMON PATH OF EGRESS	75 FT	TABLE 1014.3
DEAD END CORRIDOR	20 FT	1018.4

LEASING CENTER	CLASSIFICATION	2012 IBC
OCCUPANCY GROUP	B (ACCESSORY TO R-2)	304.1
CONSTRUCTION TYPE	VB	TABLE 601
HEIGHT ALLOWED	2 STORY (40'-0")	TABLE 503
HEIGHT PROPOSED	1 STORY (20'-0")	
~~ALLOWABLE FLOOR AREA~~	~~9,000 SF~~	TABLE 503
PROPOSED FLOOR AREA (GROSS)	2,358 SF	

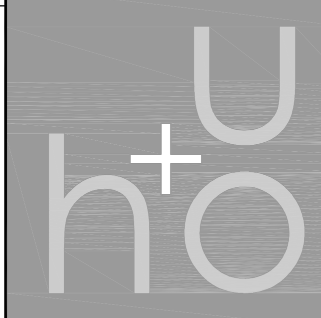
FIRE SPRINKLERS	NO	
FIRE ALARM	YES	
SMOKE ALARM	NO	
EXIT ACCESS TRAVEL DISTANCE	200 FT	TABLE 1016.2
COMMON PATH OF EGRESS LESS THAN 30 OCCUPANTS	100 FT	TABLE 1014.3
DEAD END CORRIDOR	20 FT	1018.4

DEFERRED SUBMITTALS

SECTION 107.3.4.1 OF THE APPLICABLE 2012 INTERNATIONAL BUILDING CODE (IBC) ALLOWS FOR THE DEFERRED SUBMISSION OF CERTAIN CONSTRUCTION DOCUMENTS.

1. FIRE ALARM SYSTEM CONSTRUCTION DOCUMENTS (SHOP DRAWINGS) SHALL BE REQUIRED FOR REVIEW AND EVALUATION AS PER SECTION 907.1.2 OF THE 2012 IBC AND THE NATIONAL FIRE ALARM CODE (NFPA 72).
2. AUTOMATIC FIRE SUPPRESSION (SPRINKLER) SYSTEM CONSTRUCTION DOCUMENTS (SHOP DRAWINGS) SHALL BE REQUIRED FOR REVIEW AND EVALUATION AS PER SECTION 107.2.2 OF THE 2012 IBC AND SHALL CONTAIN ALL INFORMATION AS REQUIRED BY THE REFERENCED INSTALLATION STANDARDS IN CHAPTER 9. AT THE END OF CONSTRUCTION, THE SPRINKLER SYSTEM CONTROLS SHOULD BE FULLY PROGRAMMED PER THE OWNER'S INSTRUCTION AND THE OWNER SHOULD BE TAUGHT HOW TO USE EVERY FEATURE.

A CONTRACTOR PROPERLY LICENSED BY THE STATE FIRE MARSHAL MUST DO THE WORK DESCRIBED ABOVE. THE LICENSED CONTRACTOR MUST SUBMIT SHOP DRAWINGS TO THE AUSTIN FIRE DEPARTMENT (AFD) FOR REVIEW AND APPROVAL AFTER THE BUILDING PERMIT IS APPROVED. THESE MUST BE APPROVED BY AFD PRIOR TO THE CONTRACTOR BEGINNING WORK.



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FOUNDATION COMMUNITIES

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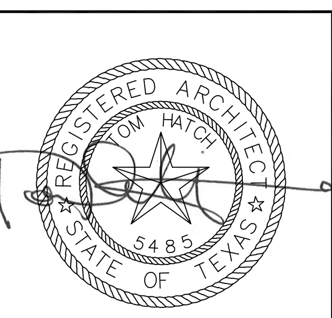

08.16.2016

ISSUE DATES:	
01.18.16	Plan Review
02.05.16	Pricing Set
03.01.16	COA Update #1
08.16.16	Construction Set

CODE SHEET & UL ASSEMBLIES

A0.02

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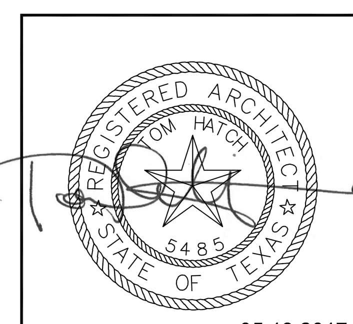

05.19.2017

ISSUE DATES:	
01.18.16	Plan Review
02.05.16	Pricing Set
03.01.16	COA Update #1
08.16.16	Construction Set
12.14.16	ASI #4
01.16.17	ASI #7
03.07.17	ASI #10
05.19.17	ASI #14
....	....

LEASING/LAUNDRY ENLARGED PLANS

A2.24

Partition types

A — TYPICAL PARTITION: (1) LAYER 5/8" G.W.B. ON EA. SIDE OF WALL; 2X6 WOOD STUDS

B — TYPICAL PARTITION: (1) LAYER 5/8" G.W.B. ON EA. SIDE OF WALL; 2X4 WOOD STUDS

F — BATHROOM PARTITION: (1) LAYER 5/8" MOISTURE RESISTANT G.W.B. ON BATHROOM SIDE OF WALL; (1) LAYER 5/8" G.W.B. ON DRY SIDE OF WALL; SOUND BATT INSULATION; 2X4 WOOD STUDS

G — BATHROOM PARTITION: (1) LAYER 5/8" MOISTURE RESISTANT G.W.B. ON BATHROOM SIDE OF WALL; (1) LAYER 5/8" G.W.B. ON DRY SIDE OF WALL; SOUND BATT INSULATION; 2X6 WOOD STUDS

H — TYPICAL PARTITION W/ SOUND INSUL.: (1) LAYER 5/8" G.W.B. ON EA. SIDE OF WALL; 2X4 WOOD STUDS; SOUND BATT INSULATION

02 LEASING OFFICE ENLARGED

SCALE: 1/4" = 1'-0"

UPDATED PAPER TOWEL DISPENSER LOCATIONS IN RESTROOM - 106 AND RESTROOM - 113.

01 LAUNDRY/MAINT. ENLARGED

SCALE: 1/4" = 1'-0"

ZONING & CODE INFORMATION

PROJECT DESCRIPTION
NEW CONSTRUCTION OF A ONE-STORY CLUBHOUSE.

LEGAL DESCRIPTION
LOT 6 BLK B FOUR POINTS CENTRE REPLAT OF LOTS 4-6 BLK B & LOT 1 BLK C

ZONING
FOUR POINTS CENTRE PUD

APPLICABLE CODES
2012 IBC, 2012 IECC, 2011 NEC, 2012 IFC, 2012 UMC, 2012 UPC, & CITY OF AUSTIN AMENDMENTS TO AFOREMENTIONED CODES.

TDLR REGISTRATION NUMBER
EABPRJB6810274

LOT AREA: 372,711 SF (8.556 ACRES)

SETBACKS (ENTIRE SITE)
- FRONT YARD: 25'-0"
- STREET YARD: 15'-0"
- INT. SIDE YARD: 5'-0"
- REAR YARD: 5'-0"

MAXIMUM HEIGHT
- ALLOWED: 40'-0"
- PROPOSED: 23'-6"

BUILDING COVERAGE (ENTIRE SITE)
- ALLOWED: N/A as allowed by the PUD base zoning
- PROPOSED: 16.5% (61,335 SF)

IMPERVIOUS COVER (ENTIRE SITE)
- ALLOWED: 44.76% (186,835 SF)
- PROPOSED: 43.90% (163,827 SF)

FLOOR AREA RATIO
- ALLOWED: 0.25 IN AREAS WITH 0-15% SLOPE
- PROPOSED: 0.02 IN AREAS WITH 0-15% SLOPE

OFFSTREET PARKING
- REQUIRED: 0 (ACCESSORY USE TO APTS)

ONSTREET PARKING
- REQUIRED: 0 (ACCESSORY USE TO APTS)

BICYCLE PARKING
- REQUIRED: 0 (ACCESSORY USE TO APTS)

CLUBHOUSE	CLASSIFICATION	2012 IBC
OCCUPANCY GROUP	E	305.1
CONSTRUCTION TYPE	VB	TABLE 601
STORIES ALLOWED	3	TABLE 503
STORIES PROPOSED	1	
ALLOWABLE FLOOR AREA	9,500 SF	TABLE 503
PROPOSED FLOOR AREA	5,135 SF	
FIRE SPRINKLERS	NO	
SMOKE & FIRE ALARM	YES	907.2.3
EXIT ACCESS TRAVEL DISTANCE	200 FT	TABLE 1016.2
COMMON PATH OF EGRESS	75 FT	TABLE 1014.3
DEAD END CORRIDOR	50 FT	1018.4

EGRESS OCCUPANCY CALCULATIONS

SPACE	OCCUPANCY	FLOOR AREA	OCC. LOAD
OFFICE	B (1:100 SF)	117 SF	2 PEOPLE
CLASSROOMS	E (1:20 SF)	1,720 SF	86 PEOPLE
LARGE GATHERING ROOM	E/A-3 (1:15 SF)	1,271 SF	85 PEOPLE
		TOTAL:	173 PEOPLE

PLUMBING FIXTURE OCCUPANCY CALCULATIONS
(THE LARGE GATHERING ROOM IS NOT OCCUPIED AT THE SAME TIME AS THE CLASSROOMS - IT DOES NOT ADD ANY ADDITIONAL OCCUPANTS TO THE PLUMBING OCCUPANCY COUNT.)

SPACE	OCCUPANCY	FLOOR AREA	OCC. LOAD
OFFICE	B (1:100 SF)	117 SF	2 PEOPLE
CLASSROOMS	E (1:20 SF)	1,720 SF	86 PEOPLE
		TOTAL:	88 PEOPLE

1

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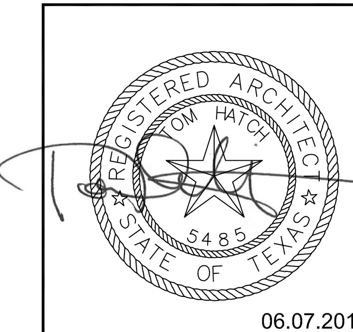

06.07.2016

ISSUE DATES:	
02.16.16	Plan Review Set
1 06.07.16	COA Update #1
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....	....
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....	....

CODE SHEET
& UL ASSEMBLIES

A0.2

02 ENLARGED FOOD PREP PLAN
SCALE: 1/4" = 1'-0"

DIAPER CHANGING STATION · DIAPER CHANGING STATION · FD · FD · RECESSED HAND DRYERS · RECESSED HAND DRYERS · SOAP DISP., TYP. · TRASH BELOW · SOAP DISP., TYP. · PAPER TOWEL DISP., TYP. · TRASH BELOW · PAPER TOWEL DISP., TYP. · MENS RR 109 · WOMENS RR 111 · MOP 110 · 3-COMP SINK WITH FLOOR SINK BELOW · HANDSINK WITH 12" SPLASH GUARD · ISLAND; REF. 03/A7.1 · REF. · WORK AREA 114

03 DECK PLAN
SCALE: 1/4" = 1'-0"

CENTER OF DECK POST TO ALIGN WITH CENTER OF GAP BETWEEN WINDOWS · BENCH · CABLE RAILING, TYP. · SIDEWALK; REF. CIVIL · BENCH

04 ENTRY GRATE PLAN
SCALE: 1/4" = 1'-0"

1/2" DROP IN SLAB · RECESS SLAB PER GRATE MANUFACTURER'S INSTRUCTION; INSTALL DRAIN · KNOX BOX @ 5'-0" A.F.F.

01 FLOOR PLAN
SCALE: 1/8" = 1'-0"

CLASSROOM 3 104 · CLASSROOM 4 105 · PANTRY 106 · STORAGE 107 · MECH. 108 · MEN 109 · MOP 110 · WOMEN 111 · WORK AREA 114 · OFFICE 112 · LARGE GATHERING ROOM 113 · ENTRY LOBBY 101 · CLASSROOM 1 102 · CLASSROOM 2 103 · DECK · FIRE EXTINGUISHER CABINET W/ EXTINGUISHER (2A:10B:C)

General Notes:

1. Reference A7.1 for dimensions of plumbing fixtures required to meet accessible clearances.
2. Slab should slope 1/4" per 12" to floor drains where indicated in the restrooms and mop closet.
3. Slab at entry should slope away from the building at 1/4" per 12".
4. Slab should extend past exterior face of studs 1-1/2" Ref. Struct. dwgs.
5. All dimensions on this sheet to face of stud or center of rough opening. U.N.O.

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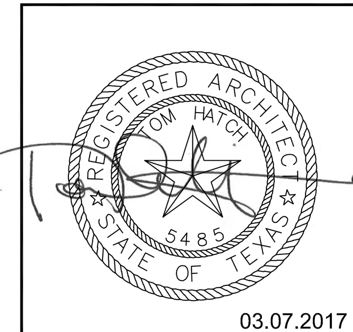

03.07.2017

	ISSUE DATES:	
	02.16.16	Plan Review Set
1	08.10.16	COA Update #1
7	03.07.17	ASI #10

FLOOR PLAN

A2.1

1k

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, Discussion, and Possible Action to consider a waiver of 10 TAC §10.101(b)(4)(I) for Alton Plaza (HTC #17347)

RECOMMENDED ACTION

WHEREAS, Alton Plaza (the "Development") received a 9% HTC award in 2017 for the adaptive reuse/rehabilitation of 48 multifamily units in Longview, Gregg County;

WHEREAS, the tax credit application required specific mandatory unit amenities described in 10 TAC §10.101(b)(4) and, specifically, the subject of this action, the requirement to have at least one Energy Star rated ceiling fan per unit with no exception for Adaptive Reuse;

WHEREAS, rehabilitation of this Development is underway, and a representative for Alton Plaza, LLC (the "Development Owner") has indicated that the ceiling heights for 34 of the units, located on floors two through four, vary from 7'4" to 8 feet, which will not provide the necessary 80 inches of clearance from the floor to the bottom of the ceiling fan that is required by ADA;

WHEREAS, the ceiling height is limited by the existing structure of the building, which has concrete floor and ceiling assemblies; therefore, the Development Owner is unable to install the Energy Star rated ceiling fans in 34 of the units; and

WHEREAS, the Development Owner has provided an alternative solution, by proposing to install a wall-mounted fan in the corner of a room with framed out shelving below the fan to provide the necessary fan clearance and protection required by ADA;

NOW, therefore, it is hereby

RESOLVED, that the requested waiver is approved, conditioned upon the Development Owner installing a wall-mounted fan in each of the 34 units where an Energy Star rated ceiling fan cannot be installed due to the low ceiling height and concrete floor and ceiling assemblies; and

FURTHER RESOLVED, that the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Alton Plaza received a 9% HTC award in 2017 for the adaptive re-use/rehabilitation of 48 units in Longview, Gregg County. The proposed Development is a five-story building in downtown Longview that was originally a parking garage built in the late 1940s. In 1956, the three upper floors were converted into office space; however, the property has been vacant for decades and in need of complete rehabilitation. According to the Development Owner, the building is historic with both a local landmark designation and National Park Service (NPS) part 1 approval with NPS Part 2 approval pending. The Development Owner is anticipating Federal Historic Credits and State Historic Credits.

In a letter dated July 17, 2018, Alyssa Carpenter, a representative for the Development Owner, requested approval for a for a variance to the requirement for at least one Energy Star rated ceiling fan per unit as described in 10 TAC §10.101(b)(4)(I). Ms. Carpenter explained that at Application they were aware of the lower ceiling heights, but they anticipated that they could install flush mount ceiling fans that would meet the ADA requirement of 80" from the floor to the bottom of the ceiling fan. Since Application, the Owner has been unable to locate a ceiling fan that meets the ADA clearance requirements. They have indicated that this issue affects floors 2-4, for a total of 34 units, as the ceiling height on these floors varies between 7'4" to 8'. The ceiling heights on the first and fifth floor, totaling 14 units, meet the ADA height requirements to install a ceiling fan and will not require a waiver.

Since the Owner did not foresee that the installation of the ceiling fans would be an issue at Application and is unable to alter the ceiling heights due to the existing structure of the building, which was originally purposed as parking garage with poured concrete floor/ceiling assemblies, the Development Owner has offered an alternative solution for the 34 units affected by this issue. The Development Owner proposed to install a wall-mounted fan in the corner of a room that would provide the necessary fan clearance and protection required by ADA. The Development Owner is aware that this alternative fan does not meet the requirement identified in §10.101(b)(4)(I), but they are proposing this option as an alternative design element that will provide a similar function as a ceiling fan.

The Owner has indicated that the approval of this waiver will provide much needed affordable housing in downtown Longview, which is currently experiencing revitalization. They have also reiterated that, as a historic development, this development meets the scoring criteria of Section 2306.67259(a)(6) to rehabilitate or perform an adaptive reuse of certified historic structure, as defined in Section 171.901(1) of the Tax Code. Furthermore, by granting this waiver the development will fulfill several purposes of Chapter 2306 of the Texas Government Code. This development fulfills Section 2306.001(1) by assisting local governments in: (A) providing essential public services for their residents and (B) overcoming financial, social, and environmental problems; Section 2306.6701(1) to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; Section 2306.6701(2) to maximize the number of suitable, affordable rental units added to the state's housing supply; and Section 2306.6701(4) to provide for the participation of for-profit organizations and provide and encourage the participation of nonprofit organizations in the acquisition, development, and operation of affordable housing developments in urban and rural communities.

Staff recommends approval of the requested waiver with the condition that the Owner installs a wall-mounted fan in the corner of a room with framed out shelving below the fan to provide the necessary fan

clearance and protection required by ADA for the 34 units where an Energy Star rated ceiling fan cannot be installed due to the low ceiling height and existing concrete floors and ceilings.

July 17, 2018

Kent Bedell
TDHCA
PO Box 13941
Austin, TX

RE: Waiver Request for 17347 Alton Plaza

Dear Mr. Bedell:

Please find this request for a waiver to Application 17347 Alton Plaza in Longview. Due to limitations of the historic building, we are requesting a waiver of Section 10.101(b)(4)(I) At least one Energy-Star rated ceiling fan per Unit. Per Section 10.207, an Applicant may request a waiver subsequent to an award.

Alton Plaza is a historic preservation adaptive reuse development of a vacant and blighted 5-story office building that was originally constructed in 1956. Ceiling heights vary from 7'4' to 8'. At the time of Application, we were aware of the lower ceiling heights, but it was anticipated that a flush mount or "hugger" fan could be installed. Since Application, we have been unable to locate a ceiling fan that will provide the necessary 80" of clearance from the floor to the bottom of the ceiling fan per ADA in the units with ceiling heights less than 8'. This height limitation impacts the units on floors 2-4 for a total of 34 units. The ceiling heights for the 14 units on floor 1 and floor 5 are sufficient to install a ceiling fan and do not require a waiver. This is a unique situation because, as a historic development, we are unable to alter the building in such a way that would accommodate ceiling fans in units on all floors.

This situation was not reasonably foreseeable at Application and is not preventable due to the historic nature of the building. As an alternative, we have identified that a wall-mounted fan could be installed in the corner of a room with framed out shelving below providing the necessary cane protection per ADA. See attached photo of this type of fan. Per our email communication with Raquel Morales, we understand that such a fan would not meet the language in Section 10.101(b)(4)(I), but we are proposing this fan as an alternative design element of a similar nature that serves a similar purpose to a ceiling fan mounted in the center of a room.

This waiver will allow for the provision of much needed affordable housing in downtown Longview, which is an area that is experiencing revitalization. As a historic development, it meets the scoring priority of Section 2306.6725(6) rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section 171.901(1), Tax Code, as part of the development. The granting of this waiver would also further several purposes in Chapter 2306 of the Texas Government Code. This development fulfills Section 2306.001(1) assist local governments in: (A) providing essential public services for their residents and (B) overcoming financial, social, and environmental problems; Section 2306.001(2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income; Section 2306.001(3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income; Section 2306.002; Section 2306.6701(1) encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; Section 2306.6701(2) maximize the number of suitable, affordable residential rental units added to the state's housing supply; and Section 2306.6701(4) provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development, and operation of affordable housing developments in urban and rural communities. Without this waiver, the redevelopment of this building will not be completed, TDHCA will not be assisting the local government in providing essential housing in Longview or overcoming the financial, social, and environmental problem of a dilapidated structure per Section 2304.001(1); nor will TDHCA be contributing to the redevelopment of a neighborhood in Longview per 2306.001(3). Additionally,

these proposed affordable units to provide for the housing needs of individuals and families of low, very low, and extremely low income in Longview would be lost.

In conclusion, we are requesting a waiver of the ceiling fan requirement for 34 units as outlined in Section 10.101(b)(4)(I) due to low ceiling heights in a certified historic structure that cannot be altered. We have proposed an alternative wall-mounted fan that meets a similar purpose. The granting of this waiver will fulfill several policies and purposes of Chapter 2306 of the Texas Government Code.

Thank you for your attention and please contact me at 512-789-1295 with any questions.

Regards,

Alyssa Carpenter

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11

BOARD ACTION REQUEST BOND FINANCE DIVISION SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding Resolution No. 19-001 authorizing the implementation of Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program 90; approving the form and substance of the program manual and the program summary; authorizing the execution of documents and instruments necessary or convenient to carry out Mortgage Credit Certificate Program 90; and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached Resolution.

BACKGROUND

Mortgage Credit Certificates ("MCCs") make homeownership more affordable for low and moderate income homebuyers. An MCC allows homebuyers to claim, on an annual basis, a direct reduction to federal income tax liability equal to the lesser of (i) the annual mortgage loan interest paid times the MCC Credit Rate (established by the Department and described herein) and (ii) $2,000. Because the MCC reduces the borrower's federal income tax liability, the credit amount may be used to effectively increase the borrower's net income for loan qualification purposes. Mortgage loan interest paid by the borrower that exceeds the $2,000 maximum credit may be claimed as an itemized deduction on the borrower's annual federal income tax return.

MCC Credit Example (Year 1)	
Mortgage Loan Amount	$162,959
Mortgage Loan Interest Rate	5.00%
First Year Mortgage Interest	$ 8,093
MCC Credit Rate	35%
Calculated Tax Credit Amount	$ 2,833
Maximum Tax Credit Allowed	$ 2,000
Schedule A Mortgage Interest Deduction	$ 6,093

To be eligible for an MCC, borrowers must meet Internal Revenue Service ("IRS") requirements for mortgage revenue bonds. With few exceptions, MCC recipients must be first-time homebuyers (cannot have had an ownership interest in a primary residence within the last three years), must be within IRS income and purchase price limits, and must occupy the residence as their primary residence. MCCs cannot be issued for mortgage loans that are funded with tax-exempt bond proceeds.

MCCs require an allocation of state ceiling, also known as volume cap. The Department can exchange $1 of single family mortgage revenue bond ("SFMRB") volume cap for $0.25 of MCC issuance authority. The par amount of mortgage loans that can receive an MCC is determined by dividing the MCC issuance authority by the MCC Credit Rate, which is established by the Department and can be no less than 10% and no greater than 50%.

Volume Cap Conversion Example

SFMRB Bond Volume Cap	500,000,000	Max Par Amount (Bond Issue)
Exchange $1 for $0.25	125,000,000	MCC Issuance Authority
Divide by MCC Credit Rate (35%)	357,142,857	Max Par Amount of Non-Bond Loans against which MCCs can be issued

The Department offers two MCC options. The first is a stand-alone MCC, where the Department issues an MCC for a mortgage loan that was originated and funded by a third party lender. The second option is a "combo" loan, where the Department issues an MCC for a mortgage loan that was originated and funded through the Department's Taxable Mortgage Program, in conjunction with the Department providing down payment and closing cost assistance to the borrower in the form of a 30-year, non-amortizing, 0% interest second mortgage that is due on sale or refinance.

The Department released its current MCC program, Program 88, on November 9, 2017, using $1 billion of volume cap to provide MCCs in conjunction with approximately $625 million in first lien mortgage loans. All Program 88 volume cap has been committed and a waiting list has been established for the Department's next MCC program.

At the Board meeting of June 28, 2018, the Board authorized and staff has since completed, publication of Public Notice for Mortgage Credit Certificate Program for Program 90, which is scheduled to close October 11, 2018. The attached resolution seeks authorization for (i) the conversion of $500 million of the Department's SFMRB volume cap to MCC Authority and (ii) the issuance of new MCCs under Program 90. The resolution also seeks approval of (i) the Program Manual and Program Summary, (ii) initial MCC Credit Rates (not to exceed 40% for mortgage loans in an amount up to $150,000, not to exceed 35% for mortgage loans greater than $150,000 and up to $200,000, and not to exceed 25% for mortgage loans greater than $200,000), (iii) the use of up to $250,000 of Department funds to pay the costs of implementing Program 90, and (iv) MCC processing and compliance fees of up to $300 per loan. Please note that loans already on the waiting list for MCCs when Program 90 is released will be issued at a 40% MCC Credit Rate.

Because the demand for volume cap for private activity bonds, including housing bonds, continues to increase, staff is again proposing a tiered MCC Credit Rate versus the traditional 40% MCC Credit Rate. The tiered structure results in the ability for the Department to issue MCCs for approximately $51 million of additional mortgage loans, assisting over 300 additional homebuyers, with the same $500 million in volume cap. Staff will monitor Program 90 and the Department's overall volume cap position and will adjust MCC credit rates as necessary for efficient utilization of volume cap.

The following page summarizes the Department's MCC activity by fiscal year since FY 2015.

Texas Department of Housing and Community Affairs

	Month	Stand Alone MCCs		Combo MCCs		TOTAL MCCs	
		Loan Amount	# of Loans	Loan Amount	# of Loans	Loan Amount	# of Loans
Fiscal Year 2018	9/30/2017	$ 34,183,058	184	$ 27,854,480	173	$ 62,037,538	357
	10/31/2017	$ 36,963,232	202	$ 39,957,441	244	$ 76,920,673	446
	11/30/2017	$ 41,298,715	226	$ 33,179,625	207	$ 74,478,340	433
	12/31/2017	$ 25,301,460	140	$ 35,166,614	213	$ 60,468,074	353
	1/31/2018	$ 25,695,000	141	$ 31,988,642	190	$ 57,683,642	331
	2/28/2018	$ 18,606,044	110	$ 18,551,484	116	$ 37,157,528	226
	3/31/2018	$ 20,511,592	112	$ 20,937,493	132	$ 41,449,085	244
	4/30/2018	$ 36,073,836	195	$ 22,654,876	137	$ 58,728,712	332
	5/31/2018	$ 44,729,156	246	$ 29,864,325	188	$ 74,593,481	434
	6/30/2018	$ 36,909,222	199	$ 31,715,654	199	$ 68,624,876	398
	7/31/2018	$ 41,553,059	230	$ 32,630,425	199	$ 74,183,484	429
	8/31/2018						
	FY2018 TOTAL	**$ 361,824,374**	**1985**	**$ 324,501,059**	**1998**	**$ 686,325,433**	**3983**

	Month	Loan Amount	# of Loans	Loan Amount	# of Loans	Loan Amount	# of Loans
Fiscal Year 2017	9/30/2016	$ 23,394,414	131	$ 4,571,475	30	$ 27,965,889	161
	10/31/2016	$ 17,569,266	107	$ 5,695,097	39	$ 23,264,363	146
	11/30/2016	$ 25,296,916	144	$ 6,884,463	48	$ 32,181,379	192
	12/31/2016	$ 31,171,608	184	$ 9,259,481	59	$ 40,431,089	243
	1/31/2017	$ 16,327,540	98	$ 22,244,813	138	$ 38,572,353	236
	2/28/2017	$ 30,307,153	173	$ 22,725,762	141	$ 53,032,915	314
	3/31/2017	$ 27,607,384	160	$ 19,988,147	127	$ 47,595,531	287
	4/30/2017	$ 27,463,210	157	$ 27,062,306	161	$ 54,525,516	318
	5/31/2017	$ 30,551,467	176	$ 26,544,509	165	$ 57,095,976	341
	6/30/2017	$ 38,399,240	223	$ 28,927,620	185	$ 67,326,860	408
	7/31/2017	$ 37,244,746	219	$ 26,136,484	167	$ 63,381,230	386
	8/31/2017	$ 37,765,486	213	$ 32,826,086	202	$ 70,591,572	415
	FY2017 TOTAL	**$ 343,098,430**	**1985**	**$ 232,866,243**	**1462**	**$ 575,964,673**	**3447**

	Month	Loan Amount	# of Loans	Loan Amount	# of Loans	Loan Amount	# of Loans
Fiscal Year 2016	9/30/2015	$ 30,757,106	189	$ 9,726,411	69	$ 40,483,517	258
	10/31/2015	$ 23,361,643	143	$ 7,850,869	61	$ 31,212,512	204
	11/30/2015	$ 18,320,564	114	$ 4,214,357	33	$ 22,534,921	147
	12/31/2015	$ 16,812,377	107	$ 3,600,713	28	$ 20,413,090	135
	1/31/2016	$ 21,662,071	128	$ 4,507,231	33	$ 26,169,302	161
	2/29/2016	$ 18,003,836	115	$ 4,457,125	33	$ 22,460,961	148
	3/31/2016	$ 17,985,455	111	$ 6,549,190	49	$ 24,534,645	160
	4/30/2016	$ 17,638,354	106	$ 4,337,632	33	$ 21,975,986	139
	5/31/2016	$ 16,691,734	100	$ 5,792,505	39	$ 22,484,239	139
	6/30/2016	$ 19,987,159	119	$ 6,521,314	43	$ 26,508,473	162
	7/31/2016	$ 11,087,382	67	$ 4,353,173	31	$ 15,440,555	98
	8/31/2016	$ 21,606,070	130	$ 6,644,232	45	$ 28,250,302	175
	FY2016 TOTAL	**$ 233,913,751**	**1429**	**$ 68,554,752**	**497**	**$ 302,468,503**	**1926**

	Month	Loan Amount	# of Loans	Loan Amount	# of Loans	Loan Amount	# of Loans
Fiscal Year 2015	9/30/2014	$ 25,086,736	164	$ 5,482,880	42	$ 30,569,616	206
	10/31/2014	$ 18,604,275	121	$ 5,371,250	38	$ 23,975,525	159
	11/30/2014	$ 11,706,215	78	$ 5,837,442	41	$ 17,543,657	119
	12/31/2014	$ 16,837,792	110	$ 4,978,065	39	$ 21,815,857	149
	1/31/2015	$ 13,488,939	87	$ 6,380,194	44	$ 19,869,133	131
	2/28/2015	$ 13,351,882	86	$ 4,799,072	35	$ 18,150,954	121
	3/31/2015	$ 14,660,076	91	$ 5,086,735	38	$ 19,746,811	129
	4/30/2015	$ 15,406,755	97	$ 3,807,234	28	$ 19,213,989	125
	5/31/2015	$ 16,837,703	104	$ 5,029,786	40	$ 21,867,489	144
	6/30/2015	$ 16,578,687	107	$ 3,885,411	31	$ 20,464,098	138
	7/31/2015	$ 19,903,757	131	$ 6,541,757	47	$ 26,445,514	178
	8/31/2015	$ 15,299,745	98	$ 8,987,844	65	$ 24,287,589	163
	FY2015 TOTAL	**$ 197,762,562**	**1274**	**$ 66,187,670**	**488**	**$ 263,950,232**	**1762**

RESOLUTION NO. 19-001

RESOLUTION AUTHORIZING THE IMPLEMENTATION OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MORTGAGE CREDIT CERTIFICATE PROGRAM 90; APPROVING THE FORM AND SUBSTANCE OF THE PROGRAM MANUAL AND THE PROGRAM SUMMARY; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT MORTGAGE CREDIT CERTIFICATE PROGRAM 90; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

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

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

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

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

WHEREAS, the Department has previously received a reservation of a portion of the State ceiling private activity bond volume cap for qualified mortgage bonds in the amount of $500,000,000 (the "Reservation"); and

WHEREAS, the Department desires to convert an amount not to exceed $500,000,000 of the Reservation to mortgage credit certificates ("MCCs"), to be used for the Department's Mortgage Credit Certificate Program to be designated as Program 90 ("MCC Program 90"); and

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

WHEREAS, the Governing Board desires to approve the Program Summary (the "Program Summary") in substantially the form attached hereto setting forth the terms of MCC Program 90; and

WHEREAS, the Governing Board desires to approve an initial range for the mortgage credit certificate rate; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed $250,000 of Department funds to pay the costs of implementing MCC Program 90 and to approve MCC processing and compliance fees in an amount not to exceed $300 per loan; and

WHEREAS, the Governing Board desires to approve the forms of the Program Manual and the Program Summary, in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to implement MCC Program 90 in accordance with such documents by authorizing MCC Program 90, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out MCC Program 90; NOW, THEREFORE,

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

ARTICLE 1

USE OF PRIVATE ACTIVITY BOND VOLUME CAP

Section 1.1. Authorization of Certain Actions. The Governing Board authorizes the Executive Director of the Department, the staff of the Department as designated by the Executive Director and Bond Counsel to take such actions on its behalf as may be necessary to carry out the actions authorized in this Resolution.

Section 1.2. MCC Authority. The Department shall take such steps as are necessary to convert $500,000,000 of its authority to issue qualified mortgage bonds under the Reservation to authority to issue MCCs in order to implement MCC Program 90.

ARTICLE 2

APPROVAL OF MCC DOCUMENTS

Section 2.1. Approval of Program Manual and Program Summary. The form and substance of the Program Manual and Program Summary are hereby authorized and approved.

Section 2.2. Mortgage Credit Certificate Rate. The mortgage credit certificate rate shall be specified by the Department in the manner set forth in the Program Manual, provided that the initial mortgage credit certificate rate for mortgage loans up to $150,000 shall not exceed 40%, the initial mortgage certificate credit rate for mortgage loans greater than $150,000 and up to $200,000 shall not

exceed 35%, and the initial mortgage credit certificate rate for mortgage loans greater than $200,000 shall not exceed 25%.

Section 2.3. Execution and Delivery of Other Documents and Waiver of Fees. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests, public notices and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Program Manual and the Program Summary. The staff of the Department is authorized to waive the fees described in the Program Manual from time to time for marketing purposes.

Section 2.4. Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the delivery of such documents by the Authorized Representatives.

Section 2.5. Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A - Program Manual
Exhibit B - Program Summary

Section 2.6. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments referred to in this Article 2: the Chair or the Vice Chair of the Governing Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 2.7. Department Contribution and Fees. The Department authorizes the contribution of Department funds in an amount not to exceed $250,000 to pay certain costs of implementing MCC Program 90 and approves MCC processing and compliance fees not to exceed $300 per loan.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Purposes of Resolution. The Governing Board of the Department has expressly determined and hereby confirms that the implementation of MCC Program 90 contemplated by this Resolution accomplishes a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

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

PASSED AND APPROVED this 6th day of September, 2018.

____

Chair, Governing Board

ATTEST:

____

Secretary to the Governing Board

(SEAL)

`

PROGRAM MANUAL

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

MORTGAGE CREDIT CERTIFICATE PROGRAM

Program Administered by:

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701
(512) 475-0277

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(954) 217-0817

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

TABLE OF CONTENTS

INTRODUCTION 1
DEFINITIONS 2
LOAN PROCESSING PROCEDURES AND PROGRAM ADMINISTRATION 4
- A. Loan Origination and MCC Reservation 5
- B. Lender Loan Approval and Verification 6
- C. Loan Closing and Submission of Final MCC Program Documents 6
- D. Issuance of MCC 8
- E. Suspended File; Resubmission of MCC Documents 8
- F. MCC Cancellations 8
- G. Reissuance of MCC 8
- H. Changes Prior to Closing 9
- I. Record Keeping and Federal Report Filing 9
- J. Revocation of MCCs 10
- K. Curing Defects 10
- L. Transfer of MCCs on Mortgage Assumptions 10
- M. Post-Audit 10
- N. MCC Eligibility Denial 11
- O. Recapture of MCC Tax Credit 11
- P. Targeted Area Reservation 11
- Q. Qualified Veterans 11

APPLICANT AND LOAN APPROVAL REQUIREMENTS 11
- A. Overview 11
- B. Applicant Eligibility Requirements 12
- C. Loan Requirements 14

SCHEDULE OF PROGRAM FEES AND EXPENSES ..... Exhibit A
TARGETED AREAS ..... Exhibit B
FORM OF MORTGAGE CREDIT CERTIFICATE ..... Exhibit C
FORM OF COMMITMENT LOT NOTICE ..... Exhibit D-1
FORM OF LENDER COMMITMENT LOT NOTICE ..... Exhibit D-2

APPENDICES

Notice to Buyers ..... Tab 1
Applicant Affidavit ..... Tab 2
Compliance File Checklist ..... Tab 3
Affidavit of Cosignor/Guarantor ..... Tab 4
Notice of Potential Recapture Tax on Sale of Home ..... Tab 5
Refinancing of MCC Loan Application ..... Tab 6A
Certificate of Lender for Refinanced Mortgage Loan ..... Tab 6B
IRS Form W-4 and Supplemental Instructions ..... Tab 7
Notice of Cancellation ..... Tab 8

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

INTRODUCTION

Pursuant to Chapter 1372 of the Texas Government Code and the rules promulgated by the Texas Bond Review Board thereunder, Texas Department of Housing and Community Affairs (the "Department") has received a private activity bond volume cap allocation in the aggregate amount of $500,000,000 to conduct a single-family mortgage program in Texas (the "Eligible Loan Area"). Capitalized terms used in this Program Manual are defined under the caption "Definitions."

General Overview

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

MCCs are issued directly to qualifying Applicants who are then able each year to take a tax credit equal to a specified percentage of the interest paid on their mortgages not to exceed $2,000.00. The Mortgage Credit Certificate Rate for the Program will be based on the mortgage loan amount and will be specified in the periodic distribution of Lender Commitment Lot Notices. Thus, an Applicant with a $146,433.00 mortgage under the initial tiered structure would realize the following savings in the example listed below:

Mortgage Amount:	$146,433.00
Interest Rate:	4.50%
Total Interest Paid First Year:	6,589.00
(Mortgage Credit Certificate Rate):	x 40%
	$2,635.00

(Based upon a 30-year mortgage with equal monthly installments of principal and interest.)

During the first year of the Program, this Applicant would be entitled to a tax credit of $2,000.00 (because the amount of the tax credit in any year is limited to $2,000.00). Based upon such an entitlement, he or she would be able to file in advance a revised W-4 withholding form taking into consideration this tax credit and have approximately $166.00 per month in additional disposable income. Additionally, taxpayers who file itemized returns may take a deduction for their mortgage interest paid each year, less an amount equal to the tax credit taken. In the above example, the additional interest deduction would be $6,589.00 less $2,000.00, or $4,589.00.

The benefit to the homeowner cannot exceed the amount of federal taxes paid each year after other credits and deductions have been taken into account. Any unused MCC tax credit can be carried forward up to three years to be applied against future income tax liability. For example, if a homeowner is eligible for a $2,000.00 tax credit, but only has a tax liability of $1,700.00, the homeowner may carry forward the $300.00 amount to the succeeding three years and apply it in a year in which the homeowner's tax liability exceeds the credit amount for that year. In addition, all or a portion of the MCC tax credit may be subject to recapture if the residence is sold within 9 years of purchase. This tax credit recapture is further explained in the Notice of Potential Recapture Tax on Sale of Home found at Tab 5 of this Program Manual.

A purchaser of a new home or existing home may apply for an MCC through a participating Lender at the time he or she applies for a mortgage from the Lender.

Since the Department will not make or hold these mortgages, the Department will not underwrite the loans. Rather, all loan approval, underwriting and execution of required state and federal certifications or Affidavits will be

performed by the Lenders participating in the Program. The Department or its designee will receive executed certificates and Affidavits on each application from a Lender in order to determine eligibility for the Program. Lenders will process mortgage loans of all types, using normal procedures, with additions to procedures at relevant points in order to satisfy Program requirements.

The Department encourages all who believe they qualify to apply for an MCC at the offices of a participating Lender who can explain the Program and its restrictions. Use of the Notice to Buyers included at Tab 1 in this Program Manual can assist Lenders and Applicants in determining whether or not an Applicant can qualify for the Program. The Lender should be well-versed in the state, federal and local restrictions outlined in this Program Manual so that Applicants are aware of these restrictions before the application is taken. The Lender must reject applicants who do not qualify under the restrictions of the Program.

Of each MCC allocation received, 20% will be set aside for the first year of the Program for use in connection with the issuance of MCCs to owners of homes located within federally-designated targeted areas ("Targeted Areas").

The purpose of this Program Manual is to describe the Program, set forth the relevant state and federal restrictions, identify the respective roles of the Department, the Lender, the Applicant and the Seller, and to detail the processing procedures. The Program definitions, MCC processing documents and applicable federal regulations are included in this Program Manual for your reference.

The Department may revise this Program Manual from time to time by issuing amendments hereto.

DEFINITIONS

As used in this Program Manual, the following words and terms have the meaning set forth below:

Affidavits. An affidavit filed in connection with the Program made under oath and subject to the penalties of perjury and the civil penalties provided herein.

Applicant. Any person or persons: (i) whose Income does not exceed the Income Limits; (ii) who intends to occupy the Residence to be financed with a loan as his or her Principal Residence within a reasonable period (not to exceed 60 days) following the making of such loan; (iii) who has not had a present Ownership interest in a Principal Residence at any time during the three-year period ending on the date of execution of the loan; provided, however, that the three-year requirement does not apply to an Applicant who (a) purchases a Residence located in a Targeted Area or (b) is a Qualified Veteran; (iv) who has not had an existing mortgage (including a deed of trust, conditional sales contract, pledge, agreement to hold title in escrow or any other form of owner-financing), whether or not paid off, on the Residence to be financed with such loan at any time prior to the execution of the loan, other than an existing mortgage securing a construction period loan, bridge loan or similar temporary financing initially incurred for the sole purpose of acquiring the Residence, initially incurred within 24 months of execution of the loan and having an original term not exceeding 24 months; and (v) who is a United States citizen, a lawful permanent resident alien or a non-permanent resident alien who is eligible to work in the United States, in each case with a valid social security number or individual tax identification number, and who meets the criteria set forth in this Program Manual.

Commitment Lot Notice. The notice from the Department to the Program Administrator in substantially the form of Exhibit D-1.

Compliance File. The documents required to be submitted by the Lender or closing agent within 30 days of closing date of the loan, as attached to the Compliance File Checklist (See Tab 3 of this Program Manual).

Department. Texas Department of Housing and Community Affairs and its successors and assigns.

Duplex. A two-family residence in which one unit will be occupied by the Applicant as his or her Principal Residence and the units were first occupied for residential purposes at least five years prior to the closing date of the

loan associated with the MCC. The five-year requirement does not apply to a duplex if it is located in a Targeted Area and the family income of the Applicant meets the income limits for Targeted Area Loans (120% or 140% of applicable median family income, as appropriate).

Eligible Loan Area. State of Texas.

Existing Housing. A single family dwelling unit that has been previously occupied prior to loan commitment.

Family. Any person or persons living together not contrary to law, e.g. traditional families, two unmarried persons sharing the same Residence or a single person.

FICO Credit Score. A method of assessing credit risk based on the statistical probability of repayment of debt developed by Fair, Isaac & Co. FICO Credit Scores assign relative risk rankings to applicants based on a statistical analysis of their credit histories. FICO Credit Scores range from 400 to 850.

Income. All income of the Applicant and anyone else who will occupy the Residence and will be secondarily liable on the mortgage loan. The Income Limits are set forth in the Notice to Buyers, the Program Summary and on the Department's website.

Lender. An institutional lender regulated by state or federal law, or any other entity which in its regular course of business makes loans which would qualify for MCC assistance, is authorized to do business in the Eligible Loan Area, and who has entered into a MCC Program Participation Agreement with the Department.

Lender Commitment Lot Notice. The notice from the Department or its designee to the Lender in substantially the form of Exhibit D-2.

MCC. A mortgage credit certificate issued pursuant to the terms and conditions of the Program, the annual federal income tax credit for which shall not exceed $2,000.

Mortgage Credit Certificate Rate. For purposes of this Program, the Mortgage Credit Certificate Rate(s) shall be specified in the periodic distribution of Lender Commitment Lot Notices. The Department may change the Mortgage Credit Certificate Rate from time to time based on borrower demand and financial market conditions. Initially, the Mortgage Credit Rates shall be 40% for mortgage loans up to $150,000, 35% for mortgage loans greater than $150,000 and up to $200,000, and (iii) 25% for mortgage loans greater than $200,000.

New Housing. A single family dwelling unit that is proposed to be constructed, currently under construction, or existing but not previously occupied.

Ownership. Ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest, including a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership interest in trust, a life estate interest, a purchase by a land contract or contract for deed. The term does not include (i) a remainder interest; (ii) a lease with or without an option to purchase; (iii) a mere expectancy to inherit an interest; (iv) the interest that a purchaser of a Residence acquires on the execution of a purchase contract; and (v) an interest in other than a Principal Residence. An Ownership interest in a mobile home or other factory-made housing which was permanently affixed to real property owned by the Applicant constitutes Ownership in a Principal Residence.

Principal Residence. A Residence that the Applicant reasonably expects to become the principal Residence of the Applicant within a reasonable time after execution of the loan to provide financing for the Residence and that will, depending on all facts and circumstances (including the good faith of the Applicant) be occupied by the Applicant for residential purposes.

Program. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, designated as Program 90.

Program Manual. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, Program Manual, as revised and amended by the Department from time to time.

Program Summary. Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, Program Summary, as revised and amended by the Department from time to time.

Purchase Price. The term "Purchase Price" has the meaning given to the term "Acquisition Cost" under Internal Revenue Code Section 143 and the regulations thereunder, which currently is the cost to an Applicant of acquiring a Residence from the Seller as a completed residential unit, including: (i) all amounts paid, either in cash or in kind, by the Applicant (or a related party or for the benefit of the Applicant) to the Seller (or a related party or for the benefit of the Seller) as consideration for the Residence; (ii) if the Residence is incomplete, the reasonable cost of completing the Residence; and (iii) if the Residence is purchased subject to a ground rent, the capitalized value of the ground rent calculated using a discount rate authorized by the Internal Revenue Service. "Purchase Price" does not include: (i) usual and reasonable settlement and financing costs (including title and transfer fees, title insurance, survey fees, credit reference fees, legal fees, appraisal expenses, points paid by the Applicant (but not points paid by the Seller) and other similar costs), but only to the extent that such amounts do not exceed the usual and reasonable costs which would be paid by the Applicant in a case in which financing is not assisted by the issuance of an MCC or provided through the issuance of tax-exempt bonds (for example, if the Applicant agrees to pay more than a pro rata share of property taxes, such excess shall be treated as part of the Purchase Price); and (ii) the value of services performed by the Applicant or members of the Applicant's family (including brothers and sisters (whether by whole or half blood), spouse, ancestors and lineal descendants only) in completing the Residence. The Purchase Price Limits are set forth in the Notice to Buyers, the Program Summary and on the Department's website. The Purchase Price limits applicable to Duplexes are set forth on the Department's website.

Qualified Veteran. An Applicant who is a "veteran" (as defined in 38 U.S.C. Section 101) who has not previously obtained a loan financed by single family mortgage revenue bonds utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended.

Residence. The term "Residence" is more fully described in the Applicant Affidavit contained at Tab 2. A Residence includes a single-family house, a Duplex, condominium unit, or mobile home permanently affixed to real property. The term Residence also includes any manufactured home in one or more sections which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length and when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling and connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein and meets the HUD minimum standards set forth in Title 24 parts 3280, 3282 and 42 U.S.C. 5401 et seq. A manufactured home must have been constructed after June 21, 1978 and be permanently affixed to the real property which will be owned by the Applicant and subject to the mortgage loan that is associated with the MCC. The term Residence does not include recreational vehicles, campers, manufactured homes not permanently affixed to real property and other similar vehicles. It does not include property such as appliances or a piece of furniture, which, under applicable local law, is not a fixture.

State. The State of Texas.

Targeted Area. The census tracts identified in Exhibit B may be amended from time to time within the Eligible Loan Area that are "qualified census tracts", which include certain census tracts identified by the United States Treasury Department in Revenue Procedure 2014-14 as having a substantial number of lower-income persons.

LOAN PROCESSING PROCEDURES AND PROGRAM ADMINISTRATION

Applicants that may be eligible for participation in the Program should apply for MCCs in conjunction with their normal mortgage loan applications. Applicants must make applications for conventional, FHA, VA, or USDA-RHS at the mortgage lending institution of their choice participating in the Program before applying for an MCC.

The MCC processing procedures are designed to coincide with the regular, on-going mortgage loan processing and underwriting procedures that are in place at most mortgage lending institutions. The Department recognizes that there are procedural variations among the participating Lenders; consequently, the procedures outlined herein are meant to be suggestive with respect to the sequence of events. However, all the elements of the processing sequence noted below must at some point be completed by the responsible party.

The fees of the Program are set forth at each step in the processing procedures which follow, and the fees charged by the Lender may in no event exceed the fees specified in this Program Manual. A Schedule of Fees is attached hereto as Exhibit A.

The following is the loan processing and Program administration flow chart for the MCC Program:

A. Loan Origination and MCC Reservation

1. The Applicant applies for a loan from a participating Lender.

2. The Lender gives the Applicant a Notice to Buyers that explains the Program and contains consumer information. (See Tab 1 of this Program Manual for this Guide.) The Notice to Buyers is intended to present certain facts to the Applicant concerning the restrictions, regulations, and prohibitions of the Program because of certain federal, state and Department regulations, as well as explain the penalties for misuse of the Program. It is imperative that the Applicant understands the terms and conditions of the Program. During the initial interview, it is the responsibility of the Lender to explain the terms and conditions of the Program to the Applicant, and to make sure that the Applicant receives a copy of the Notice to Buyers. The Notice to Buyers must be signed by the Applicants and returned to the Lender for inclusion in the Compliance File.

3. The Lender generally determines if the Applicant is a possible candidate for an MCC, based on preliminary indications of Income, Purchase Price, prior Ownership, and tax liability.

4. No MCC funds may be reserved prior to the date specified in the applicable Lender Commitment Lot Notice. All persons interested in making applications for an MCC at a participating Lender must be considered on a first-come, first-served basis, and must have an application for a mortgage loan on file with the Lender.

5. Upon fully discussing the Program with the Applicant and gathering all of the necessary documentation to verify the Applicant's eligibility, the Lender is ready to begin the reservation process. The Lender will reserve the MCC funds in the Department's or its designee's on-line reservation system. After reserving the funds the Lender will complete the underwriter's certification process and proceed with closing.

6. The Lender may provide the Applicant with a copy of IRS Form W-4 Employee's Withholding Allowance Certificate. The Applicant may complete the W-4, if necessary, to change his or her Federal withholding tax, adjusting it in an amount comparable to the expected MCC tax credit. (See Tab 7 of this Program Manual.)

7. A Lender may not remove a spouse from an application to qualify an Applicant if a co-occupying spouse is not a legal United States resident.

8. **MCC reservations may not be transferred from one Lender to another. In the event an Applicant elects to change Lenders, the MCC reservation will be canceled and a new application and reservation process must be commenced by the Applicant with the new Lender.**

B. Lender Loan Approval and Verification

1. The Lender performs normal loan approval or underwriting procedures.

2. The Lender may consider the MCC when determining the amount of disposable income available for the monthly house payment in order to determine the Applicant's qualification for the loan. The Lender determines general acceptability in accordance with its own loan approval standards and applicable FNMA, FHLMC, FHA, VA, USDA-RHS and private mortgage insurance standards and underwriting guidelines.

3. In conjunction with the Lender's regular verification process, the Lender performs reasonable investigation as to whether the Program requirements have been met as required by regulations noted in the certificate of the Lender. Lenders may verify these facts at different times and in various ways, depending upon the Lender's particular procedures for processing loans.

4. The Lender verifies that the Income Limits, Purchase Price Limits, and other non-credit Program requirements are met.

C. Loan Closing and Submission of Final MCC Program Documents

1. As part of the loan closing process, the Lender should have the Applicant sign the Applicant Affidavit. (See Tab 2 of this Program Manual.) This document contains certifications and Affidavits required of the Applicant by the federal MCC regulations and state requirements as follows:

   (a) Certification that the Applicant's annualized gross monthly Income does not exceed the applicable Income Limits.

   (b) Certification that the home will be used as a Principal Residence, and that the MCC holder will notify the Department when the home ceases to be the Principal Residence of the holder.

   (c) Certification that Applicant has not had an ownership interest in a Principal Residence during the preceding three-year period (unless an exception applies).

   (d) Certification that the Residence is located within the Eligible Loan Area.

   (e) Certification that the loan is a new mortgage loan.

   (f) Certification that the loan applied for does not constitute a prohibited mortgage.

   (g) Certification that the Purchase Price does not exceed the Purchase Price Limits.

   (h) Certification that the Applicant was not forced to apply through a particular Lender.

   (i) Certification that no interest is being paid to a related person.

   (j) To the extent applicable, certification that there are no allocations to particular developments as described in Treasury Regulation §1.25-3T(k).

   (k) To the extent applicable, certification of the Applicant's status as a Qualified Veteran.

   (l) Acknowledgment that any material misstatement or fraud is made under penalty of perjury and the civil penalties provided herein.

2. The Lender should also provide the Applicant with the Notice of Potential Recapture Tax on Sale of Home to Applicant (See Tab 5 of this Program Manual), which must be signed by the Applicant at closing.

3. Either the Lender or the closing agent submits to the Department or its designee a completed and executed Compliance File by regular mail, overnight delivery or electronic submission.

4. The Compliance File includes all of the executed certifications and Affidavits noted herein. Each document must be complete and signed where appropriate. <u>All documents must be dated within six (6) months of the submission date to the Department</u>. Original or certified copies of documents should be sent to the Department or its designee, except as otherwise indicated. The eligibility of an Applicant shall be determined by the Lender. The Lender must review the Compliance File Checklist and related documents to determine their completeness in accordance with the terms of this Program Manual. Reasonable efforts should be undertaken to verify the information given, either independently or concurrently with underwriting procedures.

5. The Compliance File will specifically include the following documents:

   (a) The Applicant Affidavit, along with federal tax transcripts or signed tax returns (including all schedules) for the previous three years (such federal tax transcripts are not required for loans made in Targeted Areas or for an Applicant who is a Qualified Veteran). Federal tax transcripts can be requested from the IRS by the Applicant by using IRS Form 4506-T;

   (b) The Affidavit of Seller, certifying the Purchase Price of the Residence and certain other matters contained therein (See Tab 2 of this Program Manual for this document) (signature is waived for a real estate owned property);

   (c) A Certificate of the Lender, certifying that the Lender has performed a reasonable investigation to make the required Program determinations (See Tab 2 of this Program Manual for this document). Further, by its submission, the Lender certifies that all Program eligibility requirements have been met, and that the loan fees are reasonable relative to other loans not associated with MCCs;

   (d) A photocopy of the closing disclosure executed by all parties;

   (e) The Notice of Potential Recapture Tax on Sale of Home, executed by the Applicant (See Tab 5 of this Program Manual for this document);

   (f) The MCC Issuance Fee in the amount as specified in the periodic distribution of Lender Commitment Lot Notices in the form of a check or money order made payable to the Department or its designee. The MCC Issuance Fee may be paid by the Applicant, the Seller, the Lender or any other person on the Applicant's behalf. In addition to the MCC Issuance Fee and the other fees provided herein, the Lender may collect and retain at loan closing an MCC Document Handling Fee of up to $75.00. Such Fee may be paid by the Applicant, the Seller or any other person on the Applicant's behalf;

   (g) The Applicant's certificate of completion of an approved pre-purchase homebuyer education course;

   (h) A copy of the Qualified Veteran's discharge papers, if applicable;

   (i) The Applicant's federal tax transcript or signed tax returns (obtained by IRS Form 4506-T) for the preceding calendar year (applicable only to loans closed after

February 15th). All loans closed after February 15 of each year will require the prior year's federal tax transcript prior to issuance of the MCC;

(j) A copy of the real estate purchase contract for the Residence, if required;

(k) A copy of the final executed loan application (1003) submitted to the Lender, if required; and

(l) A copy of the Warranty Deed, if required.

6. ALL DOCUMENTS LISTED ON THE COMPLIANCE FILE CHECKLIST MUST BE SUBMITTED TO THE DEPARTMENT OR ITS DESIGNEE WITHIN 30 DAYS FOLLOWING THE CLOSING DATE OF THE MORTGAGE LOAN.

D. Issuance of MCC

The Department or its designee confirms the completion of the Applicant's file, that the loan was closed as evidenced by the Compliance File, and that the Applicant has met the requirements for issuance of an MCC. The Department then forwards to the Applicant, with a copy to the Lender, an executed MCC dated as of the closing date of the loan. (See Exhibit C for the MCC form.) A copy of the MCC is retained by the Department.

E. Suspended File; Resubmission of MCC Documents

If a Compliance File is incomplete or incorrect, the file will be suspended and the Lender will be given up to thirty (30) days from the date of contact by the Department to submit complete and/or revised documentation. Any resubmission of a Compliance File that has been returned or denied by the Department must include all information which the Department has determined necessary for reconsideration.

F. MCC Cancellations

Any suspended Compliance File that is not cleared for MCC issuance within thirty (30) days will be cancelled by the Department under the Notice of Cancellation provided under Tab 8 of this Program Manual. The Lender should cancel MCC reservations in the on-line reservation system.

G. Reissuance of MCC

The Department shall, upon payment by the MCC holder of a Reissuance Fee, issue a reissued MCC for certain refinancings under Treas. Regs. §1.25-3(p) if the Department receives to its satisfaction evidence that:

(i) The reissued MCC is issued to the holder of an existing MCC with respect to the same property to which the existing MCC relates.

(ii) The reissued MCC entirely replaces the existing MCC (that is, the holder cannot retain the existing MCC with respect to any portion of the outstanding balance of the certified mortgage indebtedness specified on the existing MCC).

(iii) The certified mortgage indebtedness specified on the reissued MCC does not exceed the remaining outstanding balance of the certified mortgage indebtedness specified on the existing MCC.

(iv) The reissued MCC does not increase the Mortgage Credit Certificate Rate specified in the existing MCC.

(v) The expiration date on the reissued MCC is not later than the expiration date on the existing MCC.

(vi) The reissued MCC does not result in an increase in the tax credit that would otherwise have been allowable to the holder under the existing MCC for any taxable year. The holder of a reissued MCC determines the amount of tax credit that would otherwise have been allowable by multiplying the interest that was scheduled to have been paid on the refinanced loan by the Mortgage Credit Certificate Rate of the existing MCC. In the case of a series of refinancings, the tax credit that would otherwise have been allowable is determined from the amount of interest that was scheduled to have been paid on the original loan and the Mortgage Credit Certificate Rate of the original MCC.

H. Changes Prior to Closing

The Lender must notify the Department or its designee of any changes that affect the conditions under which the MCC was reserved.

1. Changes in the Applicant's Financial Condition Prior to Closing

The eligibility of an Applicant for an MCC is based upon the Applicant's Income and Family size. Changes in the Applicant's financial status or Family size may affect the eligibility for an MCC. Upward changes in Income, whether or not foreseen or predictable at the time of the reservation and changes in the working status of a spouse from unemployed to employed may also affect eligibility. If the Applicant marries prior to closing, the new spouse must satisfy the prior home Ownership requirements contained in the Applicant Affidavit, and the Applicant Affidavit must be completed by both spouses and submitted with the Compliance File. Any Income added to the Family Income may affect the eligibility of the Applicants.

2. Changes in Home Ownership Status, Purchase Price and Amount of Loan Prior to Closing

If the Applicant acquires a present ownership interest in a Principal Residence prior to loan closing and/or if the total Purchase Price of the Residence purchased in connection with the MCC increases so as to exceed the Purchase Price Limitations set forth herein, the MCC reservation must be canceled.

3. Other Changes in Circumstances Prior to Closing

The Lender must immediately notify the Department or its designee in writing of any change in the circumstances upon which the MCC reservation was made. If any other change of the circumstances upon which the MCC reservation was made results in the Applicants not meeting the requirements for a qualified MCC, the MCC reservation must be canceled.

I. Record Keeping and Federal Report Filing

1. For each calendar quarter during which the Department issues MCCs beginning with the quarter in which the election to issue that MCCs is made, it must make reports on IRS Form 8330. The report must include:

(a) Name, address and ITIN (social security number or individual tax identification number) of the Department.

(b) Date of election.

(c) The sum of the products of the certified indebtedness amount (loan amount), and the Mortgage Credit Certificate Rate, for each MCC issued.

(d) Name, address and TIN of each MCC holder where an MCC was revoked.

2. Annually, the Department must report to the Internal Revenue Service:

   (a) The number of MCCs by Income and Purchase Price as required by IRS reporting regulations.

   (b) The volume of MCCs by Income and Purchase Price as required by IRS reporting regulations.

3. For each calendar year during which it originates loans to Applicants obtaining MCCs or issues a reissued MCC, the Lender must file an annual report using IRS Form 8329 with respect to such MCCs and reissued MCCs. Prior to the filing deadline for such report, the Department will assist in furnishing to the Lender the information in its records necessary for the Lender to complete IRS Form 8329. For each reissued MCC, the lender for the refinanced loan, if not a participating Lender, shall acknowledge and agree to file an IRS Form 8329 with respect to such reissued MCC by signing the Certificate of Lender for Refinanced Mortgage Loan (See Tab 6B of this Program Manual).

4. For 6 years, the Lender must retain:

   (a) Name, address and TIN of each MCC holder.
   (b) Name, address and TIN of the Department.
   (c) Date of loan, certified indebtedness amount, and Mortgage Credit Certificate Rate.

5. In January following each year during which MCCs are issued, the Department will attempt to mail an IRS Form 8396 to each MCC holder of record as a reminder to properly declare the MCC tax credit for federal income tax purposes.

J. Revocation of MCCs

1. Automatic revocation occurs when the Residence related to the MCC ceases to be the MCC certificate holder's Principal Residence.

2. An MCC holder will have its MCC revoked if the holder does not meet the requirements for a qualified MCC.

3. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent, by any person related to the issuance of the MCC.

K. Curing Defects

In the event any defects are discovered in any certificate or Affidavit after an MCC has been issued, the Lender and the MCC holder shall be notified of such defect and given 60 days to cure it prior to revocation of the MCC.

L. Transfer of MCCs on Mortgage Assumptions

A loan assumption associated with an MCC will be treated as a new MCC application, and the procedure required by this Program Manual will be repeated. A single MCC Assumption Fee will be charged by the Department in connection with such transfers.

M. Post-Audit

The Department may perform a random case post-audit of the Lender records.

N. MCC Eligibility Denial

In the event a Lender determines that an Applicant is ineligible for an MCC, the Lender shall cancel the reservation in the on-line registration system.

O. Recapture of MCC Tax Credit

In the event an MCC holder sells his or her Principal Residence within 9 years of issuance of an MCC, a portion of the tax credit utilized by the holder may be subject to a recapture tax. See the Notice of Potential Recapture Tax on Sale of Home at Tab 5 of this Program for further information regarding tax credit recapture.

P. Targeted Area Reservation

For at least one year after the commencement of the Program, the Department will reserve twenty percent (20%) of the Department's MCC authority for home mortgage loans in Targeted Areas.

Q. Qualified Veterans

A Qualified Veteran is exempt from the three-year no prior home ownership requirement. The Qualified Veteran must (a) certify that (i) he or she has not previously obtained a mortgage loan financed by single family mortgage revenue bonds utilizing the exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended, and (ii) is utilizing the veteran exception set forth in Section 143(d)(2)(D) of the Internal Revenue Code of 1986, as amended and (b) provide copies of discharge papers, if applicable.

APPLICANT AND LOAN APPROVAL REQUIREMENTS

A. Overview

For loans involving MCCs, the loan approval and underwriting standards may be modified to reflect a recognition of the MCC derived federal income tax credit for mortgage interest in determining income, housing expense, and indebtedness ratios. The secondary mortgage market and the mortgage insurance industry have established underwriting policies for loans involving MCCs. These are available separately as policy statements from the mortgage lending industry.

The Applicant, Purchase Price and mortgage underwriting requirements covered in this section are incorporated in the Program documents contained in this Program Manual. It will be necessary for all Applicants, participating Lenders and other parties to the transaction to complete and sign the appropriate Program documents and attest to their validity. The Lender will be required to submit certifications in which it will certify that it has reviewed Affidavits of the Applicant and the Seller and found them to be true and correct. If the Lender becomes aware of misstatements, whether negligently or intentionally made, it must notify the Department immediately. The Department reserves the right to take all appropriate actions including, if necessary, denial or revocation of the MCC. The Lender should also be aware, and inform the Applicant, that both federal and Texas law provide for fines and criminal penalties for misrepresentations made in connection with participation in the Program. In an attempt to assure that Program requirements are met, an Applicant Affidavit is required of each Applicant, and must be submitted to the Department.

The mortgage loan must be a fixed rate loan and financed from sources other than tax-exempt mortgage bonds or tax-exempt veterans' mortgage bonds. For mortgage loans using only an MCC, the mortgage may be a conventional, FHA, VA or USDA-RHS loan and will be at prevailing market rates.

B. Applicant Eligibility Requirements

Similar to any normal mortgage loan, the Applicant must meet the credit and underwriting criteria established by the participating Lender providing the loan. Based on relevant federal and state regulations, Applicants must also meet the following requirements specific to MCCs:

1. First-time Homebuyer Requirement. The Applicant who will become an MCC holder cannot have had an Ownership interest in a Principal Residence at any time during the preceding three years ending on the date on which the loan is executed. This requirement qualifies the Applicant as a "first-time homebuyer" with respect to the federal regulations. The Lender must obtain an Applicant Affidavit to the effect that the Applicant had no Ownership interest in a Principal Residence at any time during the three-year period prior to the date on which the loan is executed. This fact must be verified by the Lender through request for, and examination of, the Applicant's federal tax transcripts for the preceding three years to determine whether the Applicant has claimed a deduction for interest or taxes on property that was the Applicant's Principal Residence. The first-time homebuyer requirement does not apply to a loan made to finance a Residence in a Targeted Area or a loan made to a Qualified Veteran [or in certain cases permitted under applicable provisions of the Code].

   For purposes of the first-time homebuyer requirement, a Principal Residence includes a single-family house, Duplex, condominium unit or mobile home. Ownership interest means ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest. Ownership interest also means a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership interest in trust, a life estate interest, and purchase by a land contract or contract for deed. To meet the first-time homebuyer requirement, the Applicant must complete and sign the Applicant Affidavit and attach federal tax transcripts for the last three years to the Applicant Affidavit, which federal tax transcripts state the type of return filed by the Applicant for each tax year, the Applicant's filing status and adjusted gross income for the last three years. To summarize this procedure as it applies to different cases:

   (a) If the Applicant can produce federal tax transcripts stating the type of return filed (1040, 1040A or 1040EZ) for the last three years that show no deductions of interest or taxes for a Principal Residence, these forms must be submitted to the Lender and forwarded to the Department or its designee with the Applicant Affidavit.

   (b) The Department will not issue the MCC until receipt of federal tax transcripts (including all schedules), that show the type of return filed and that the Applicant took no deduction of interest or taxes for a Principal Residence for the years in question. The federal tax transcripts can be requested from the IRS by the Applicant by using IRS Form 4506-T.

   (c) In the unusual event the Applicant was not required by law to file federal income tax returns for any year during the preceding three years, it will be necessary for the Applicant to so state on the Applicant Affidavit forwarded to the Department with the other Program documents and to provide an IRS printout stating "No Record Found" for each applicable tax year.

   (d) When the loan is executed during the period between January 1 and February 15 and the Applicant has not yet filed his or her federal income tax return for the preceding year with the IRS, the Department may, with respect to such year, rely on an Applicant Affidavit stating that the Applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his or her Principal Residence for the preceding calendar year.

   (e) If the loan is made in a Targeted Area or if the Applicant is a Qualified Veteran, the Applicant is not required to provide federal tax transcripts.

2. Principal Residence Requirement. The Applicant must use the Residence that involves the MCC as his or her Principal Residence. The Lender must obtain from the Applicant, via the Program documents, a statement of the Applicant's intent to use the Residence as his or her Principal Residence within a reasonable time (60 days) after the MCC is issued. This Affidavit further states that the MCC holder will notify the Lender and the Department if the Residence ceases to be his or her Principal Residence.

3. Revocation. An Applicant will have his or her MCC revoked if the Applicant does not meet the requirements for a qualified MCC. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent. Revocation will occur if the Residence to which the MCC relates ceases to be Applicant's Principal Residence.

4. Fraud. If the Applicant or MCC holder provides a certificate, Affidavit, or any other information to the Lender or the Department containing a material misstatement and such misstatement is due to fraud, then any MCC issued shall be automatically null and void without the need for any further action by the Department.

5. Penalties for Misstatement. If the Applicant makes a material misstatement in any Affidavit or certification made in connection with an application for the issuance of an MCC and such misstatement is due to negligence of the Applicant, the Applicant shall pay a civil penalty fee of $1,000.00 for each MCC with respect to which a misstatement was made. If any Applicant makes a material misstatement in any Affidavit or certification made in connection with application for or issuance of an MCC and such misstatement is due to fraud, the Applicant shall pay a penalty fee of $10,000.00 for each MCC with respect to which the fraudulent misstatement was made. The above-described civil penalties shall be imposed in addition to any criminal penalty provided by law.

6. Income Limits. The annual gross Income of an Applicant is limited to the applicable amount shown in the Notice to Buyers, the Program Summary and on the Department's website. These limits may be modified annually.

7. Purchase Price Limits. Initially, the Purchase Price limits shall be as set forth in the Notice to Buyers, the Program Summary and on the Department's website, but these amounts are subject to reduction by any applicable FHA limits, or such revised amounts as may be effective from time to time, as required by the federal regulations. The determination whether the residence meets the applicable Purchase Price limits shall be made as of the date of issuance of the MCC. Any revisions of the Purchase Price limits by the Department may rely on average area purchase price limitations published by the Treasury Department, any successor thereof, or as may be provided in Section 143 of the Internal Revenue Code, for the statistical area in which the residence is located.

8. Homebuyer Education. The Applicant must complete a pre-purchase homebuyer education course under the Program. The education requirement may be met by attending one-on-one counseling as provided through the Department's network of certified Texas Statewide Homebuyer Education Providers, HUD-approved counseling agencies, on-line counseling offered through the Department's Texas Homebuyer U, mortgage insurance companies and/or HUD, Fannie Mae or Freddie Mac approved lender programs. The certificate of completion must be included in the Compliance File in order to satisfy this requirement.

9. Non-Purchasing Spouse. A non-purchasing spouse must be considered in determining eligibility to participate in the Program. Although the spouse may not be an Applicant for the loan, and his or her income may be excluded for credit underwriting purposes, a spouse's income must be considered in the calculation of Income for purposes of the MCC. A non-purchasing spouse must also meet the first-time homebuyer requirement and the Principal Residence requirement. A non-purchasing spouse may disqualify the purchasing spouse even if the purchasing spouse fully meets the Program requirements. A non-purchasing spouse must provide federal tax transcripts and income information, even if the spouse has no income, as well as executing all applicable

Affidavits. Non-purchasing spouses must have a valid social security number or an Individual Tax Identification Number (ITIN).

C. Loan Requirements

1. New Loan Requirements. An MCC cannot be issued in conjunction with the acquisition or replacement of an existing loan or mortgage; however, an MCC can be used in conjunction with the replacement of construction period loans or bridge loans of a temporary nature. Construction period or bridge loans must be for no longer than 24 months. The Lender must obtain from the Applicant, via the Program documents, a statement to the effect that the loan being made in connection with the MCC will not be used to acquire or replace an existing mortgage or land contract, subject to the exceptions outlined above.

2. Prohibited Mortgages. An MCC cannot be used in conjunction with a qualified mortgage bond or a qualified veterans' mortgage bond. The Lender must obtain from the Applicant, via the Program documents, a statement that no portion of the financing of the Residence in connection with the MCC is provided from a qualified mortgage or veterans' bond.

3. No Interest Paid to Related Persons. No interest on the certified indebtedness amount of the loan can be paid to a person who is a related person to the certificate holder, as the term "related person" is defined in Section 144(a)(3)(A) of the Internal Revenue Code and regulations promulgated by the Internal Revenue Service pursuant thereto. The Lender must obtain from the Applicant, via the Program documents, a statement that a related person does not have, and is not expected to have, an interest as a creditor in the loan.

4. Transferability. If the loan is assumed by a new purchaser, the MCC may be transferable under certain circumstances:

   (a) The transferee must demonstrate he or she has assumed the liability for the remaining balance of the loan.

   (b) The new MCC must meet all the conditions of the original certificate, and any changes in federal, state or Department policy that amends the requirements of the original MCC.

5. Term of Mortgage Loans. Each mortgage loan associated with an MCC shall have a term of either 15 years or 30 years.

EXHIBIT A

SCHEDULE OF PROGRAM FEES AND EXPENSES

MCC Assumption Fee $125.00

This fee is submitted to the Department or its designee with the Applicant's new Application through a participating Lender.

MCC Issuance Fee any amount approved by an Authorized Representative of the Department provided that the fee cannot be any greater than 1% of the Certified Indebtedness associated with the MCC and provided further that the fee cannot be any less than $500 per MCC issued.

This fee is submitted to the Department or its designee upon loan closing with all of the completed Program documents required for the issuance of an MCC. Upon receipt of the fee and the required documentation, the Department will issue an MCC to the borrower with a copy to the Lender.

MCC Document Handling Fee up to $75.00

This fee may be charged and retained by the Lender to compensate it for handling the additional documentation required of it by the Program. The Lender additionally is authorized to charge its reasonable and customary fees and charges for origination of the loan.

Lender Participation Fee $1,000.00

This one-time fee is to be paid by the Lender and submitted with the MCC Program Participation Agreement to the Department or its designee. The Lender's participation will be noted on the Department's website. The Lender Participation Fee will be waived for Lenders that have participated in one of the Department's previous MCC Programs.

Late Fee $75.00

This fee may be charged to the Lender for a Compliance File that is sent to the Department or its designee more than thirty (30) days after the date of closing.

MCC Reissuance Fee $50.00

This fee may be charged and retained by the Department or its designee to compensate it for handling and processing the issuance of a reissued MCC pursuant to a mortgage refinancing.

EXHIBIT B

County	Qualified Census Tracts					
Atascosa	9603.00					
Bell	0207.01	0207.02	0208.00	0216.02	0226.00	0229.00
	9800.01					
Bexar	1103.00	1105.00	1106.00	1108.00	1109.00	1110.00
	1214.04	1302.00	1303.00	1304.01	1304.02	1305.00
	1306.00	1307.00	1309.00	1401.00	1406.00	1410.00
	1411.01	1411.02	1505.01	1505.02	1508.00	1514.00
	1602.00	1605.01	1605.02	1606.00	1609.02	1610.00
	1612.00	1620.04	1701.02	1702.00	1703.00	1704.01
	1705.00	1708.00	1709.00	1710.00	1711.00	1712.00
	1713.01	1715.01	1716.02	1802.01	1804.00	1810.05
	1905.03	1910.04	1914.08	1919.00		
Bowie	0105.00	0106.00				
Brazos.......................	0005.00	0006.04	0014.00	0017.02	0020.12	
Brown.......................	9506.00	9507.00				
Cameron	0105.00	0109.00	0110.00	0112.00	0117.00	0119.01
	0119.03	0121.02	0125.05	0125.07	0126.07	0126.09
	0127.00	0128.00	0131.06	0132.03	0132.06	0132.07
	0133.05	0133.06	0133.07	0133.08	0133.09	0134.01
	0136.00	0137.00	0138.01	0138.02	0139.01	0139.02
	0139.03	0140.01	0140.02	0141.00	0142.00	0143.00
Castro	9502.00					
Cherokee	9505.00	9507.00				
Collin........................	0317.20					
Coryell......................	0105.04					
Dallas........................	0004.01	0004.05	0008.00	0009.00	0012.04	0015.02
	0015.03	0020.00	0025.00	0027.01	0027.02	0034.00
	0038.00	0039.01	0039.02	0041.00	0043.00	0047.00
	0049.00	0054.00	0056.00	0057.00	0059.02	0060.01
	0060.02	0072.01	0072.02	0078.11	0078.15	0078.18
	0078.19	0078.20	0078.23	0078.26	0085.00	0086.03
	0086.04	0087.01	0087.03	0087.04	0087.05	0088.02
	0089.00	0091.04	0093.03	0093.04	0096.10	0098.04
	0099.00	0100.00	0101.01	0107.01	0107.03	0109.03
	0109.04	0114.01	0115.00	0116.01	0116.02	0120.00
	0122.08	0122.11	0130.11	0131.05	0136.25	0137.13
	0138.05	0141.03	0141.14	0143.08	0143.09	0144.07
	0146.02	0146.03	0154.04	0166.05	0166.07	0177.03
	0182.04	0185.05	0185.06	0188.02	0190.13	0190.19
	0192.12	0192.13	0203.00	0205.00		

County	Qualified Census Tracts					
Dawson.....................	9504.02					
Denton......................	0206.01	0209.00	0212.01	0217.39		
Dimmit	9504.00					
Ector.........................	0015.00	0019.00				
El Paso......................	0001.08	0001.09	0001.10	0002.05	0003.01	0004.04
	0006.00	0008.00	0010.01	0010.02	0011.15	0012.01
	0014.00	0016.00	0017.00	0018.00	0019.00	0020.00
	0021.00	0022.01	0022.02	0023.00	0026.00	0028.00
	0029.00	0030.00	0031.00	0032.00	0034.02	0035.02
	0036.01	0036.02	0037.01	0037.02	0038.03	0038.04
	0039.01	0039.03	0041.03	0041.05	0041.07	0042.01
	0042.02	0101.02	0102.20	0102.21	0103.32	0103.33
	0103.34	0103.35	0103.44	0103.47	0104.05	0104.06
	0104.07	0104.08	0105.01	0105.04	0105.06	0106.00
Ellis	0604.00					
Falls..........................	0004.00					
Fort Bend.................	6750.00					
Galveston.................	7237.00	7246.00	7252.00			
Gray..........................	9507.00	9508.00				
Grayson	0020.00					
Gregg........................	0012.00	0013.00	0015.00			
Guadalupe	2102.00					
Hale	9501.00					
Harris........................	2104.00	2110.00	2111.00	2113.00	2116.00	2117.00
	2119.00	2123.00	2124.00	2205.00	2207.00	2208.00
	2210.00	2215.00	2222.00	2225.01	2226.00	2227.00
	2230.02	2301.00	2303.00	2304.00	2306.00	2308.00
	2310.00	2315.00	2318.00	2321.00	2327.02	2331.02
	2333.00	2336.00	2401.00	2405.01	2405.02	2406.00
	2408.01	2415.00	2534.00	3105.00	3110.00	3111.00
	3116.00	3117.00	3122.00	3123.00	3124.00	3128.00
	3136.00	3138.00	3143.00	3206.02	3212.00	3220.00
	3230.00	3231.00	3235.00	3239.00	3312.00	3314.00
	3316.02	3317.00	3320.00	3328.00	3331.00	3332.02
	4201.00	4205.00	4211.01	4211.02	4212.01	4212.02
	4213.00	4214.01	4214.02	4215.00	4216.00	4222.00
	4223.01	4224.01	4229.00	4231.00	4320.02	4327.01
	4328.01	4328.02	4330.01	4330.02	4330.03	4331.00
	4334.00	4335.01	4335.02	4336.00	4531.00	4532.00

County	Qualified Census Tracts					
	4533.00	4534.03	4544.00	5204.00	5205.00	5206.01
	5206.02	5210.00	5214.00	5301.00	5303.00	5304.00
	5307.00	5320.01	5330.00	5333.00	5340.01	5501.00
	5502.00	5503.01	9801.00			
Harrison....................	0204.01	0205.01				
Hays..........................	0103.04					
Hidalgo.....................	0201.01	0201.02	0204.03	0205.01	0206.00	0207.23
	0207.25	0210.00	0211.00	0213.02	0213.03	0214.01
	0215.00	0218.03	0218.04	0218.05	0218.06	0221.03
	0221.05	0221.06	0222.03	0222.04	0224.01	0225.01
	0225.02	0227.02	0228.00	0229.00	0231.02	0231.04
	0235.03	0235.07	0235.11	0235.13	0235.14	0237.00
	0241.07	0241.08	0241.09	0241.12	0241.13	0241.14
	0242.01	0242.04	0242.05	0246.00		
Hill	9609.00	9610.00				
Houston	9504.00					
Hudspeth	9503.00					
Hunt..........................	9605.00	9608.00	9609.00			
Hutchinson	9507.00	9508.00				
Jasper........................	9503.00					
Jefferson	0001.03	0007.00	0009.00	0019.00	0026.00	0051.00
	0059.00	0061.00	0063.00	0117.00		
Johnson.....................	1308.00					
Karnes	9704.00					
Kaufman...................	0505.00					
Lamar	0005.00	0008.00				
Lamb	9505.00					
Lubbock....................	0002.02	0003.01	0003.02	0006.03	0006.05	0009.00
	0010.00	0012.00	0013.00	0017.09	0020.02	0024.00
Maverick	9502.01	9502.04	9504.00			
McLennan	0002.00	0004.00	0005.98	0010.00	0011.00	0012.00
	0015.00	0023.02	0027.00	0033.00	0043.00	
Midland	0015.00	0017.00				

County	Qualified Census Tracts					
Montgomery	6931.01	6934.00				
Nacogdoches	9506.00	9507.00	9509.00			
Nueces	0006.00	0008.00	0009.00	0010.00	0011.00	0012.00
	0013.00	0015.00	0016.01	0018.01	0027.06	0033.03
	0033.05	0056.02	0064.00			
Palo Pinto	0009.00					
Polk	2102.03	2103.01				
Potter	0103.00	0106.00	0110.00	0120.00	0126.00	0128.00
	0130.00	0145.00	0148.00	0150.00	0153.00	0154.00
Robertson	9605.00					
San Augustine	9502.00					
San Patricio	0113.00					
Shelby	9504.00					
Smith	0002.01	0004.00	0005.00	0007.00		
Starr	9501.05	9501.06	9501.07	9502.02	9502.03	9502.04
	9504.02	9507.01				
Tarrant	1002.02	1005.01	1009.00	1012.02	1013.02	1014.02
	1017.00	1025.00	1035.00	1036.01	1037.01	1038.00
	1045.02	1045.03	1045.04	1046.01	1046.03	1047.02
	1048.02	1048.03	1048.04	1050.06	1052.05	1059.01
	1059.02	1061.02	1062.01	1065.16	1066.00	1103.01
	1111.03	1217.03	1219.03	1219.05	1219.06	1228.01
	1231.00	1234.00	1235.00	1236.00		
Taylor	0102.00	0103.00	0107.00	0117.00	0122.00	0131.00
Terry	9503.00					
Titus	9506.00	9507.00				
Tom Green	0007.00	0015.00	0018.00			
Travis	0006.01	0006.03	0008.02	0018.04	0018.06	0018.12
	0018.19	0018.20	0018.23	0018.63	0021.05	0021.08
	0021.10	0021.11	0022.08	0023.07	0023.08	0023.10
	0023.12	0023.15	0023.16	0023.17	0024.13	0024.19
Val Verde	9503.02	9506.01	9506.02			
Victoria	0003.01	0003.02				
Walker	7906.00	7907.00				

County	Qualified Census Tracts					
Webb	0001.05	0001.07	0001.08	0001.09	0002.00	0003.00
	0006.01	0007.00	0008.00	0009.03	0009.04	0011.05
	0012.01	0012.02	0013.00	0015.01	0018.07	0018.08
	0018.09	0018.14	0018.17	0018.18	0019.00	
Wichita	0101.00	0102.00	0104.00	0108.00	0111.00	0114.00
	0130.00					
Willacy	9503.00	9506.00	9507.00			
Zapata	9503.01					
Zavala	9501.00	9503.01	9503.02			

The determination of the Qualified Census Tracts in the State of Texas was made by the United States Department of Housing and Urban Development and the Treasury Department based on criteria in the 2010 Census and Section 143 of the Internal Revenue Code. The Texas Department of Housing and Community Affairs did not participate in the determination of the Qualified Census Tracts although the Lenders and/or the Department may rely thereon.

NOTE: Census tract reference maps are available on the U.S. Census Bureau website at http://www.ffiec.gov/Geocode/default.aspx.

EXHIBIT C

(Form of Face of Certificate)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

This Mortgage Credit Certificate is issued by Texas Department of Housing and Community Affairs (the "Issuer"), 221 East 11th Street, Austin, Texas 78701-2410, Tax Identification No. 74-2610542, pursuant to the Issuer's election not to issue qualified mortgage bonds, dated October ___, 2018.

Name (s) : ______________________ ______________________

Soc. Sec. Nos.: ______________________ ______________________

Address: ____

THE MORTGAGE CERTIFICATE CREDIT RATE IS _______________ PERCENT (_____%).

Pursuant to the closing certificate as of the date below, the CERTIFIED INDEBTEDNESS AMOUNT with respect to which this Certificate is issued is $____________.

The EXPIRATION DATE of this Certificate, which is also the date such indebtedness matures, is ______________________________.

The AVERAGE AREA PURCHASE PRICE applicable to the Residence is $______________.

The PURCHASE PRICE of the Residence with respect to which this Certificate is issued is $____________.

The Residence with respect to which this Certificate is issued is (check one): ☐ located in a Targeted Area, ☐ being purchased by a Qualified Veteran, or ☐ none of the foregoing.

The Certificate holder meets the requirements of Internal Revenue Code § 25(c)(2)(A)(iii)(IV), relating to income, and I, the undersigned, certify under penalties of perjury that I have determined to the best of my ability that this Certificate meets the following requirements, as applicable: Treasury Regulations § 1.25-3T(d), relating to residence; § 1.25-3T(e), relating to ownership interests within the 3-year prior period; § 1.25-3T(f), relating to purchase price; § 1.25-3T(g), relating to new mortgages; § 1.25-3T(i), relating to prohibited mortgages; § 1.25-3T(j), relating to particular Lenders; § 1.25-3T(k), relating to allocations to particular developments; and § 1.25-3T(n), relating to interest paid to related persons and whether the Residence in connection with which this Certificate is issued is a Targeted Area Residence.

This Certificate may be transferred only after issuance of a new Certificate by the Issuer.

Loan Closing/MCC Issue Date: ____________________

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS

By: ______________________________
Name: ______________________________
Title: ______________________________
MCC Distribution Date: ______________________________

Cert. No.: ______________________________

(FORM OF CERTIFICATE)
(REVERSE)
TERMS AND CONDITIONS

FEDERAL TAX CREDIT. This Mortgage Credit Certificate ("MCC") entitles the holder (as named on the face of this MCC) to an annual federal tax credit equal to the lesser of _____ percent of the annual interest paid on the mortgage loan described on the face of this MCC or $2,000.00. In addition, this MCC will reduce the holder's mortgage interest deduction by an amount equal to the tax credit for the same tax year. The credit cannot be larger than the holder's annual federal income tax liability, after all other credits and deductions have been taken into account. MCC credits in excess of current year tax liability may, however, be carried forward for use in the subsequent three years. At the time of issuance of this MCC, the filing of IRS Form 8396 is required in order to take advantage of the tax credit each year.

PRINCIPAL RESIDENCE. This MCC is to be used in connection with the financing of the purchase of a Residence. The Residence must be or become the holder's "Principal Residence" within a reasonable time (not to exceed 60 days) following the date of issuance of the MCC. The "Principal Residence" means a Residence that, depending on all the facts and circumstances (including the good faith intent of the occupant), is occupied by the holder primarily for residential purposes. "Principal Residence" does not include a home used as an investment property or a recreational home, or a home that is used primarily in a trade or business (as evidenced by the use of more than 15 percent of the total floor space in a trade of business). Further, the holder may not claim, with respect to the Residence, any deductions pursuant to Section 280A of the Internal Revenue Code of 1986, as amended, for expense incurred in connection with the business use of a home.

PRIOR OWNERSHIP OF A RESIDENCE. The holder of this MCC cannot have had a present ownership interest in a Principal Residence at any time during the three-year period prior to the date on which the loan is executed. For purposes of making such determination, a Principal Residence includes a single-family house, condominium unit, mobile home, share of a housing cooperative or occupancy of a unit in a multifamily building owned by the holder. The term "present ownership interest" includes a fee simple interest; a joint tenancy, a tenancy in common or a tenancy by the entirety; the interest of a tenant-shareholder in a cooperative; a life estate; a land contract under which possession and the burdens and benefits of ownership are transferred although legal title is not transferred until some later date; and an interest held in trust for one person by another person. A "present ownership interest" does not include a remainder interest, a lease with or without an option to purchase, mere expectancy to inherit an interest in a principal residence, the interest that a person acquires upon the execution of a real estate purchase contract, or any interest in other than a "Principal Residence" during the previous three years. This requirement is waived if the Residence is located in a Targeted Area or if the Residence is acquired by a Qualified Veteran.

PARTICIPATING LENDER AND LOAN ELIGIBILITY. Financing may be sought from any Lender. The decision to make a loan is completely within the discretion of the Lender to whom the application for a mortgage loan is submitted. The Issuer plays no role in the decision to make a loan or determining the amount of the loan.

MORTGAGE REQUIREMENTS. No MCC will be issued in connection with financing that is to be used to replace an existing mortgage on the Residence to which the holder is a party or upon which the holder is an obligor. No MCC will be issued unless, prior to the date thereof, the holder was not a party to a mortgage on the Residence (whether in the form of a deed of trust, contract for deed, conditional sales contract, pledge, agreement to hold title in escrow, or other form of owner financing), other than a construction loan, bridge loan, or other temporary initial financing having a term not exceeding 24 months. In addition, no MCC will be issued if any financing for the Residence is to be obtained from a qualified mortgage bond or qualified veterans' mortgage bond or if any person who is related to the holder has an interest as a creditor in the financing.

OCCUPANCY OF THE RESIDENCE. If the Residence ceases to be occupied as the holder's "Principal Residence," the holder will no longer be eligible for the MCC and must immediately notify the Department and the Lender providing the financing of this fact and the date of this event.

INCOME LIMITS. At the time of execution of the loan in connection with which this MCC is issued, the holder's current income cannot exceed, (i) for families of three or more persons, 115% (140% in certain Targeted Areas) of the area median income and (ii) for individuals and families of two persons, 100% (120% in certain Targeted Areas) of the area median income, subject to an upward adjustment of the income limits in certain "high housing cost areas." The Income Limits may be subject to adjustment at any time.

PURCHASE PRICE LIMITS. The purchase price for the Residence being acquired in connection with which this MCC is issued cannot exceed 90% (110%, in the case of certain Targeted Area Residences) of the average area purchase price applicable to the Residence. These limits may be subject to adjustment at any time.

TRANSFERABILITY. This MCC is not assumable and is transferable only upon application to the Department. The proposed transferee must meet all Program requirements then in effect.

COMPLIANCE WITH INTERNAL REVENUE CODE. This MCC is intended to comply with the provisions of Section 25 of the Internal Revenue Code of 1986, as amended, as well as any other applicable federal or State laws.

REFINANCING. The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.

EXHIBIT D-1

Commitment Lot Notice
(FROM DEPARTMENT TO PROGRAM ADMINISTRATOR)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM NO. 90

To: eHousingPlus
3050 Universal Boulevard, Suite 190
Weston, FL 33331
Attention: Paloma Miranda
Email: Paloma.Miranda@hdsoftware.net

On the date hereof, the Issuer has established the following Commitment Lot:

Commitment Lot Designation	**Commitment Lot Size**	**MCC Rates**	**MCC Issuance Fee(s)**
______________	$__________	40% for loans up to $150,000 35% for loans greater than $150,000 and up to $200,000 25% for loans greater than $200,000	______ MCC Only ______TMP Loan/MCC Combination

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: ____
Name: ____
Title: ____

EXHIBIT D-2

Lender Commitment Lot Notice
(FROM PROGRAM ADMINISTRATOR TO MORTGAGE LENDER)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM NO. 90

First Date to Reserve MCC Funds ________________

Commitment Lot Size: $_______________

Mortgage Credit Certificate Rates: 40% for loans up to $150,000
35% for loans greater than $150,000 and up to $200,000
25% for loans greater than $200,000

MCC Issuance Fee(s) ________________ MCC Only

________________ TMP Loan/MCC Combination

All MCC funds are available on a first-come, first-served basis. MCC reservations expire ninety (90) days from the date of registration. Updates to extend time must be made in the reservation system by the participating lender.

REMINDER: If doing a TMP Loan/MCC Combination, the more restrictive program guidelines will apply.

If you have any questions regarding this notice, please contact:
ehousing
Compliance office
3050 Universal Boulevard, Suite 190
Weston, FL 33331 954-217-0817 Email: Paloma.Miranda@hdsoftware.net

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Taxable Mortgage Program (TMP) / Texas Mortgage Credit Certificate (MCC)
REVISED: 07/27/2017

NOTICE TO BUYERS

Texas Department of Housing and Community Affairs ("TDHCA") created its Taxable Mortgage Program (TMP-My First Texas Home) and its Texas Mortgage Credit Certificate Program (MCC) to help make ownership of new or existing homes more affordable for individuals and families of low and moderate income in the State of Texas, especially first-time buyers. The Taxable Mortgage Program (My First Texas Home) provides the homebuyer with a 30-year fixed interest rate mortgage loan and assistance to be used towards down-payment and/or closing cost assistance. The Texas Mortgage Credit Certificate (MCC) Program provides the homebuyer with a mortgage credit certificate which increases a family's disposable income by reducing its federal income tax obligations. This tax savings provides a family with more available income to qualify for a loan and meet mortgage payment requirements. In order to participate in either or both Programs, the homebuyer(s) must meet certain eligibility requirements, purchase a home and obtain a mortgage loan and/or MCC through a participating lender. The eligible loan area consists of the State of Texas. The Programs are administered by TDHCA.

If your home is being financed using the TMP mortgage loan, the residence must be occupied as your principal residence within a reasonable time not to exceed 60 days of loan closing and it may not be used as an investment property, vacation, or recreational home. You will be required to immediately notify the Servicer in writing if the residence financed using the TMP mortgage loan ceases to be your principal, permanent residence. You cannot rent your home without the Servicer's prior written consent (which consent can only be given in very limited, extreme circumstances) or sell your home to a person ineligible for assistance from the Department, unless you pay your loan in full.

The residence must also be occupied as your principal residence within a reasonable time not to exceed 60 days of loan closing and it may not be used as investment property, vacation, or recreational home. If the residence ceases to be your principal residence, you will be required to immediately notify TDHCA so that appropriate action, including but not limited to revocation of the MCC, may be taken.

ELIGIBLE BORROWERS

First-Time Homebuyer Requirement: Borrowers seeking financing for the purchase of a residence or the issuance of an MCC must be first-time homebuyers, which means that the borrower has not owned a principal residence in the past three years. Certain exceptions exist for residences located in certain designated areas and for applicants who are "qualified veterans."

INCOME LIMITS AND HOME PURCHASE PRICE LIMITATION

For maximum income and purchase price limits, see attachment or visit the TDHCA website: http://www.tdhca.state.tx.us/homeownership/fthb/buyer_intro.htm

ELIGIBLE PROPERTY

General Information: New single family houses, including certain duplexes, townhomes and condominiums are eligible for either program. Manufactured housing is allowed (FHA only on My First Texas Home program). Triplexes and fourplexes and shares in housing cooperatives are not eligible for the Program(s). The cost of the residence must not exceed the maximum home purchase price limits specified for the Program(s).

Duplex: A duplex may be financed under either Program as long as one unit of the duplex is occupied by the borrower as his or her principal residence and the duplex was first occupied for residential purposes at least five years prior to the closing date for the mortgage loan that is associated with the applicable program. The five-year requirement does not apply to a duplex if it is located in a qualified census tract that has been designated as a

"targeted area" and the family income of the borrower meets the income limits for targeted area loans (120% or 140% of applicable median family income, as appropriate). The acquisition cost limits applicable to duplexes are available on TDHCA's website.

Manufactured Homes: A manufactured home must be FHA eligible and be in one or more sections which in the traveling mode is 8 body feet or more in width and 40 body feet or more in length and when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling and connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein and meets the HUD minimum standards set forth in Title 24 parts 3280, 3282 and 42 U.S.C. 5401 et seq. The manufactured home must have been constructed after June 21, 1978 and be permanently affixed to the real property which will be owned by the homebuyer and subject to the mortgage loan. Recreational vehicles, campers and other such vehicles are ineligible.

Financing Terms: The mortgage loan used in conjunction with the MCC Program must be financed from sources other than tax-exempt mortgage bonds or tax-exempt veterans' mortgage bonds. The mortgage may be a conventional, FHA, VA or USDA-RHS loan and will be at prevailing market rates or rate applicable with loan program. The mortgage loan must not be made to the borrower by a "related person," as defined in Section 144(a)(3)(A) of the Internal Revenue Code. If using the TMP – My First Texas Home Program, the financing terms will be established by TDHCA. Eligible property types and other terms of the Program may differ for mortgage loans financed through the Fannie Mae HFA Preferred product.

PROGRAM DESCRIPTION TAXABLE MORTGAGE PROGRAM (TMP)

General Information: The Taxable Mortgage Program (My First Texas Home) provides the homebuyer with a 30-year fixed interest rate mortgage loan and assistance, at the option of the homebuyer, in an amount up to 5% of the mortgage loan, to be used towards down-payment and/or closing cost assistance.

Benefit Amount and Length of Benefit: The amount of benefit will vary based on the borrower's individual financial circumstances and the length of time the borrower lives in the home.

Higher Mortgage Loan Interest Rate with Down Payment/Closing Cost Assistance: The interest rate on your mortgage loan is based upon acceptance of down payment and/or closing cost assistance. If you receive down payment assistance from TDHCA, the interest rate on your mortgage loan may be at a higher interest rate than could otherwise be obtained (or may be available to you) if no down payment and/or closing cost assistance were included. If the interest rate on your mortgage loan is higher than you otherwise could obtain, you should carefully evaluate whether it is in your best financial interest to pay the higher mortgage loan interest rate associated with acceptance of down payment and/or closing cost assistance.

Repayment of Down Payment/Closing Cost Assistance: If receiving down payment assistance from TDHCA in connection with your mortgage loan, you will be required to repay the down payment and/or closing cost assistance you received in connection with your mortgage loan at the end of the term of your loan or earlier if you sell, refinance, transfer or otherwise dispose of your home. The annual percentage rate (APR) of interest is 0% and the 2nd mortgage loan is non-amortizing (has no monthly payment component).

Assumption of Loan: In order for the mortgage loan to be assumed, you must sell your home to a person eligible for assistance from the Department, otherwise, you must pay your mortgage loan in full or the Department may demand immediate full repayment of the mortgage loan. This could result in foreclosure of your mortgage and repossession of the property. In addition, if you rent the property or committed fraud or intentionally misrepresented yourself when you applied for the mortgage loan, the Mortgage Lender may foreclose your mortgage and repossess the property. If the Mortgage Lender takes your home through a foreclosure of the mortgage because of these reasons, HUD, FHA, VA, Fannie Mae, Freddie Mac, the Servicer and/or the Department (as applicable) will not be able to help you.

In order for the mortgage loan to be assumed, you must sell your home at or below the federally-designated acquisition cost in effect when you sell your home.

If the money received from the foreclosure sale is not enough to pay the remaining amount of money you owe on the loan, the Servicer may obtain a deficiency judgment against you (a court ruling that you must pay whatever money is still owed on the loan after the foreclosure sale). Such judgment will be taken over by HUD, VA, or a private mortgage insurer (as applicable). If the Servicer files an insurance claim against HUD, VA, or the private mortgage insurer (as applicable) because of the foreclosure, HUD, VA, or the private mortgage insurer (as applicable) may then bring an action against you to collect the judgment.

Recapture. If you sell or otherwise dispose of the residence during the next 9 years, this benefit may, under certain circumstances, be subject to "recapture." Such recapture is accomplished by an increase in your federal income tax for the year in which there is a disposition of the residence. This recapture only applies if there is a gain resulting from the sale or other disposition of the residence and total annual household income increases above specified levels. You may wish to consult a tax advisor or the Internal Revenue Service at the time of sale or other disposition of the residence to determine the amount, if any, of the recapture tax. Following loan closing, you will be provided additional information that will be needed to calculate the maximum recapture tax liability at the time you sell or dispose of the residence.

PROGRAM DESCRIPTION MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM

General Information: An MCC is a tax credit that will reduce the federal income taxes of qualified buyers purchasing a qualified residence. As a result, the MCC has the effect of reducing your mortgage payments. Applications must be made to TDHCA prior to closing the loan. The MCC may not be used in connection with the refinancing of an existing loan, unless such loan is a construction period loan, bridge loan or similar temporary initial financing of 24 months or less.

Benefit Amount: The size of your annual tax credit will be a percentage established by TDHCA (the "Mortgage Credit Certificate Rate") of the annual interest paid on your mortgage loan. However, the maximum amount of the tax credit shall not exceed $2,000 per year. The credit cannot be larger than your annual federal income tax liability, after all other credits and deductions have been taken into account. MCC credits in excess of your current year tax liability may, however, be carried forward for use in the subsequent three years.

Tax Credit Versus Tax Deduction: A mortgage interest deduction differs from a mortgage tax credit in a number of ways. For example, all homebuyers, regardless of income, may take a mortgage interest deduction, whereas mortgage tax credits are available only to holders of MCCs. The dollar value of a mortgage interest deduction depends upon your tax bracket. If you are in the 15 percent tax bracket, you will save 15 cents in taxes for each dollar of mortgage interest paid. With the MCC, you will save $1 for each $1 of credit received. Using an MCC and itemizing your deductions on Schedule A of Form 1040 will require you to reduce your mortgage interest deduction by an amount equal to your mortgage tax credit claimed.

Length of Benefit: Each year, your mortgage tax credit will be calculated on the basis of the designated percentage of the total interest you paid on your mortgage loan that year. The MCC will be in effect for the life of your mortgage loan, so long as the residence remains your principal residence.

Assumption of Loan: The MCC can be transferred only upon issuance of a new certificate by TDHCA. The person assuming your loan will have to qualify just as a new borrower would be required to qualify under the MCC Program.

Recapture of Tax Credit: Your MCC will be subject to certain requirements imposed by federal law concerning the recapture of a portion of the mortgage tax credit benefits granted to you upon the sale of your residence within nine years from the date of purchase. In no event will the recapture tax exceed the lesser of (i) 6.25% of the highest principal balance of your mortgage or (ii) one half of your taxable gain on the sale of your residence. At loan closing, you will be provided additional information that will be needed to calculate the maximum recapture tax liability at the time you sell or dispose of the residence.

APPLICATION INFORMATION

At the time of your formal mortgage loan application, you will have the ability to apply for the TMP mortgage loan and/or a MCC. After you have completed and signed the mortgage loan application, the lender will review your information and will reserve program funds in the Program's on-line registration system. The MCC will be issued to the homebuyer upon loan closing and submission of the required Program documents required in Program guidelines, and applicable program fees. Loan or MCC reservations cannot be transferred from one lender to another. In the event you desire to change lenders, the loan reservation will be canceled and the application and reservation process must start over with the new lender. **The purpose of this document is to provide information on the TDHCA TMP 79 (My First Texas Home) and Texas Mortgage Credit Certificate programs. If applying for either or both of these programs, you should request from your lender a copy of the Loan Confirmation generated from the Program's on-line portal to verify the applicable program option(s) reserved in connection with your mortgage loan.**

DISCLOSURE OF APPLICANT INFORMATION

The applicant(s) hereby consent and agree that all information furnished by the applicant(s) to the participating lender and TDHCA, including but not limited to, non-public personal and financial information in connection with the application for a mortgage loan under the Taxable Mortgage Program or an MCC, may be disclosed to any person or other third parties in connection with the processing of the application, verification of information concerning the TMP loan or MCC, the loan or the applicant(s), and for any other purpose in furtherance of or connected with the Program.

Date____

____

APPLICANT

____

Printed Name of Applicant

____

APPLICANT OR NON-PURCHASING SPOUSE

____

Printed Name of Applicant OR Non-Purchasing Spouse

APPENDIX A

TDHCA My First Texas Home (TMP-79) / Texas Mortgage Credit Certificate Program (MCC)

Combined Income and Purchase Price Limits Table

(Including Income Limit Adjustments for High Housing Cost Areas)

Effective April 24, 2018

		NON-TARGETED AREAS			* TARGETED AREAS		
Area of State	**Counties in Area**	**100% AMFI 1 or 2 Persons**	**115% AMFI 3 or more Persons**	**Non-Targeted Area Purchase Price Limit**	**120% AMFI 1 or 2 Persons**	**140% AMFI 3 or more Persons**	**Targeted Area Purchase Price Limit**
Balance of State	**All other counties not mentioned below**	**$68,800**	**$79,120**	**$271,164**	**$82,560**	**$96,320**	**$331,423**
Andrews County	Andrews	$75,900	$87,285	$271,164	*No Targeted Census Tracts in County*		
Austin County, HMFA	Austin	$72,400	$83,260	$304,941	*No Targeted Census Tracts in County*		
Austin-Round Rock, MSA	Bastrop, Caldwell, Hays*, Travis* & Williamson	$86,000	$98,900	$353,646	$103,200	$120,400	$432,235
Blanco County	Blanco	$72,400	$83,260	$271,164	*No Targeted Census Tracts in County*		
Borden County	Borden	$74,500	$85,675	$271,164	*No Targeted Census Tracts in County*		
Brazoria County, HMFA	Brazoria	$91,100	$104,765	$304,941	*No Targeted Census Tracts in County*		
Crane County	Crane	$72,900	$83,835	$271,164	*No Targeted Census Tracts in County*		
Dallas, HMFA	Collin*, Dallas*, Denton*, Ellis*, Hunt*, Kaufman* & Rockwall	$82,837	$95,262	$355,764	$92,640	$108,080	$434,823
Fort Worth - Arlington, HMFA	Johnson*, Parker & Tarrant*	$83,237	$95,722	$355,764	$90,240	$105,280	$434,823
Gillespie County	Gillespie	$71,000	$81,650	$271,164	*No Targeted Census Tracts in County*		
Glasscock County	Glasscock	$87,100	$100,165	$271,164	*No Targeted Census Tracts in County*		
Hartley County	Hartley	$73,000	$83,950	$271,164	*No Targeted Census Tracts in County*		
Hemphill County	Hemphill	$70,000	$80,500	$271,164	*No Targeted Census Tracts in County*		
Hood County, HMFA	Hood	$84,237	$96,872	$355,764	*No Targeted Census Tracts in County*		
Houston-The Woodlands-Sugar Land, HMFA	Chambers, Fort Bend*, Galveston, Harris*, Liberty, Montgomery* & Waller	$74,900	$86,135	$304,941	$89,880	$104,860	$372,706
Jackson County	Jackson	$71,400	$82,110	$271,164	*No Targeted Census Tracts in County*		
Kendall County, HMFA	Kendall	$93,400	$107,410	$331,411	*No Targeted Census Tracts in County*		
King County	King	$74,600	$85,790	$271,164	*No Targeted Census Tracts in County*		
Lipscomb County	Lipscomb	$79,300	$91,195	$271,164	*No Targeted Census Tracts in County*		
Loving County	Loving	$78,500	$90,275	$271,164	*No Targeted Census Tracts in County*		
Martin County, HMFA	Martin	$68,800	$79,120	$271,164	*No Targeted Census Tracts in County*		
Medina County, HMFA	Medina	$77,509	$89,136	$331,411	*No Targeted Census Tracts in County*		
Midland, HMFA	Midland*	$90,500	$104,075	$271,164	$108,600	$126,700	$331,423
Odessa MSA	Ector*	$72,600	$83,490	$271,164	$87,120	$101,640	$331,423
Oldham County, HMFA	Oldham	$69,900	$80,385	$271,164	*No Targeted Census Tracts in County*		
Reagan County	Reagan	$71,400	$82,110	$271,164	*No Targeted Census Tracts in County*		
Roberts County	Roberts	$88,000	$101,200	$271,164	*No Targeted Census Tracts in County*		
San Antonio-New Braunfels, MSA	Atascosa*, Bandera, Bexar*, Comal, Guadalupe* & Wilson	$77,789	$89,458	$331,411	$82,560	$96,320	$405,058
Schleicher County	Schleicher	$70,800	$81,420	$271,164	*No Targeted Census Tracts in County*		
Somervell County, HMFA	Somervell	$82,560	$96,320	$355,764	*No Targeted Census Tracts in County*		
Victoria MSA	Goliad, Victoria*	$69,300	$79,695	$271,164	$83,160	$97,020	$331,423
Wise County, HMFA	Wise	$82,560	$96,320	$355,764	*No Targeted Census Tracts in County*		

*** Property must be located in a qualified targeted census tract to use the Targeted Area Limits.**

"AMFI" - Area Median Family Income; "MSA" - Metropolitan Statistical Area; "HMFA" - HUD Metro FMR Area

Down Payment Assistance Available to ALL Income Categories - *Targeted Areas are areas of severe economic distress.

For additional information please visit our website at www.MyFirstTexasHome.com

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

APPLICANT AFFIDAVIT

There are important legal consequences to this Affidavit. Please read carefully before signing.

REVISED: 09/24/ 2015

STATE OF TEXAS **LOAN AMOUNT: $________________**

COUNTY OF _______________________ **LENDER: ______________________________**

The undersigned, as part of my(our) application for a loan under the Department's Taxable Mortgage Program ("TMP") and/or for a mortgage credit certificate ("MCC") to be issued by the Department in connection with a loan from a participating lender of my(our) choice for a single-family residence that will become my(our) permanent, primary residence, being first duly sworn state the following information to be true and correct:

APPLICANT LAST NAME FIRST MIDDLE

CO-APPLICANT LAST NAME FIRST MIDDLE

ADDRESS BEING PURCHASED

TEXAS

CITY COUNTY STATE ZIP CODE

CHECK AS APPLICABLE:

☐ New Construction ☐ Existing Structure ☐ Non-Targeted Area ☐ Targeted Area

☐ TMP Only ☐ MCC Only ☐ TMP/MCC Combination

CHECK IF APPLICANT IS USING THE EXCEPTION TO FIRST-TIME HOMEBUYER REQUIREMENT FOR QUALIFIED VETERANS: ☐ Applicant meets the requirements to qualify as a "veteran" as defined in 38 U.S.C. Section 101. Attached hereto are true and correct copies of my discharge or release papers, which demonstrate that such discharge or release was other than dishonorable. Applicant has not previously obtained a loan financed by single family mortgage revenue bonds or another MCC utilizing the exception to the first-time homebuyer requirement for Residences to Veterans under Section 143(d)(2)(D).

Copies of Federal Tax Transcripts for the past three (3) years for all persons who will be liable on the mortgage loan are submitted herewith or the reasons for exemption from filing are stated as follows: ____
____.

NOTE: Non-purchasing spouse federal tax transcripts and income must be submitted and/or included.

CHECK IF APPLICABLE: ☐ I certify that the mortgage loan closing is occurring between January 1 and February 15, and that I have not yet filed my federal income tax return for the prior year. I further certify that when I file my federal tax return for the prior year, I will neither be entitled to, nor claim, deductions for real estate taxes or interest on indebtedness with respect to my principal residence for that year.

Total Persons in Household _______ **Mid Credit Score ________**

Family Income includes the anticipated gross income of all persons expected to both live in the residence being financed and to be liable on the mortgage loan, and includes but is not limited to Annual Wages, Commissions, Bonuses, Self-Employment (Plus Depreciation), Dividends, Interest, Annuities, Pensions, Child Support, Alimony and Public Assistance:

Applicant Type	**Applicant Name**	**Income Type**	**Income Amount**
		Total Income	

NOTE: Non-purchasing spouse federal tax transcripts and income must be submitted and/or included.

Applicant certifies that the Persons receiving the MCC and/or benefitting from a loan under TMP are not currently delinquent or in default with child support and/or government loans.

The TOTAL ACQUISITION COST $__________________________

The above acquisition cost includes the following itemized amounts:

1. Amount paid for the residence, in cash or in kind, by Applicant to the seller (including any amount which seller is required to pay as a real estate commission or loan discount points): $______________
2. Amount paid for the residence, in cash or in kind, by Applicant or any person related to the Applicant or by any person for the benefit of the Applicant, to seller or any person related to seller or for seller's benefit (other than the amount set forth above): $______________
3. If the residence is incomplete or unfinished the estimated cost of completing it (a written estimate of completion cost is attached): $______________
4. If the residence is located on leased land, the capitalized value (using a discount rate equal to the interest rate borne by the mortgage loan) of the ground rent: $______________
5. Land purchased separately and owned by the Applicant(s) for less than two (2) years prior to the commencement of construction of the residence. $______________

Apart from any normal real estate agents' commissions, no money is being paid, no promissory note is being delivered, nor is anything else of value (including, without limitation, personal property) being exchanged or transferred to the seller of the residence or any other persons by me, or to my knowledge, by any other person in connection with the residence except as itemized with the amount of their purchase price that does not exceed their fair market value.

TOTAL ACQUISITION COST of the property includes all amounts paid previously or in the future, in cash or in kind by the Applicant(s) (or a related party or for the benefit of the Applicant(s)) to the seller (or a related party or for the benefit of the seller); "points" paid to the seller; if the residence is incomplete, the reasonable cost of completing the residence; the capitalized value of ground rent using the discount rate equal to the interest rate borne by the mortgage loan) (leasehold estate); additional amounts for land purchased separately and owned by the Applicant(s) less than two (2) years prior to the commencement of construction of the residence; and any other settlement and/or financing costs to the extent that such costs exceed the usual and reasonable costs that would be paid by the buyer where financing is not assisted through the issuance of an MCC or provided through the issuance of tax-exempt bonds. Acquisition cost does not include usual and reasonable settlement or financing costs; the value of services performed by the mortgagor or members of the mortgagor's family in completing the residence; fix-up expenses such as painting, minor repairs and floor refinishing; or the cost of land which has been owned by the Applicant for at least 2 years prior to the commencement of construction of the residence.

TYPE OF LOAN:

I (We) acknowledge that the interest rate of my (our) mortgage loan is at a higher interest rate than I (we) might otherwise obtain if I (we) did not receive down payment and/or closing cost assistance in conjunction with this mortgage loan. I (we) have determined the interest cost associated with this mortgage loan, in light of the down payment and closing cost assistance, is in my (our) best financial interest.

THE APPLICANT FURTHER CERTIFIES THAT:

(a) The residence is a single-family residence (For this purpose, a single-family residence includes a two-family residence so long as (1) one unit will be occupied by the applicant and (2) the units were first occupied at least 5 years before the loan is closed.) (A residence includes stock held by a tenant-stockholder in a cooperative housing corporation. It does not include property such as an appliance, a piece of furniture, a radio, etc., which, under Texas law, is not a fixture. The term also includes any manufactured home meeting certain size requirements and that is of a kind customarily used at a fixed location.); (b) the residence does not include (1) recreational vehicles, campers and other similar vehicles or (2) land that is greater than the normal and usual lot size within the area or that is in excess of what is needed to maintain the basic livability of the residence; further, I(we) do not expect to derive any income from the land associated with the residence; (c) I(we) intend to use the residence as my (our) principal residence within a reasonable time not to exceed 60 days of loan closing, and I(we) will immediately notify the Department in writing if the residence ceases to be my(our) principal, permanent residence; (d) the residence will not be used (1) as investment property, vacation, or recreational home or (2) in conjunction with business activities (as evidenced by the use of more than fifteen percent of the total floor space in a trade or business) except for the rental of one of the units in a two family residence; further, I(we) do not intend to claim, with respect to the residence, any deductions pursuant to Section 280A of the Code for expenses incurred with respect to the business use of a home; (e) unless the residence is located in a targeted area or the Applicant is a qualified veteran, all Applicants and any co-Applicants, either individually or together, have not had a present ownership interest in a principal residence during the 3-year period prior to the date of the loan closing (a present ownership interest includes, but is not limited to, a fee simple interest; a joint, tenancy, a tenancy in common or a tenancy in the entirety; the interest of a tenant-shareholder in a cooperative, a life estate, a land contract and an interest in trust for the mortgagor; a present ownership interest does not include a remainder interest, a lease with or without an option to purchase, an expectation of inheritance, the interest acquired under a purchase contract and an interest in a residence that is not a principal residence); (f) the acquisition cost listed above does not exceed 90 percent (for residences not located in a targeted area) or 110 percent (for residences located in a targeted area) of the average area purchase price; (g) the loan will not be used to replace my(our) existing mortgage, unless such loan is a construction period loan, bridge loan or similar temporary initial financing of 24 months or less; (h) no portion of the financing of the residence is or will be provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond; (i) the Department has not limited me(us) to seeking financing through any particular lender; (j) no "related person," as defined in Section 144(a)(3)(A) of the Code, has or is expected to have an interest as a creditor in the mortgage loan; (k) there are no persons who have or are expected to have a present ownership interest in the residence following closing on the loan who have not executed this Affidavit or one substantially similar to this Affidavit; and (l) I(we) do not have an application in process nor have I(we) received a commitment for a mortgage loan under any prior program of the Department (or the Texas Housing Agency).

(b) The residence will be occupied as my (our) principal residence within a reasonable time not to exceed 60 days of loan closing, will not be used as investment property, vacation, or recreational home; and I(we) will immediately notify the Servicer in writing if the residence ceases to be my(our) principal, permanent residence; (1) this is not a refinancing of an existing, previously occupied residence for which this mortgage loan is being requested and will not replace my(our) existing mortgage or land contract or a newly constructed residence has not and will not be occupied prior to loan commitment and the proceeds of the mortgage loan will not be used to replace my(our)existing mortgage, unless such loan is a construction, bridge or temporary initial financing of 24 months or less; (2) unless the residence is located in a targeted area or the mortgagor is a qualified veteran, all borrowers, spouses and any co-borrowers have submitted the most recent 3 years federal tax transcripts or reasons exempted by law to do so and individually or together have not had an ownership interest in a principal residence within 3 years of loan closing (*principal residence includes single family detached, condominium, shares in housing cooperative, occupancy in an owned multi-family housing unit, factory made housing permanently affixed to real property; ownership includes full or partial ownership interest, fee simple, joint ownership interest by joint tenancy, tenancy in common or tenancy in the entirety, the interest of a tenant-stockholder in a cooperative, a land contract under which possession and the burdens and benefits of ownership are transferred, even if legal title is until some later date, ownership interest in trust or life estate interest*); (3) there are no persons who have or are expected to have a present ownership interest in the residence following closing on the loan who have not executed this Affidavit or one substantially similar to this Affidavit; and (4) I(we) must meet all federally and locally mandated requirements to qualify for the mortgage loan.

If this Affidavit is made in connection with an MCC Only or a TMP/MCC Combination, **I(we) understand this Affidavit will be relied upon for the purposes of determining my(our) eligibility and understand that any fraudulent statement will result in (i) the immediate revocation of my(our) MCC and (ii) a $10,000 penalty under Section 6709 of the Code. I(we) further understand that any material misstatement in this Affidavit because of my(our) negligence will result in (i) the immediate revocation of my(our) MCC and (ii) a civil penalty of $1,000. Under penalties of perjury, I(we) declare that I(we) have examined the statements and certifications contained herein, and, to the best of my(our) knowledge and belief, they are true, correct and complete. I(we) understand that perjury is a felony punishable by fine or imprisonment or both.**

If this Affidavit is made in connection with a TMP Only, **this Affidavit will be relied upon for the purposes of determining my(our) eligibility and if any information contained in this Affidavit contains a material misstatement which is due to fraud or intentionally made, I(we) are subject to criminal penalty.**

Further, I(We) state not

______________________________	______________________________
APPLICANT	**CO-APPLICANT OR NON-PURCHASING SPOUSE**
______________________________	______________________________
Printed Name of Applicant	Printed Name of Co-Applicant or Non-Purchasing Spouse

Sworn to and subscribed before me on the ________ day of ______________________, 20_____.

	______________________________
PERSONALIZED SEAL	Notary Public Signature

[Signature Page to Applicant Affidavit]

AFFIDAVIT OF SELLER
(Waived for REO Property)
REVISED: 09/24/2015

I/We the undersigned, as an essential participant in an application for which a Mortgage Loan or a Mortgage Credit Certificate is being sought under one of the Texas Department of Housing and Community Affairs' homeownership programs, being first duly sworn hereby certify the following:

(a) I(we) are the Seller (or Builder) of the single-family residence (the "Residence") located at:

____
ADDRESS BEING SOLD

		TEXAS	
CITY	COUNTY	STATE	ZIP CODE

(b) I(We) certify that the total amount to be paid by the purchaser (or a related party to or for the benefit of the purchaser) to me(us), or to anyone related to me(us), or for my(our) benefit (such as payment to a real estate agent) in connection with the purchase of the Residence is $ _______________. Such amount includes the following itemized amounts: (i) amount paid for the Residence, in cash or in kind, by Applicant or any person related to the Applicant for the benefit of the Applicant to the Seller or any person related to the Seller for Seller's benefit in the amount of $_____________, (ii) if the Residence is incomplete and the Seller will pay any amounts towards completion, the amount of $_____________ and (iii) if the Residence is subject to a ground rent payable to the Seller, the capitalized value of the ground rent of $_____________.

Such amount does not include (1) usual and reasonable settlement and financing costs that would be paid by the purchaser where financing is not provided through the issuance of an MCC or qualified mortgage bond issue, (2) the value of services performed by purchaser or members of the purchaser's family, (3) the cost of any land owned by the purchaser at least 2 years prior to commencement of construction on the residence, or (4) any amount paid for personal property that is not a fixture under Texas law.

(c) I(We) have not entered into any other contract or agreement with the Applicant(s), either expressed or implied, to perform additional construction on the Residence or to transfer any additional property at additional cost other than personal property contained in the Residence which are listed by item and amount and attached hereto and incorporated into this Affidavit.

If this Affidavit is made in connection with an MCC Only or a TMP/MCC Combination, **I/we understand this Affidavit will be relied upon for the purposes of determining the Applicant's eligibility and understand that any fraudulent statement will result in (i) the immediate revocation of the Applicant's MCC and (ii) a $10,000 penalty under Section 6709 of the Code. Under penalties of perjury, I(we) declare that I(we) have examined the statements and certifications contained herein, and, to the best of my(our) knowledge and belief, they are true, correct and complete. I(we) understand that perjury is a felony punishable by fine or imprisonment or both.**

If this Affidavit is made in connection with a TMP Only, **I(We) acknowledge and understand that this Affidavit will be relied upon for purposes of determining the Mortgagor(s) eligibility and if any information contained in this Affidavit contains a material misstatement which is due to fraud or intentionally made, I(we) are subject to criminal penalty.**

________________	____
Dated	Signature of Seller or Signature or Builder Representative

____
Printed Name of Seller or Builder Representative

______________ Dated

____
Signature of Seller - If Seller Is Not an Individual, Type/print Name and Title and Name of Selling Entity. If Signatory Is Not the Owner, Type/print Name and Title. Attach Copy of Power of Attorney.

____
Printed Name of Seller

Sworn to and subscribed before me on the ________ day of ______________________, ______.

PERSONALIZED SEAL

____
Notary Public Signature

CERTIFICATE OF LENDER

REVISED: 09/04/2015

____, the Lender, certifies that as of the date of closing of the mortgage loan it has (1) reviewed the foregoing affidavits of the Applicant(s) and the Seller and found the financial details contained therein (based on Lender's review of documents provided by, and the representations of the Applicant and Seller) to be true and correct; (2) has charged the Applicant(s) lender fees that are customary and reasonable and no more than what is charged by the Lender to other non-Program buyers; and (3) after completion of all underwriting, verifications and investigations, has approved the mortgage loan. **The Lender further certifies if applicable:**

CHECK IF APPLICABLE TO MCC ONLY OR TMP/MCC:

☐ **The financing attached to the Applicant's MCC does not use any of the prohibited financing, such as mortgages funded with a qualified mortgage bond or a qualified veterans' mortgage bond.**

______________________________	______________________________
Dated	Signature of Authorized Officer
______________________________	______________________________
Telephone Number of Authorized Officer	Print Name & Title of Authorized Officer

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
Taxable Mortgage Program (TMP) / Texas Mortgage Credit Certificate (MCC)

COMPLIANCE FILE CHECKLIST
REVISED: 02/23/2017

SERVICER or MCC LOAN NUMBER:

MORTGAGOR NAME:

LENDER NAME:

LENDER LOAN NUMBER:

PLEASE SUBMIT ONLY COMPLETE FILES IN AN ACCO-BOUND FILE FOLDER IN THE EXACT ORDER SHOWN BELOW. INCOMPLETE NON ACCO-BOUND FILES WILL BE RETURNED AT LENDER EXPENSE.

_______ This CHECKLIST
Compliance/Admin fee - Corporate checks should be made payable to eHousingPlus. Note borrower(s) name and property address on the check. Wire payments are accepted by eHousingPlus.
***You MUST enter the Check # or ACH confirmation:___

TMP-79 stand-alone fees	**TMP-79 with Texas MCC fees**	Texas MCC Stand alone fees
______ $225 Compliance/Admin Fee	______ $225 Compliance/Admin Fee ______ $500 MCC Issuance Fee	______ $200 Compliance/Admin Fee ______ $500 MCC Issuance Fee

ORIGINAL OR CERTIFIED TRUE ONLY OF THE FOLLOWING:
_______ ORIGINAL SIGNED Notices to Buyers
_______ ORIGINAL SIGNED Affidavit - Mortgagor & Seller/Builder Affidavit & Lender Certificate
_______ ORIGINAL SIGNED Disclosure of 2nd Mortgage Loan Terms (TMP79/Combo Loans Only)
_______ ORIGINAL SIGNED or Certified Copy- Affidavit of Co-Signor/Guarantor (if applicable)
COPIES OF THE FOLLOWING:
_______ COPIES OF SIGNED Income Tax Returns OR Transcripts OR any combo of returns/transcripts for the past 3 years (transcripts do NOT require a signature). Required for ALL borrower(s) and spouse, even if not on the loan. Not required for loans in Targeted Areas or Veterans Exception.
_______ COPY of Notice of Potential Recapture Tax on Sale of Home - only for MCC loans (no signature required)
_______ COPY of Homebuyer Education Certificate
_______ COPY of Real Estate Purchase Contract (not required for stand-alone MCC loans)
_______ COPY of FINAL SIGNED 1003
_______ COPY of FINAL SIGNED CLOSING DISCLOSURE (TRID form)
_______ COPY of Warranty Deed
_______ COPY of discharge papers (DD214) only if Veteran is qualifying under the Veterans Exception

THE COMPLETE ACCO-BOUND COMPLIANCE FILE FOLDER IS SUBMITTED TO:
eHousingPlus
3050 Universal Blvd., Suite 190
Weston, FL 33331

PLEASE NOTE: TMP MORTGAGE FILE, INCLUDING CREDIT PACKAGE AND DPA DOCS AND ADDITIONAL PAPERWORK RELATED TO THE DPA ASSISTANCE ARE SENT TO IHFA

Rev. 02/23/17

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

AFFIDAVIT OF COSIGNOR/GUARANTOR

There are important legal consequences to this Affidavit. Read carefully before signing.

REVISED: 05/12/2014

THE STATE OF TEXAS §
COUNTY OF ____________________ §

I/we the undersigned, as an obligor on a note (the "Note") made in connection with a mortgage loan (the "Mortgage Loan") being submitted by the Applicant(s) under the Department's Taxable Mortgage Purchase Program ("TMP") and/or Mortgage Credit Certificate Program ("MCC Program"):

____
APPLICANT LAST NAME FIRST MIDDLE

____
CO-APPLICANT LAST NAME FIRST MIDDLE

in the amount of $____

from ______________________________________ (the "Mortgage Lender") under TMP and/or the MCC Program, hereby certify that I/we are executing the note solely for purposes of providing additional security for the Mortgage Loan.

I/We further certify that I/we have no other financial or ownership interest in the property subject to the Mortgage Loan and that I/we have no intention to and will not occupy the property subject to the Mortgage Loan as a permanent/primary residence.

The statements set forth herein are made under penalty of perjury. I/we understand that perjury is a felony punishable by fine, imprisonment or both.

______________________________ ______________________________
Dated Signature of Cosignor/Guarantor

____
Printed Name of Cosignor/Guarantor

______________________________ ______________________________
Dated Signature of Cosignor/Guarantor

____
Printed Name of Cosignor/Guarantor

Sworn to and subscribed before me on this ______ day of ________________, ____.

______________________________ ______________________________
PERSONALIZED SEAL Notary Public Signature

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

NOTICE OF POTENTIAL RECAPTURE TAX ON SALE OF HOME
(To be delivered to Applicant at the Time of Settlement of Mortgage Loan)
REVISED: 07/06/2015

eHousingPlus
3050 Universal Blvd. Ste 190
Weston, FL 33331
(954) 217-0817
www.eHousingPlus.com

IMPORTANT CLOSING DOCUMENTS – DO NOT DISCARD –
NECESSARY IF YOU SHOULD DECIDE TO SELL YOUR PROPERTY - KEEP IN SAFE PLACE
NOTICE TO BORROWER(S) OF MAXIMUM RECAPTURE TAX AND COMPUTATION OF
RECAPTURE TAX ON DISPOSITION OF THIS PROPERTY

Loan #

Dear Homeowner:

As previously disclosed to you, your mortgage may be subject to "recapture" if you sell or otherwise dispose of your house within nine years after purchase. The recapture takes the form of an increase to your federal income tax owed for the year of disposition, but only applies if you dispose of your house at a gain and your income is above a certain amount.

In accordance with the requirements of Section 143(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), this Notice serves to inform you that the "federally-subsidized amount" with respect to your mortgage loan is $_______________, which is 6.25% of the projected highest principal amount of your mortgage loan. Further, the adjusted qualifying income for each category of family size for each year of the 9-year period beginning on the date of closing on your mortgage loan is set forth below.

If you dispose of your house within months*:	Holding Period Percentage	Maximum Adjusted Qualifying Income (MAQI), for	
		1-2 person HH	3+ person HH
1 – 12	20%		
13 – 24	40%		
25 – 36	60%		
37 – 48	80%		
49 – 60	100%		
61 – 72	80%		
73 – 84	60%		
85 – 96	40%		
97 – 108	20%		
109 or more	No Recapture Tax		

*from closing date of your loan

1. GENERAL - When you sell your house, you may have to pay the Recapture Tax as calculated herein.
   Recapture Tax may also apply if you dispose of the property in some other way, such as giving the property to a relative. Whenever "sale" is used in this notice, it also applies to other ways of disposing your house.

2. EXCEPTIONS - In the following scenarios, no Recapture tax would be due:
   a) You dispose of your house more than nine (9) years after you close your mortgage loan;
   b) Your house is disposed of as a result of your death;
   c) You transfer your house, either to your spouse or former spouse due to divorce, and you have no gain or loss reflected in your income (under Section 1041 of the Internal Revenue Code);
   d) You dispose of your house at a loss.

3. MAXIMUM RECAPTURE TAX - The maximum Recapture Tax that you may be required to pay as an addition to your Federal Income Tax is equal to the "federally-subsidized amount" of $__________ set forth above.

4. ACTUAL RECAPTURE TAX - The actual Recapture Tax, if any, can only be determined when you sell your house, and will be the LESSER of:
   a) 50% of the gain on the sale, regardless of whether it is included in your income for Federal Income Tax purposes, or
   b) Your Recapture Tax amount, which is calculated by multiplying the following three (3) amounts:
      * Maximum Recapture Tax Amount (Explained in Paragraph 3),
      * Holding Period Percentage (Detailed in Page 1 Table - Column 1), and
      * Income Percentage (Described in Item 5 below)

5. INCOME PERCENTAGE - Calculate as follows...
   a) Subtract the Maximum Adjusted Qualifying Income (MAQI) (see table on page 1) for the taxable year in which you sell your house, from your Modified Adjusted Income (MAI) for the same taxable year. MAI is the Adjusted Gross Income shown on your IRS tax return with the following two adjustments:
      1. PLUS any interest received or accrued in the taxable year from tax-exempt bonds that may have been excluded from your gross income, under Section 103 of the IRS Code; and
      2. MINUS the amount of gain on the sale or disposition of the property that was included in your gross income for that taxable year.

   MAI - MAQI = DIFFERENCE

   b)

DIFFERENCE AMOUNT	INCOME PERCENTAGE
0 or Less	-0-
$5,000 or More	100%
More than 0 but less than $5,000	Difference/$5,000 (Example: $1,000/$5,000 = 20%)

----

6. LIMITATIONS AND SPECIAL RULES ON RECAPTURE TAX - Additional provisions and rules apply in specific circumstances, such as the destruction of the property, disposition by gift, sale upon early prepayment and others.

The determination of whether you are subject to any Recapture Tax can only be made at the time of sale of your property. You may wish to consult a tax advisor and/or Internal Revenue Service office for more details in your particular case. General Information on Recapture Tax can be found in Section 143(m) of the Code, or by logging on to www.irs.gov. You may also request Form 8828 and the respective instructions for said form for a better understanding on how Recapture Tax can impact you.

Sincerely,
eHousingPlus

FOR YOUR REFERENCE:

Your Loan Servicer:
Originating Lender:
Loan #
Loan Amount:
Term in months: Closing Date:
Issuer:
Program:
Property Address: County:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

REFINANCING OF MCC LOAN APPLICATION
(REQUEST FOR NEW MCC)

Borrower(s):______________________________

Borrower Telephone Number:________________ Email Address:________________

Residence Address:______________________________

TDHCA MCC Number:______________________________

Balance Owing an Original Loan:$______________________________

New Loan Amount: $______________________________

Original Loan Amount: $______________________________

Refinanced Loan Maturity:______________________________

Closing Date of Refinancing:______________________________

Lender:______________________________

Lender Loan Reference:______________________________

Attachments: Original Mortgage Credit Certificate (keep a copy for your files).

Copy of closing statement

MCC Reissuance Fee payable to TDHCA – $50.00

Lender Certificate for Refinanced Mortgage Loan (Tab 6B) –
completed by lender refinancing the mortgage loan

The undersigned borrower (whether one or more), being the owner(s) of the above residence of (the "Residence"), and the holder of a Mortgage Credit Certificate (the "MCC") issued in connection with the Texas Department of Housing and Community Affairs Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury and the civil penalties outlined herein, that each of the following statements are, correct and complete in all respects:

1. Property. The refinanced loan pertains to the same property to which the original MCC related, which is the Residence described above.

2. Replacement of Entire MCC. The new MCC replaces the original MCC in its entirety. No portion of the original MCC is being retained with respect to any portion of the outstanding balance of the original loan amount specified on the original MCC.

3. Loan Amount. The refinanced loan amount does not exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.

4. MCC Credit Rate. The new MCC will be at the same credit rate as the original MCC.

5. No Increase in Tax Credit Amounts. The undersigned acknowledges that in the event the maturity of the refinanced loan is a date later than the maturity of the original loan, the new MCC will expire as of the original maturity date so that there shall be no increase in the tax credit amounts under the new MCC for any tax year over the amounts which would have been available under the original MCC.

6. Date of Refinancing. The date of the refinancing stated above is the true and correct date the refinancing documents were executed.

7. Reaffirmation of the Original Obligations. The undersigned further reaffirms all of the representations, obligations and agreements covered under the documents signed in connection with obtaining the original MCC and acknowledges that all such obligations and agreements shall continue in full force and effect in connection with the new MCC.

8. Revocation of Mortgage Credit Certificate. The undersigned understands that is any of the statements set forth herein are not true, correct and complete in all respects, or that if federal law or regulations disqualify further participation in the MCC Program, the MCC Program, the MCC may be immediately revoked.

9. Penalty. The statements set forth herein are made under penalty of perjury and the following civil penalties. Any material misstatement in any affidavit or certification made in connection with application for or issuance of an MCC due to my negligence shall result in a civil penalty fee payable to the Department of $1,000.00, and any such material misstatement due to my fraud shall result in a civil penalty fee payable to the Department of $10,000.00. I understand that perjury is a felony offense punishable by fine or imprisonment, or both.

Signature(s) of Borrower:

____

____

SUBSCRIBED and SWORN to before me this___ day of ______, 20__.

____
Notary Public, State of Texas

ATTACH THE ORIGINAL MCC CERTIFICATE, LENDER CERTIFICATE FOR REFINANCED MORTGAGE LOAN (TAB 6B), AND A COPY OF YOUR CLOSING STATEMENT TO THIS FORM AND MAIL TO:

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Dina Gonzalez

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

LENDER CERTIFICATE FOR REFINANCED MORTGAGE LOAN
(NON-PARTICIPATING LENDER)

As the mortgage lender originating the refinanced mortgage loan referenced in the "Refinancing of MCC Loan Application," I acknowledge that I am required to file an IRS Form 8329 with the Internal Revenue Service for the reissued Mortgage Credit Certificate (MCC) associated with such refinanced mortgage loan and hereby agree to file Form 8329 with the Internal Revenue Service to update IRS information concerning the reissuance of the related MCC. The Department will forward the 8329 following reissuance of the MCC.

For our company, Form 8329 should be forwarded to:

Company Name ____

Contact Person ____

Email ___________________________ **Phone** ___________________________

____
(Authorized Officer Signature)

Printed Name of Authorized Officer ______________________________

Email ___________________________ **Phone** ___________________________

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

SUPPLEMENTAL INSTRUCTIONS FOR COMPLETING IRS FORM W-4

The MCC tax credit, is very similar to the credit which may be taken for child or dependent care expenses which ranges from 20% to 30% depending upon income. Although a separate line on the W-4 form is not provided for the MCC credit, you may use line F for this purpose.

If you anticipate at least $1,500.00 of MCC mortgage interest during the year, you may enter "1" on line F. If you anticipate paying more than $3,000.00 in mortgage interest during the year, you may enter "2: on line F. If you additionally have child or dependent care expenses that would entitle you to a tax credit, the number should be adjusted accordingly.

The following example shows how you might calculate the amount of mortgage interest you will pay during the year:

Mortgage balance at beginning of year:	$146,433.00
Interest rate on mortgage loan:	4.50%
Estimated annual interest paid:	$6,589.00

The actual amount of interest paid will be somewhat smaller because with each monthly payment your mortgage balance normally decreased during the year.

If you have more than one wage earner in your family (e.g., both spouses are employed), be careful not to claim too many allowances by putting the maximum number on both workers' W-4 forms. Dual income families normally need to reduce the number of allowances taken to avoid having to pay penalties when their annual tax return is filed.

If you wish to calculate the additional amount of mortgage interest you might be able to take as an itemized deduction, follow the instructions on the back of the W-4 Form. On line 1, be sure to subtract an amount equal to the credit amount of your certificate from the total amount of mortgage interest which you have calculated for deduction purposes. (Federal law requires subtracting an amount equal to the MCC tax credit claimed from the amount of the home mortgage interest to be deducted.)

This IRS Form W-4 is to be filed with the payroll clerk where you work. You do not send the W-4 form to the Internal Revenue Service or to TDHCA. If you have any questions concerning completion of the form, your payroll clerk should be able to assist you. For additional information regarding how to calculate withholdings, please visit the following link: https://www.irs.gov/individuals/irs-withholding-calculator.

Failure to revise your IRS Form W-4 to reflect the MCC tax credit will have no effect on your ability to claim the deduction with your annual tax return. When you file your annual IRS form 1040, you will need to claim the MCC tax credit in the space provided. You will also need to complete IRS 8396 and file it with your tax return.

These instructions are for your information only. Texas Department of Housing and Community Affairs and its officers and agents do not intend to render any income tax advice in connection with this MCC program. All MCC holders or applicants should consult with the Internal Revenue Service or their personal income tax advisers concerning the appropriate level of withholding allowance given their personal tax situations.

Form W-4 (2018)

Future developments. For the latest information about any future developments related to Form W-4, such as legislation enacted after it was published, go to *www.irs.gov/FormW4.*

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. You may claim exemption from withholding for 2018 if **both** of the following apply.

• For 2017 you had a right to a refund of **all** federal income tax withheld because you had **no** tax liability, **and**

• For 2018 you expect a refund of **all** federal income tax withheld because you expect to have **no** tax liability.

If you're exempt, complete **only** lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2018 expires February 15, 2019. See Pub. 505, Tax Withholding and Estimated Tax, to learn more about whether you qualify for exemption from withholding.

General Instructions

If you aren't exempt, follow the rest of these instructions to determine the number of withholding allowances you should claim for withholding for 2018 and any additional amount of tax to have withheld. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

You can also use the calculator at ***www.irs.gov/W4App*** to determine your tax withholding more accurately. Consider using this calculator if you have a more complicated tax situation, such as if you have a working spouse, more than one job, or a large amount of nonwage income outside of your job. After your Form W-4 takes effect, you can also use this calculator to see how the amount of tax you're having withheld compares to your projected total tax for 2018. If you use the calculator, you don't need to complete any of the worksheets for Form W-4.

Note that if you have too much tax withheld, you will receive a refund when you file your tax return. If you have too little tax withheld, you will owe tax when you file your tax return, and you might owe a penalty.

Filers with multiple jobs or working spouses. If you have more than one job at a time, or if you're married and your spouse is also working, read all of the instructions including the instructions for the Two-Earners/Multiple Jobs Worksheet before beginning.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you might owe additional tax. Or, you can use the Deductions, Adjustments, and Other Income Worksheet on page 3 or the calculator at *www.irs.gov/W4App* to make sure you have enough tax withheld from your paycheck. If you have pension or annuity income, see Pub. 505 or use the calculator at *www.irs.gov/W4App* to find out if you should adjust your withholding on Form W-4 or W-4P.

Nonresident alien. If you're a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Specific Instructions

Personal Allowances Worksheet

Complete this worksheet on page 3 first to determine the number of withholding allowances to claim.

Line C. *Head of household please note:* Generally, you can claim head of household filing status on your tax return only if you're unmarried and pay more than 50% of the costs of keeping up a home for yourself and a qualifying individual. See Pub. 501 for more information about filing status.

Line E. Child tax credit. When you file your tax return, you might be eligible to claim a credit for each of your qualifying children. To qualify, the child must be under age 17 as of December 31 and must be your dependent who lives with you for more than half the year. To learn more about this credit, see Pub. 972, Child Tax Credit. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line E of the worksheet. On the worksheet you will be asked about your total income. For this purpose, total income includes all of your wages and other income, including income earned by a spouse, during the year.

Line F. Credit for other dependents. When you file your tax return, you might be eligible to claim a credit for each of your dependents that don't qualify for the child tax credit, such as any dependent children age 17 and older. To learn more about this credit, see Pub. 505. To reduce the tax withheld from your pay by taking this credit into account, follow the instructions on line F of the worksheet. On the worksheet, you will be asked about your total income. For this purpose, total income includes all of

Separate here and give Form W-4 to your employer. Keep the worksheet(s) for your records.

Form **W-4**
Department of the Treasury
Internal Revenue Service

Employee's Withholding Allowance Certificate

▶ Whether you're entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.

OMB No. 1545-0074

2018

1 Your first name and middle initial	Last name	2 **Your social security number**
Home address (number and street or rural route)	3 ☐ Single ☐ Married ☐ Married, but withhold at higher Single rate. **Note:** If married filing separately, check "Married, but withhold at higher Single rate."	
City or town, state, and ZIP code	4 **If your last name differs from that shown on your social security card, check here. You must call 800-772-1213 for a replacement card.** ▶ ☐	

5 Total number of allowances you're claiming (from the applicable worksheet on the following pages) . . . **5**

6 Additional amount, if any, you want withheld from each paycheck . . . . **6** $

7 I claim exemption from withholding for 2018, and I certify that I meet **both** of the following conditions for exemption.

• Last year I had a right to a refund of **all** federal income tax withheld because I had **no** tax liability, **and**

• This year I expect a refund of **all** federal income tax withheld because I expect to have **no** tax liability.

If you meet both conditions, write "Exempt" here . . . . ▶ **7**

Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature
(This form is not valid unless you sign it.) ▶ **Date ▶**

8 Employer's name and address (**Employer:** Complete boxes 8 and 10 if sending to IRS and complete boxes 8, 9, and 10 if sending to State Directory of New Hires.)	9 First date of employment	10 Employer identification number (EIN)

For Privacy Act and Paperwork Reduction Act Notice, see page 4. Cat. No. 10220Q Form **W-4** (2018)

your wages and other income, including income earned by a spouse, during the year.

Line G. Other credits. You might be able to reduce the tax withheld from your paycheck if you expect to claim other tax credits, such as the earned income tax credit and tax credits for education and child care expenses. If you do so, your paycheck will be larger but the amount of any refund that you receive when you file your tax return will be smaller. Follow the instructions for Worksheet 1-6 in Pub. 505 if you want to reduce your withholding to take these credits into account.

Deductions, Adjustments, and Additional Income Worksheet

Complete this worksheet to determine if you're able to reduce the tax withheld from your paycheck to account for your itemized deductions and other adjustments to income such as IRA contributions. If you do so, your refund at the end of the year will be smaller, but your paycheck will be larger. You're not required to complete this worksheet or reduce your withholding if you don't wish to do so.

You can also use this worksheet to figure out how much to increase the tax withheld from your paycheck if you have a large amount of nonwage income, such as interest or dividends.

Another option is to take these items into account and make your withholding more accurate by using the calculator at *www.irs.gov/W4App*. If you use the calculator, you don't need to complete any of the worksheets for Form W-4.

Two-Earners/Multiple Jobs Worksheet

Complete this worksheet if you have more than one job at a time or are married filing jointly and have a working spouse. If you don't complete this worksheet, you might have too little tax withheld. If so, you will owe tax when you file your tax return and might be subject to a penalty.

Figure the total number of allowances you're entitled to claim and any additional amount of tax to withhold on all jobs using worksheets from only one Form W-4. Claim all allowances on the W-4 that you or your spouse file for the highest paying job in your family and claim zero allowances on Forms W-4 filed for all other jobs. For example, if you earn $60,000 per year and your spouse earns $20,000, you should complete the worksheets to determine what to enter on lines 5 and 6 of your Form W-4, and your spouse should enter zero ("-0-") on lines 5 and 6 of his or her Form W-4. See Pub. 505 for details.

Another option is to use the calculator at *www.irs.gov/W4App* to make your withholding more accurate.

Tip: If you have a working spouse and your incomes are similar, you can check the "Married, but withhold at higher Single rate" box instead of using this worksheet. If you choose this option, then each spouse should fill out the Personal Allowances Worksheet and check the "Married, but withhold at higher Single rate" box on Form W-4, but only one spouse should claim any allowances for credits or fill out the Deductions, Adjustments, and Additional Income Worksheet.

Instructions for Employer

Employees, do not complete box 8, 9, or 10. Your employer will complete these boxes if necessary.

New hire reporting. Employers are required by law to report new employees to a designated State Directory of New Hires. Employers may use Form W-4, boxes 8, 9, and 10 to comply with the new hire reporting requirement for a newly hired employee. A newly hired employee is an employee who hasn't previously been employed by the employer, or who was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days. Employers should contact the appropriate State Directory of New Hires to find out how to submit a copy of the completed Form W-4. For information and links to each designated State Directory of New Hires (including for U.S. territories), go to ***www.acf.hhs.gov/programs/css/employers***.

If an employer is sending a copy of Form W-4 to a designated State Directory of New Hires to comply with the new hire reporting requirement for a newly hired employee, complete boxes 8, 9, and 10 as follows.

Box 8. Enter the employer's name and address. If the employer is sending a copy of this form to a State Directory of New Hires, enter the address where child support agencies should send income withholding orders.

Box 9. If the employer is sending a copy of this form to a State Directory of New Hires, enter the employee's first date of employment, which is the date services for payment were first performed by the employee. If the employer rehired the employee after the employee had been separated from the employer's service for at least 60 days, enter the rehire date.

Box 10. Enter the employer's employer identification number (EIN).

Personal Allowances Worksheet (Keep for your records.)

A	Enter "1" for yourself	A	
B	Enter "1" if you will file as married filing jointly	B	
C	Enter "1" if you will file as head of household	C	
D	Enter "1" if: • You're single, or married filing separately, and have only one job; or • You're married filing jointly, have only one job, and your spouse doesn't work; or • Your wages from a second job or your spouse's wages (or the total of both) are $1,500 or less.	D	
E	**Child tax credit.** See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than $69,801 ($101,401 if married filing jointly), enter "4" for each eligible child. • If your total income will be from $69,801 to $175,550 ($101,401 to $339,000 if married filing jointly), enter "2" for each eligible child. • If your total income will be from $175,551 to $200,000 ($339,001 to $400,000 if married filing jointly), enter "1" for each eligible child. • If your total income will be higher than $200,000 ($400,000 if married filing jointly), enter "-0-"	E	
F	**Credit for other dependents.** • If your total income will be less than $69,801 ($101,401 if married filing jointly), enter "1" for each eligible dependent. • If your total income will be from $69,801 to $175,550 ($101,401 to $339,000 if married filing jointly), enter "1" for every two dependents (for example, "-0-" for one dependent, "1" if you have two or three dependents, and "2" if you have four dependents). • If your total income will be higher than $175,550 ($339,000 if married filing jointly), enter "-0-"	F	
G	**Other credits.** If you have other credits, see Worksheet 1-6 of Pub. 505 and enter the amount from that worksheet here	G	
H	Add lines A through G and enter the total here ►	H	

For accuracy, **complete all worksheets that apply.**

- If you plan to **itemize** or **claim adjustments to income** and want to reduce your withholding, or if you have a large amount of nonwage income and want to increase your withholding, see the **Deductions, Adjustments, and Additional Income Worksheet** below.
- If you **have more than one job at a time** or are **married filing jointly and you and your spouse both work**, and the combined earnings from all jobs exceed $52,000 ($24,000 if married filing jointly), see the **Two-Earners/Multiple Jobs Worksheet** on page 4 to avoid having too little tax withheld.
- If **neither** of the above situations applies, **stop here** and enter the number from line H on line 5 of Form W-4 above.

Deductions, Adjustments, and Additional Income Worksheet

Note: Use this worksheet *only* if you plan to itemize deductions, claim certain adjustments to income, or have a large amount of nonwage income.

1	Enter an estimate of your 2018 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes (up to $10,000), and medical expenses in excess of 7.5% of your income. See Pub. 505 for details	1	$
2	Enter: $24,000 if you're married filing jointly or qualifying widow(er); $18,000 if you're head of household; $12,000 if you're single or married filing separately	2	$
3	**Subtract** line 2 from line 1. If zero or less, enter "-0-"	3	$
4	Enter an estimate of your 2018 adjustments to income and any additional standard deduction for age or blindness (see Pub. 505 for information about these items)	4	$
5	**Add** lines 3 and 4 and enter the total	5	$
6	Enter an estimate of your 2018 nonwage income (such as dividends or interest)	6	$
7	**Subtract** line 6 from line 5. If zero, enter "-0-". If less than zero, enter the amount in parentheses	7	$
8	**Divide** the amount on line 7 by $4,150 and enter the result here. If a negative amount, enter in parentheses. Drop any fraction	8	
9	Enter the number from the **Personal Allowances Worksheet,** line H above	9	
10	**Add** lines 8 and 9 and enter the total here. If zero or less, enter "-0-". If you plan to use the **Two-Earners/Multiple Jobs Worksheet,** also enter this total on line 1, page 4. Otherwise, **stop here** and enter this total on Form W-4, line 5, page 1	10	

Two-Earners/Multiple Jobs Worksheet

Note: Use this worksheet *only* if the instructions under line H from the **Personal Allowances Worksheet** direct you here.

1 Enter the number from the **Personal Allowances Worksheet,** line H, page 3 (or, if you used the **Deductions, Adjustments, and Additional Income Worksheet** on page 3, the number from line 10 of that worksheet) . . . 1 ______

2 Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here. **However,** if you're married filing jointly and wages from the highest paying job are $75,000 or less and the combined wages for you and your spouse are $107,000 or less, don't enter more than "3" . . . 2 ______

3 If line 1 is **more than or equal to** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. **Do not** use the rest of this worksheet . . . 3 ______

Note: If line 1 is **less than** line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4 through 9 below to figure the additional withholding amount necessary to avoid a year-end tax bill.

4 Enter the number from line 2 of this worksheet . . . 4 ______

5 Enter the number from line 1 of this worksheet . . . 5 ______

6 **Subtract** line 5 from line 4 . . . 6 ______

7 Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here . . . 7 $ ______

8 **Multiply** line 7 by line 6 and enter the result here. This is the additional annual withholding needed . . . 8 $ ______

9 **Divide** line 8 by the number of pay periods remaining in 2018. For example, divide by 18 if you're paid every 2 weeks and you complete this form on a date in late April when there are 18 pay periods remaining in 2018. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck . . . 9 $ ______

Table 1

Married Filing Jointly		All Others	
If wages from **LOWEST** paying job are—	Enter on line 2 above	If wages from **LOWEST** paying job are—	Enter on line 2 above
$0 - $5,000	0	$0 - $7,000	0
5,001 - 9,500	1	7,001 - 12,500	1
9,501 - 19,000	2	12,501 - 24,500	2
19,001 - 26,500	3	24,501 - 31,500	3
26,501 - 37,000	4	31,501 - 39,000	4
37,001 - 43,500	5	39,001 - 55,000	5
43,501 - 55,000	6	55,001 - 70,000	6
55,001 - 60,000	7	70,001 - 85,000	7
60,001 - 70,000	8	85,001 - 90,000	8
70,001 - 75,000	9	90,001 - 100,000	9
75,001 - 85,000	10	100,001 - 105,000	10
85,001 - 95,000	11	105,001 - 115,000	11
95,001 - 130,000	12	115,001 - 120,000	12
130,001 - 150,000	13	120,001 - 130,000	13
150,001 - 160,000	14	130,001 - 145,000	14
160,001 - 170,000	15	145,001 - 155,000	15
170,001 - 180,000	16	155,001 - 185,000	16
180,001 - 190,000	17	185,001 and over	17
190,001 - 200,000	18		
200,001 and over	19		

Table 2

Married Filing Jointly		All Others	
If wages from **HIGHEST** paying job are—	Enter on line 7 above	If wages from **HIGHEST** paying job are—	Enter on line 7 above
$0 - $24,375	$420	$0 - $7,000	$420
24,376 - 82,725	500	7,001 - 36,175	500
82,726 - 170,325	910	36,176 - 79,975	910
170,326 - 320,325	1,000	79,976 - 154,975	1,000
320,326 - 405,325	1,330	154,976 - 197,475	1,330
405,326 - 605,325	1,450	197,476 - 497,475	1,450
605,326 and over	1,540	497,476 and over	1,540

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3402(f)(2) and 6109 and their regulations require you to provide this information; your employer uses it to determine your federal income tax withholding. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation; to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws; and to the Department of Health and Human Services for use in the National Directory of New Hires. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You aren't required to provide the information requested on a form that's subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE PROGRAM

NOTICE OF CANCELLATION

Lender: ____________________________

Applicant: ______________________________ TDH#:________________

Subject Property Address: ____
____

TDHCA has received an MCC Compliance file on ______________________

Number of e-mails to Lender regarding outstanding deficiency _____________

Date Notice sent to Lender ________________________

MCC Underwriter Certification? ☐ Yes ☐ No

In compliance with the Mortgage Credit Certificate Program, after several requests to address the outstanding deficiencies for the above MCC loan, this notice of cancellation is effective as of the date below. If these deficiencies are not remedied by the date below, TDHCA will not reinstate this loan and the issuance fee will be refunded back to your company.

Reason(s) for Cancellation:

_____ Borrower is married – which means the NPS should have signed the Notice to Buyer; Applicant Affidavit

_____ Affidavit of Seller – Not included with file

_____ 3 years tax transcripts and/or signed tax returns were not included with the file 1003 reflects borrower married. (Hence NPS signature on Applicant Affidavit and Notice to Buyers)

_____ 1003 and HUD-1 / Closing Disclosure were not included

_____ Homebuyer Education Certificate of Completion

_____ NPS needs to be added to eHousing system

_______Other

Effective Date of Cancellation: ______________________________

By:____

Name:_______________________________________

Title:____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM

PROGRAM SUMMARY

MCC Authority

- Approximately $350 million of MCC Authority will be available until December 31, 2021. The first date that MCCs can be issued under the Program is expected to be October 11, 2018. The funds will be available under the Program to participating Lenders on a controlled, first-come, first-served basis in accordance with the procedures hereinafter described. The Department will notify Lenders of various terms related to the Program and the MCCs through the periodic distribution of Lender Commitment Lot Notices by eHousingPlus, which has been designated as the Program Administrator. The Lender Commitment Lot Notice will notify Mortgage Lenders that funds are available, specify the amount of funds available (the "Commitment Lot"), specify the mortgage credit certificate rate(s) in effect for that Commitment Lot, and specify the fees applicable to the Commitment Lot.

Qualified Homebuyer

- Must be a First-Time Homebuyer (Applicant cannot have owned a home as a Principal Residence within the previous three years, except (i) in certain targeted areas, (ii) if the applicant is a qualified veteran who has not previously received financing pursuant to this exception, or (iii) in certain cases permitted under applicable provisions of the Internal Revenue Code).

- Must intend to occupy the Residence as the principal and permanent place of Residence within a reasonable time not to exceed 60 days after the Closing Date of the Mortgage Loan.

- Must meet the income guidelines of the Program.

- Must complete an approved pre-purchase homebuyer education course under the Program.

Eligible Loan Area

- State of Texas

Eligible Property Types

- New or existing single family residences, including certain duplexes

- New or existing condominiums or townhomes

- Certain manufactured housing permanently affixed to the ground

Program Fees and Expenses

- Program fees will be specified in the periodic distribution of Lender Commitment Lot Notices

Maximum Income and Maximum Home Purchase Price Limits

- SEE EXHIBIT A

Mortgage Loan Types

- Prevailing market rate mortgages; may be a conventional, FHA, VA or USDA-RHS fixed rate loan; variable rate loans are not permitted (cannot be part of a tax-exempt bond program or a veterans' tax-exempt bond program).

- Term of the loan will be either 15 years or 30 years.

Refinancings

- An MCC may be reissued under certain circumstances to the holder of an MCC issued under this program if the underlying mortgage is refinanced.

- The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing.

EXHIBIT A

TDHCA My First Texas Home (TMP-79) / Texas Mortgage Credit Certificate Program (MCC)

Combined Income and Purchase Price Limits Table

(Including Income Limit Adjustments for High Housing Cost Areas)

Effective April 24, 2018

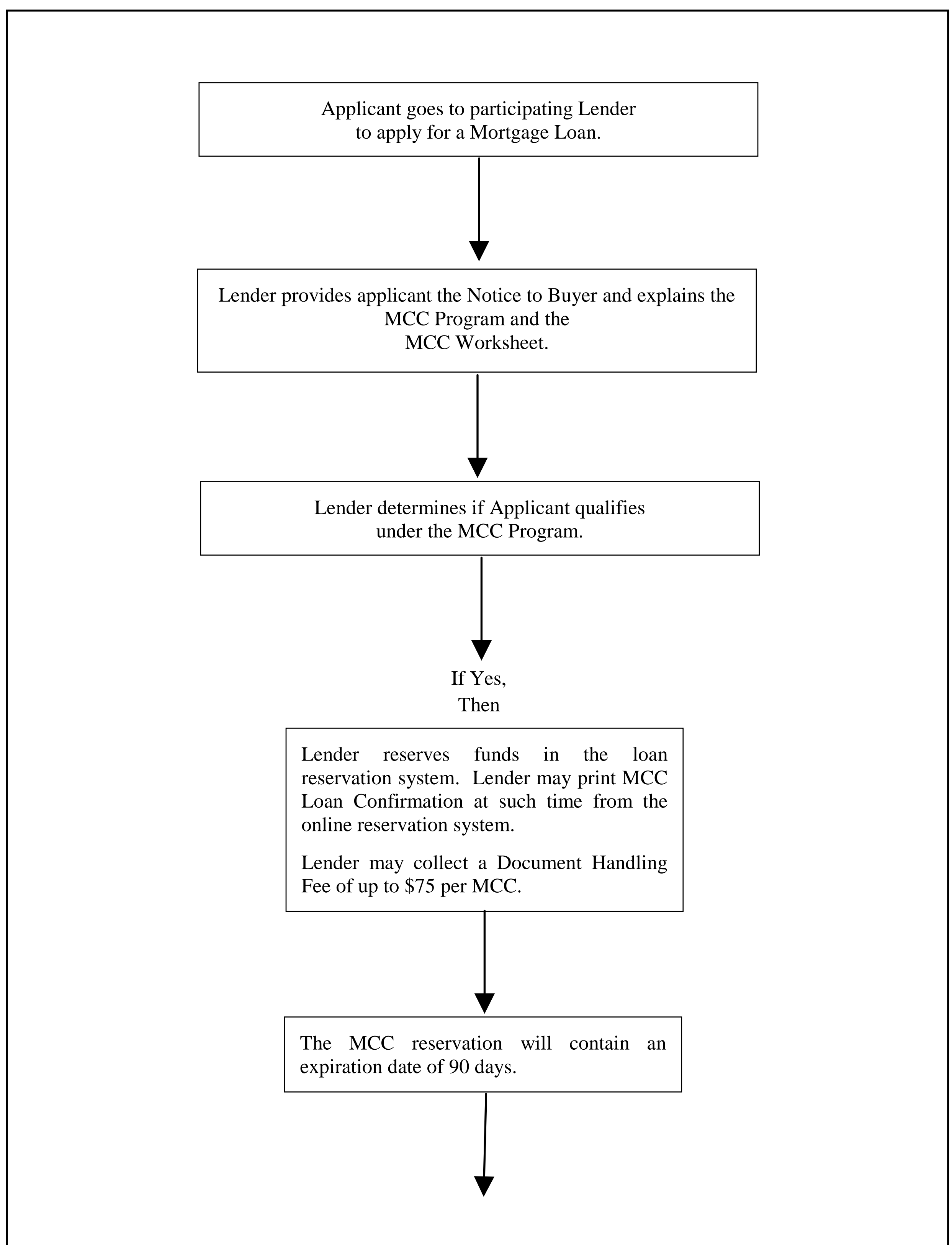
		NON-TARGETED AREAS			* TARGETED AREAS		
Area of State	**Counties in Area**	**100% AMFI 1 or 2 Persons**	**115% AMFI 3 or more Persons**	**Non-Targeted Area Purchase Price Limit**	**120% AMFI 1 or 2 Persons**	**140% AMFI 3 or more Persons**	**Targeted Area Purchase Price Limit**
Balance of State	**All other counties not mentioned below**	**$68,800**	**$79,120**	**$271,164**	**$82,560**	**$96,320**	**$331,423**
Andrews County	Andrews	$75,900	$87,285	$271,164	*No Targeted Census Tracts in County*		
Austin County, HMFA	Austin	$72,400	$83,260	$304,941	*No Targeted Census Tracts in County*		
Austin-Round Rock, MSA	Bastrop, Caldwell, Hays*, Travis* & Williamson	$86,000	$98,900	$353,646	$103,200	$120,400	$432,235
Blanco County	Blanco	$72,400	$83,260	$271,164	*No Targeted Census Tracts in County*		
Borden County	Borden	$74,500	$85,675	$271,164	*No Targeted Census Tracts in County*		
Brazoria County, HMFA	Brazoria	$91,100	$104,765	$304,941	*No Targeted Census Tracts in County*		
Crane County	Crane	$72,900	$83,835	$271,164	*No Targeted Census Tracts in County*		
Dallas, HMFA	Collin*, Dallas*, Denton*, Ellis*, Hunt*, Kaufman* & Rockwall	$82,837	$95,262	$355,764	$92,640	$108,080	$434,823
Fort Worth - Arlington, HMFA	Johnson*, Parker & Tarrant*	$83,237	$95,722	$355,764	$90,240	$105,280	$434,823
Gillespie County	Gillespie	$71,000	$81,650	$271,164	*No Targeted Census Tracts in County*		
Glasscock County	Glasscock	$87,100	$100,165	$271,164	*No Targeted Census Tracts in County*		
Hartley County	Hartley	$73,000	$83,950	$271,164	*No Targeted Census Tracts in County*		
Hemphill County	Hemphill	$70,000	$80,500	$271,164	*No Targeted Census Tracts in County*		
Hood County, HMFA	Hood	$84,237	$96,872	$355,764	*No Targeted Census Tracts in County*		
Houston-The Woodlands-Sugar Land, HMFA	Chambers, Fort Bend*, Galveston, Harris*, Liberty, Montgomery* & Waller	$74,900	$86,135	$304,941	$89,880	$104,860	$372,706
Jackson County	Jackson	$71,400	$82,110	$271,164	*No Targeted Census Tracts in County*		
Kendall County, HMFA	Kendall	$93,400	$107,410	$331,411	*No Targeted Census Tracts in County*		
King County	King	$74,600	$85,790	$271,164	*No Targeted Census Tracts in County*		
Lipscomb County	Lipscomb	$79,300	$91,195	$271,164	*No Targeted Census Tracts in County*		
Loving County	Loving	$78,500	$90,275	$271,164	*No Targeted Census Tracts in County*		
Martin County, HMFA	Martin	$68,800	$79,120	$271,164	*No Targeted Census Tracts in County*		
Medina County, HMFA	Medina	$77,509	$89,136	$331,411	*No Targeted Census Tracts in County*		
Midland, HMFA	Midland*	$90,500	$104,075	$271,164	$108,600	$126,700	$331,423
Odessa MSA	Ector*	$72,600	$83,490	$271,164	$87,120	$101,640	$331,423
Oldham County, HMFA	Oldham	$69,900	$80,385	$271,164	*No Targeted Census Tracts in County*		
Reagan County	Reagan	$71,400	$82,110	$271,164	*No Targeted Census Tracts in County*		
Roberts County	Roberts	$88,000	$101,200	$271,164	*No Targeted Census Tracts in County*		
San Antonio-New Braunfels, MSA	Atascosa*, Bandera, Bexar*, Comal, Guadalupe* & Wilson	$77,789	$89,458	$331,411	$82,560	$96,320	$405,058
Schleicher County	Schleicher	$70,800	$81,420	$271,164	*No Targeted Census Tracts in County*		
Somervell County, HMFA	Somervell	$82,560	$96,320	$355,764	*No Targeted Census Tracts in County*		
Victoria MSA	Goliad, Victoria*	$69,300	$79,695	$271,164	$83,160	$97,020	$331,423
Wise County, HMFA	Wise	$82,560	$96,320	$355,764	*No Targeted Census Tracts in County*		

*** Property must be located in a qualified targeted census tract to use the Targeted Area Limits.**

"AMFI" - Area Median Family Income; "MSA" - Metropolitan Statistical Area; "HMFA" - HUD Metro FMR Area
Down Payment Assistance Available to ALL Income Categories - *Targeted Areas are areas of severe economic distress.
For additional information please visit our website at www.MyFirstTexasHome.com

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM

MCC ISSUANCE PROCEDURES



Lender proceeds with normal underwriting procedures. Once the loan is approved and the underwriter confirms the applicant is eligible for the MCC Program, the underwriter completes the online underwriter certification.

Lender closes the Mortgage Loan and provides the applicant with a copy of the MCC Loan Confirmation and submits the Compliance File to the Department or its designee within 30 days following the closing date of the Mortgage Loan. Compliance File:

(1) Compliance File Checklist;
(2) Applicant Affidavit, Affidavit of Seller and Certificate of Lender;
(3) HUD-1 settlement statement;
(4) Notice of Potential Recapture Tax on Sale of Home;
(5) MCC Issuance Fee, generated and auto-populated by online reservation system (check or money order or electronic wire);
(6) Certificate of completion of an approved pre-purchase homebuyer education course;
(7) Copy of the qualified veteran's discharge papers, if applicable;
(8) Copy of federal Tax Transcript (obtained by IRS Form 4506-T) for preceding calendar year, if required;
(9) Copy of real estate purchase contract, if required;
(10) Copy of final executed loan application (1003), if required; and
(11) Copy of warranty deed, if required.

Department or its designee reviews the Compliance File for compliance with the MCC Program and issues the MCC. The MCC is mailed to the Mortgagor by regular mail with a copy emailed to the Lender.

If the documentation is incomplete or incorrect, the Compliance File must be resubmitted — Please refer to the Program Manual.

Lender must also file the IRS Form 8329 annually for all loans originated during the calendar year where the Mortgagor obtained an MCC and for reissued MCCs. The Department will provide information to the Lender to complete IRS Form 8329. The Department will provide IRS Form 8329 to a non-participating lender who originates a refinanced mortgage loan for which a reissued MCC is issued.

1m

BOND FINANCE DIVISION

BOARD ACTION REQUEST

SEPTEMBER 6, 2018

Presentation, discussion, and possible action authorizing publication of a Notice of Public Hearing for the issuance of Single Family Mortgage Revenue Bonds.

RECOMMENDED ACTION

Authorize the publication of a Notice of Public Hearing for the issuance of Single Family Mortgage Revenue Bonds in the *Texas Register* and in newspapers throughout the State.

BACKGROUND

Historically, the Department has issued single family mortgage revenue bonds ("SFMRBs") to finance single family programs implemented by its Texas Homeownership Division. Pursuant to Section 147(f) of the Internal Revenue Code of 1986, in order to issue SFMRBs that qualify for tax-exempt status, the Department must obtain approval from the appropriate governmental unit ("Approval") after holding a public hearing following reasonable public notice of such hearing ("Notice").

The Department's current Approval expires October 29, 2018. Staff recommends that the new Notice describe a plan of financing allowing for the issuance of up to $850 million in tax-exempt SFMRBs for new mortgage loan origination and up to $150 million for tax-exempt refunding bonds. The hearing will be held in October 2018, and the Approval will be sought from the Texas Attorney General in connection with the next-occurring issue of tax-exempt SFMRBs. The new Approval will apply to tax-exempt SFMRBs (up to the maximum amounts noted in the Notice) that are issued within three years of the issue date of the first bond issue pursuant to the plan of finance.

Anticipated costs for newspaper publications are expected to be approximately $20,000.

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding Resolution No. 19-002 authorizing request for Unencumbered State Ceiling and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt the attached Resolution.

BACKGROUND

Each year, state agencies with authority to issue tax exempt bonds may request that the Texas Bond Review Board ("BRB") assign as carryforward any volume cap that has not been reserved or designated as carryforward for other issuers on the last business day of the year ("Unencumbered State Ceiling"). The Texas Department of Housing and Community Affairs has requested and received carryforward designations from the Unencumbered State Ceiling in calendar years 2010, 2011, 2013, 2014, 2015, and 2016. Staff is requesting authorization to request carryforward in an amount not to exceed $500 million of unreserved 2018 volume cap, to the extent available, from the Unencumbered State Ceiling. All volume cap will be used for future issuance of single family mortgage revenue bonds (new origination and refunding) or for future Mortgage Credit Certificate programs. Any requested volume cap must be used within three years.

At this time, staff is not seeking, nor is the Board granting, approval of any specific issue or program.

RESOLUTION NO. 19-002

RESOLUTION AUTHORIZING REQUEST FOR UNENCUMBERED STATE CEILING; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

WHEREAS, Section 146(a) of the Internal Revenue Code of 1986, as amended (the "Code") requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes; and

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

WHEREAS, the Allocation Act provides that on the last business day of the year the Texas Bond Review Board (the "Bond Review Board") may assign as carryforward to state agencies at their request any State ceiling that is not reserved or designated as carryforward and for which no application for carryforward is pending (referred to herein as "Unencumbered State Ceiling"); and

WHEREAS, the Governing Body desires to request that Unencumbered State Ceiling for the year 2018 be assigned to the Department as carryforward;

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Assignment of Unencumbered State Ceiling. The Department is authorized to submit a request to the Bond Review Board for assignment as carryforward to the Department of all remaining Unencumbered State Ceiling for the year 2018 in an aggregate amount not to exceed $500,000,000.

Section 1.2 Authorization of Certain Actions. The Authorized Representatives of the Department named in this Resolution are hereby authorized to take such actions on behalf of the Department as may be necessary to carry out the purposes of this Resolution.

Section 1.3 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Directors of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership Program of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the

"Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1 Purposes of Resolution. The Board has expressly determined and hereby confirms that the Department's receipt of Unencumbered State Ceiling will accomplish a valid public purpose of the Department by providing for the housing needs of persons and families of low, very low and extremely low income and families of moderate income in the State.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 6th day of September, 2018.

____
Chair, Governing Board

ATTEST:

____
Secretary to the Governing Board

(SEAL)

10

BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.1, Reasonable Accommodation Requests, and an order adopting new 10 TAC §1.1, Reasonable Accommodation Requests to the Department, and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code, §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the Department recommends to the Board that there is a continuing need for this rule to exist, which is to provide for compliance with Tex. Gov't Code §2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs, and to provide for compliance with the Fair Housing Act and other federal and state laws;

WHEREAS, this rule was last acted upon in April 2014, and is in need of updating to make minor changes to the description of the process, to add the Department's Fair Housing Manager in accommodation request decision-making, to reflect that accommodation requests do not have to be in writing, to revise the title to make it clear these are only requests to the Department (not to its subrecipients), and to provide the statutory authority and purpose of the rule; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from June 11, 2018, through July 11, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.1, Reasonable Accommodation Requests, and new 10 TAC §1.1, Reasonable Accommodation Requests to the Department, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.1, Reasonable Accommodation Requests, and new 10 TAC §1.1, Reasonable Accommodation Requests to the Department, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is provided by Tex. Gov't Code, §2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs. This rule also provides for compliance with the Fair Housing Act and other federal and state civil rights laws. One type of disability discrimination is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling or program/activity. This rule provides for how an individual who is seeking an accommodation request directly from the Department can pursue such a request.

Department Policy: This rule provides the public notice for how a reasonable accommodation request can be made to the Department, and the procedures the Department will use in handling that request. Beyond the policy already established under the Authority above, no further policy is established by the Department; the rule merely lays out procedures for implementing that policy.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to continue to ensure compliance with the applicable state and federal requirements and provide a transparent process for persons that may want to make a reasonable accommodation request. The new rule being adopted reflects changes that include: minor changes to the description of the process, adding the Department's Fair Housing Manager in accommodation request decision-making, reflecting that accommodation requests do not have to be in writing, revising the title to make it clear these are only requests to the Department (not to our subrecipients), and providing the statutory authority and purpose of the rule. No comment was received on the rule.

Since the publication of the draft, one minor technical correction is being made regarding titles of Department staff. It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.1, Reasonable Accommodation Requests

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.1, Reasonable Accommodation Requests. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the handling of reasonable accommodations requests submitted to the Department.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the handling of reasonable accommodations requests submitted to the Department.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

10 TAC §1.1, Reasonable Accommodation Requests

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.1, Reasonable Accommodation Requests

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.1, Reasonable Accommodation Requests, with changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3684). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.066(e) and to update the rule to: make minor changes to the description of the process, to add the Department's Fair Housing Manager in accommodation request decision-making, to reflect that accommodation requests do not have to be in writing, to revise the title to make it clear these are only requests to the Department (not to its subrecipients), and to provide the statutory authority and purpose of the rule. The only change made since the published text is a technical correction to change terminology relating to staff titles.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act, a federal law; the rule also ensures compliance with Tex. Gov't Code §2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have prompted being offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the handling of reasonable accommodations requests submitted to the Department.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not expand, limit, or repeal an existing regulation, but merely clarifies several procedural and operational steps in the handling of reasonable accommodations.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the request for a reasonable accommodation of an individual in their engagement with the Department's programs; therefore, no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to several procedural changes in the handling of a reasonable accommodation request there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to several procedural changes in the handling of a reasonable accommodation request; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely formalizes several procedural changes relating to the handling of reasonable accommodation requests by the Department there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more clear rule. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing several procedural changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to several procedural changes in the handling of a reasonable accommodation request.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed rule were accepted in writing and by e-mail. No comments regarding the new rule were received, however one technical correction is being made.

The Board approved the final order adopting the new rule on September 6, 2018.

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

§1.1, Reasonable Accommodation Requests to the Department

(a) Purpose. The purpose of this section is to establish the procedures by which a Requestor may ask that a Reasonable Accommodation is made by the Department. For rules governing the handling of reasonable accommodation requests and responsibilities of entities receiving funds or resources from the Department see Subchapter B, §1.204 of this Chapter. This rule is statutorily authorized by Tex. Gov't Code, 2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an

opportunity to participate in the Department's programs, and in accordance with the Fair Housing Act, and other federal and state civil rights laws.
(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
(1) Board--Texas Department of Housing and Community Affairs Governing Board.
(2) Division Manager or Director--Department staff member supervising the division or area of a division containing the program for which a Reasonable Accommodation is being requested.
(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act, or as defined by other applicable federal or state law.
(4) Fair Housing Act--Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968.
(5) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, service, building, or dwelling unit, that will allow a qualified person with a Disability to:
(A) Participate fully in a program;
(B) Take advantage of a service;
(C) Live in a dwelling; or
(D) Use and enjoy a dwelling.
(6) Requestor--Includes applicants, members of the public, clients of Department programs, and program participants.
(7) Section 504--Section 504 of the Rehabilitation Act of 1973, as amended.
(c) Procedures.
(1) The Requestor of the Reasonable Accommodation shall submit a request to the Division Manager or Director. A request does not have to be in writing. A request can be made in a face-to-face conversation with a Division Manager or Director or using any other method of communication. A request is any communication in which an individual clearly asks or states that they need the Department to provide or to change something because of a Disability.
(2) The request, whether oral or written, must contain, at minimum:
(A) The Department program or procedure for which an accommodation is being requested;
(B) Household information to include name and address;
(C) Description of the Reasonable Accommodation being requested; and
(D) Reason the Reasonable Accommodation is necessary.
(E) In the case of oral requests, the Division Manager or Director will create a written summary of the request.
(3) The Division Director will coordinate with the Fair Housing Manager and the supervising Director, if any, and may ask for additional information from the Requestor. Staff should address Reasonable Accommodations requests promptly. If making such a Reasonable Accommodation would involve incurring expense, staff should consult with their Division Manager or Director to ensure that they remain within their approved budget or, if additional measures beyond those within budget are required, that they are promptly considered and a compliant decision made. Upon having the applicable information, the Division Director or Manager and Fair Housing Manager will determine:
(A) If the proposed Reasonable Accommodation is covered under Section 504 and/or the Fair Housing Act, or any other federal or state law; and
(B) Whether to recommend to the Executive Director approval, an alternative Reasonable Accommodation, or denial.
(4) The request and recommendation, are then sent to the Executive Director or their designee, resulting in one of the following steps:
(A) The Executive Director determines Board action is not necessary and approves the request;
(B) The Executive Director proposes an alternative Reasonable Accommodation to the Requestor;
(C) The Executive Director determines Board action is necessary and presents the request and any proposed alternative Reasonable Accommodation at an ensuing Board meeting. The Executive Director can choose to include a recommendation for or against the request;

(D) The Executive Director refers the request to the Department's Dispute Resolution Coordinator for an Alternative Dispute Resolution procedure as outlined in 10 TAC §1.17; or

(E) The Executive Director denies the request. In the case of a denial, the Requestor can ask that their request be placed on the agenda for the next available Board meeting.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.2, Department Complaint System, and an order adopting new 10 TAC §1.2, Department Complaint System, and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the Department recommends to the Board that there is a continuing need for this rule to exist, which is to provide for compliance with Tex. Gov't Code §2306.066, Information and Complaints, Tex. Gov't Code, Chapter 2105, Subchapter C, "Complaints," and 24 CFR §91.115(h), which requires as part of its Citizen Participation Plan that the Department have a complaint policy, and all of which require that the Department have information prepared that describes the function and procedures by which complaints are filed and resolved, and that the state statutes provide how the information is made available to the public, and this rule serves as that procedure and the means by which it is made public;

WHEREAS, this rule was last acted upon in April 2014, and is in need of updating to: bring the rule into greater conformity with the statutes and regulation, clarify procedural steps and add staff roles and systems now used in the handling of complaints, provide for the provision of complaint–related documents to the person making the complaint, and provide the statutory and regulatory authorities and purposes of the rule; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from June 11, 2018, through July 11, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.2, Department Complaint System, and new 10 TAC §1.2, Department Complaint System, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.2, Department Complaint System, and new 10 TAC §1.2, Department Complaint System, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is provided by Tex. Gov't Code §2306.066, Information and Complaints, Tex. Gov't Code, Chapter 2105, Subchapter C, "Complaints," and 24 CFR §91.115(h), which requires as part of its Citizen Participation Plan that the Department have a complaint policy. Both the federal regulation and the state statutes require that the Department have information prepared that describes the function and procedures by which complaints are filed and resolved, and the state statutes require that the information is made available to the public (unless another procedure is required by Federal law. such as the Violence Against Woman Act). This rule serves as that procedure and the means by which it is made public. The rule provides clear guidance for how complaints will be handled, what information will be retained, how a person is kept updated, and when the complaint process does not apply.

Department Policy: While 24 CFR §91.115(h), Tex. Gov't Code, Chapter 2105, Subchapter C and Tex. Gov't Code §2306.066 do require that the Department describe the function and procedures by which complaints are handled, the statute and regulations do not entirely specify what those procedures must be. Therefore, this rule does set Department policy, not specifically provided for in state statute or federal statute or regulation, for how complaints will be handled.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to continue to ensure compliance with Tex. Gov't Code §2306.066, Information and Complaints Tex. Gov't Code, Chapter 2105, Subchapter C, "Complaints," and 24 CFR §91.115(h), as applicable and provides a transparent process for persons that may want to make a complaint. The new rule reflects changes that include: bringing the rule into greater conformity with the statute, clarifying procedural steps and adding staff roles and systems now used in the handling of complaints, providing for the provision of complaint–related documents to the person making the complaint, and providing the statutory authority and purpose of the rule.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.2, Department Complaint System

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.2, Department Complaint System. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the handling of complaints received by the Department.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the handling of complaints received by the Department.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.2, Department Complaint System

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.2, Department Complaint System

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.2, Department Complaint System, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3686). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.066, Information and Complaints, Tex. Gov't Code, Chapter 2105, Subchapter C, "Complaints," and 24 CFR §91.115(h), which requires as part of its Citizen Participation Plan that the Department have a complaint policy. The new rule makes changes that include: bringing the rule into greater conformity with the statute, clarifying procedural steps and adding staff roles and systems now used in the handling of complaints, providing for the provision of documents related to complaints to the person making the complaint, and providing the statutory authority and purpose of the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under items (4) and (9) of that section. The rule ensures Department compliance with 24 CFR §91.115(h), a federal law that requires the Department to have a complaint policy, and with Tex. Gov't Code §2306.066, Information and Complaints, and Tex. Gov't Code, Chapter 2105, Complaints, all of which require that the Department have information prepared that describes the function and procedures by which complaints are filed and resolved, and that the state statutes provide how the information is made available to the public, and this rule serves as that procedure and the means by which it is made public. In spite of the exceptions noted above, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the handling of complaints submitted to the Department.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not expand, limit, or repeal an existing regulation, but merely clarifies several procedural and operational steps in the handling of complaints received by the Department.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the handing of complaints received by the Department; therefore, other than in the case of a small or micro-business determining to file a complaint, no small or micro-businesses are subject to the rule. If a small or micro-business does opt to file a complaint the rule outlines clear simple steps and processes in all cases.

3. The Department has determined that because this rule relates only to procedural changes in the handling of a complaint filed with the Department there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to procedural changes in the handling of a complaint filed with the Department; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely formalizes procedural changes relating to the handling of complaints there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more clear rule. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing procedural changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes in the handling of a complaint filed with the Department.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the new rule on September 6, 2018.

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

§1.2, Department Complaint System to the Department

(a) Purpose. The purpose of this section is to establish the procedures by which complaints are filed with the Department and how the Department handles those complaints under Department jurisdiction in compliance with Tex. Gov't Code §2306.066, TEX. GOV'T CODE, Chapter 2105, Subchapter C, and 24 CFR §91.115(h), as applicable.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Complaint--A complaint submitted to the Department in writing (via mailed letter, fax, email, or submitted online through the Department website) from a person that believes the Department has the authority to resolve the issue. This excludes consumer complaints relating to manufactured housing.

(2) Complaint Coordinator--Department employee designated by the Executive Director or his designee to monitor the Public Complaint System and coordinate activities related to complaints.

(3) Complaint Liaison--the Department employee(s) designated by each division to handle each division's complaint-related issues.

(4) Department--The Texas Department of Housing and Community Affairs.

(5) Person--Any individual, other than an employee of the Department, and any partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(6) Public Complaint System--Department-created system used to track and process complaints received by the Department.

(c) Procedures. A person who has a Complaint may submit such Complaint to the Department for submission to a Complaint Coordinator. If an accommodation because of a disability is needed in relation to a Complaint, the Person interested in filing the Complaint should refer to 10 TAC §1.1, Reasonable Accommodation Requests; if assistance is needed for non-English speaking persons, the Person interested in filing the Complaint should access the Department's Language Assistance webpage (https://www.tdhca.state.tx.us/lap.htm).

(1) A Complaint Coordinator shall enter the complaint in the Public Complaint System, review and process the complaint, and forward the complaint to the appropriate Complaint Liaison.

(2) A Complaint Liaison shall investigate and resolve or close the Complaint. A Complaint Liaison shall enter summaries of contact with the complainant and actions leading to complaint resolution in the Public Complaint System.

(3) The Complaint Coordinator will submit periodic summary reports or analysis to the Executive Director or designee.

(4) The Department shall provide to the Person filing the Complaint, and to each Person who is a subject of the Complaint, a copy of this rule, which serves as the Department's policy and procedures relating to complaint investigation and resolution.

(5) The Department shall either notify the complainant of the resolution of the Complaint within 15 business days after the date the Complaint was received by the Department, or notify the complainant, within such period, of the date the complainant can expect a response to the Complaint.

(6) The Department shall notify the complainant of the status of the Complaint at least quarterly and until the final disposition of the Complaint.

(7) An information file about each complaint shall be maintained. The file must include:

(A) the Complaint number;

(B) the name of the person who filed the Complaint;

(C) the date the Complaint was received by the Department;

(D) the subject matter of the Complaint;

(E) the name of each Person contacted in relation to the Complaint;

(F) a summary of the results of the review or investigation of the Complaint; and

(G) an explanation of the reason the file was closed, if the Department closed the file without taking action other than to investigate the Complaint.

(8) A Complaint may be withdrawn by the complainant at any time.

(9) A complainant may request and receive from the Department copies of any documentation or records collected by the Department with regard to the complaint subject to the Texas Public Information Act.

(10) Adherence to these procedures is not required by the Department if another procedure is required by law, or if the following a procedure above would jeopardize an undercover investigation.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.4, Protest Procedures for Contractors, and an order adopting new 10 TAC §1.4, Protest Procedures for Contractors, and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code, §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the Department recommends to the Board that there is a continuing need for this rule to exist, which is to provide for compliance with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts (the "Comptroller") addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures;

WHEREAS, this rule was last acted upon in 1998, and is in need of updating to bring it into compliance with changes to the Comptroller's rules and improve its organization; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from June 11, 2018, through July 11, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.4, Protest Procedures for Contractors, and new 10 TAC §1.4, Protest Procedures for Contractors, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.4, Protest Procedures for Contractors, and new 10 TAC §1.4, Protest Procedures for Contractors, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The state authority for this rule is 34 TAC Chapter 20, Subchapter F, Division 3, of the Comptroller's Procurement Rules. While that rule does not specifically mandate that each agency have its procurement contractor protest procedures in rule, it does require that an agency have adopted procedures and that a copy of those adopted protest procedures be submitted to the Comptroller during the post-payment audit of the agency's purchasing documents or upon request by the Comptroller. It also requires that the procedures must be consistent with the Comptroller's procedures for protests (which are described in Division 3).

Department Policy: It should be noted that in this rule staff is recommending the continuation of a Department policy that exceeds the requirements of the Comptroller's rule. While the Comptroller's rule only requires that Protests be permitted for those who have responded to a solicitation, the Department's rule allows a Protest to be filed by someone even if they have not submitted in response to a solicitation. If they are a prospective bidder, offeror, or contractor they may also file a protest. Staff believes that allowing only bidders to submit a protest could result in legitimate concerns being missed. For example, an outside vendor feeling that they could not even respond due to some restrictive language or circumstance from the procurement documents that prohibited fair competition would not have a forum for voicing that concern.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to continue to reflect its compliance with the Comptroller's requirements and provide a transparent process for contractors. The new rule reflects changes that include: bringing the rule into consistency with the Comptroller sections noted above, which the Comptroller updated in January 2017, and improving organization of the rule.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.4, Protest Procedures for Contractors

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.4, Protest Procedures for Contractors. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the handling of protests filed by contractors participating in procurement opportunities with the Department.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the handling of protests filing by contractors participating in procurement opportunities with the Department.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.4 Protest Procedures for Contractors

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.4, Protest Procedures for Contractors

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.4, Protest Procedures for Contractors, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3688). The purpose of the new section is to update the rule to reflect the most current Texas Comptroller of Public Account's (the "Comptroller") rules relating to procurement, found at 34 TAC Chapter 20, Subchapter F, Division 3, and provide improved organization and clarity in the rule.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under items (1), relating to state agency procurement. The rule ensures Department compliance with the rules of the Texas Comptroller of Public Accounts found at 34 TAC Chapter 20, Subchapter F, Division 3, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have warranted a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the handling of protests filed by contractors participating in procurement opportunities with the Department.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not expand, limit, or repeal an existing regulation, but merely brings the Department's rule into compliance with the Comptroller's rule and provides clarity in the handling of protests filed by contractors participating in procurement opportunities with the Department.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for protests to be filed by contractors engaging with the Department on procurement opportunties; therefore, other than in the case of a small or micro-business having participated in a procurement and having a protest, no small or micro-businesses are subject to the rule. If a small or micro-business does opt to procure with the Department and has a protest, the rule outlines clear simple steps and processes in all cases.

3. The Department has determined that because this rule relates only to procedural changes in the handling of protest procedures for contractors relating to procurement there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to procedural changes in the handling of a protest procedures by a contractor engaged with the Department for procurement purposes; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely formalizes procedural changes relating to the handling of contractor protests during procurement opportunities there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more clear rule. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing procedural changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes in the handling of a protests filed with the Department by contractors engaging on procurement opportunities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the new rule on September 6, 2018.

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

§1.4, Protest Procedures for Contractors

(a) Purpose. The purpose of this rule provides for the Department's compliance with 34 TAC Chapter 20, Subchapter F, Division 3, the rules of the Texas Comptroller of Public Accounts addressing procurement, which require state agencies to adopt protest procedures consistent with the Comptroller's procedures.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Governing Board of the Department.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Interested Parties--means all vendors who have submitted bids or proposals for the contract involved. A list of interested parties is available upon request from the Department.

(4) Protest--A written objection submitted to the Department by any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a procurement contract by the Department.

(c) These procedures are for Department procurements only. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a solicitation, evaluation, or award may formally protest to the Department's Purchasing Officer.

(d) To be considered timely, the Protest must be filed in accordance with the requirements of 34 TAC §20.535(b).

(e) To be considered complete, the Protest must be in writing, signed by an authorized representative, notarized, and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the Person submitting the Protest alleges to have been violated;

(2) a specific description of each act made by the Department that the Person submitting the Protest alleges to have been violated specified in the statutory or regulatory provision(s) identified in paragraph (1) of this Subsection;

(3) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the Protest has been timely filed;

(B) a description of the adverse impact to the Department or the state; and

(C) a description of the resulting adverse impact to the protesting vendor;

(4) a statement of the argument and authorities that the Person submitting the Protest offers in support of the Protest;

(5) an explanation of the subsequent action the Person submitting the Protest is requesting; and

(6) except for a Protest that concerns the solicitation documents or actions associated with the publication of solicitation documents, a statement confirming that copies of the Protest have been mailed or delivered to other identifiable Interested Parties.

(f) The Purchasing Officer shall have the initial authority to settle and resolve the Dispute concerning the solicitation or award of a contract. The Purchasing Officer may dismiss the Protest if it is not timely filed or does not meet the requirements of this section. The Purchasing Officer may solicit written responses to the Protest from other Interested Parties.

(g) If the Protest is not resolved by mutual agreement, the Purchasing Officer will provide a written recommendation to the Department's Executive Director.

(h) The Executive Director shall issue a final written determination on the Protest within 15 calendar days after receipt of the Purchasing Officer's recommendation in accordance with the requirements of 34 TAC §20.537(c).

(i) In the alternative, the Executive Director may, in his or her discretion, refer the matter to the Department's Governing Board for their consideration at a regularly scheduled meeting. The decision of the Board shall be final.

(j) A protesting party may appeal the determination of the Executive Director under section (g) of this section to the Department's Governing Board. An appeal of the Executive Director's determination must be in writing and received by the Purchasing Officer not later than 10 calendar days after the date the Executive Director sent written notice of their determination. The scope of the appeal shall be limited to review of the Executive Director's determination. The protesting party must mail or deliver to all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(1) The appeal will be presented for consideration at the next regularly scheduled meeting of the Governing Board. The decision of the Governing Board shall be final.

(2) An appeal that is not filed timely shall not be considered unless good cause for delay is shown in writing relating to issues that are significant to agency procurement practices or procedures, or the Department's General Counsel makes such a determination.

(k) All documents collected by the Department as part of a solicitation, evaluation, and/or award of a contract shall be retained with the procurement file according to Department's Records Retention Schedule.

(l) The Department reserves all of its rights under 34 TAC §20.536. The Department may award a solicitation or award without delay, in spite of a timely filed Protest, to protect the best interests of the state.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.6, Historically Underutilized Businesses, and an order adopting new 10 TAC §1.6, Historically Underutilized Businesses, and directing their publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs ("the Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code, §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the Department recommends to the Board that there is a continuing need for this rule to exist, which is to provide for compliance with Tex. Gov't Code, §2161.003 which requires that state agencies adopt the Comptroller's rules relating to Historically Underutilized Businesses ("HUBs") as the agency's own rules;

WHEREAS, this rule was last acted upon in 2012, and is in need of updating to bring it into compliance with the Comptroller's rules and to update citations; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from June 11, 2018, through July 11, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.6, Historically Underutilized Businesses, and new 10 TAC §1.6, Historically Underutilized Businesses, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.6, Historically Underutilized Businesses, and new 10 TAC §1.6, Historically Underutilized Businesses, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The state authority for this rule is Tex. Gov't Code, §2161.003 which requires that state agencies adopt the Comptroller's rules relating to Historically Underutilized Businesses ("HUBs") as the agency's own rules. Those rules for the Comptroller are found at 34 TAC Chapter 20, Subchapter D, Division 1, §§20.281 to 20.298.

Department Policy: No Department policy is established with this rule beyond those established through reference to the Comptroller's rules.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to evidence compliance with with Tex. Gov't Code, §2161.003. The new rule reflects changes that include: bringing the rule into consistency with the Comptroller sections noted above, correcting citations, and making minor edits for readability.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.6, Historically Underutilized Businesses

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.6, Historically Underutilized Businesses. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for Historically Underutilized Businesses ("HUBs") in the Department's procurement processes.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for Historically Underutilized Businesses ("HUBs") in the Department's procurement processes.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.6 Historically Underutilized Businesses

Attachment 2: Preamble, including required analysis, for adopting new of 10 TAC §1.6, Historically Underutilized Businesses

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.6, Historically Underutilized Businesses, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3690). The purpose of the new section is to provide compliance with Tex. Gov't Code, §2161.003; to update the rule to provide consistency with the most current Texas Comptroller of Public Account's (the "Comptroller") rules relating to Historically Underutilized Businesses ("HUBs"), found at 34 TAC Chapter 20, Subchapter D, Division 1, §§20.281 to 20.298; and to make minor edits for readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under item (9), relating to implementing legislation. The rule ensures Department compliance with Tex. Gov't Code, §2161.003, which requires that state agencies adopt the Comptroller's rules relating to Historically Underutilized Businesses as the agency's own rules. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have warranted a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for Historically Underutilized Businesses ("HUBs") in the Department's procurement processes.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not expand, limit, or repeal an existing regulation, but merely brings the Department's rule into compliance with the Comptroller's rule and provides clarity relating to the procedure for Historically Underutilized Businesses ("HUBs") in the Department's procurement processes.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for HUBs in the Department's procurement; therefore, other than in the case of a small or micro-business that is a HUB participating in a Department procurement, no small or micro-businesses are subject to the rule. If a small or micro-business does opt to procure with the

Department and is a HUB, the rule provides the Department's policy, which as required mirrors the Comptroller's policy.

3. The Department has determined that because this rule relates only to primarily technical changes to bring the Department's rule into compliance with the Comptroller's most recent rule there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to technical changes to bring the Department's rule into compliance with the Comptroller's most recent rule; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule merely echoes technical corrections to ensure conformity with the Comptroller's rule on HUBs there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated rule that is consistent with the Comptroller's rule as required by Tex. Gov't Code §2161.003. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to technical changes to become consistent with the Comptroller's rule as required by Tex. Gov't Code §2161.003.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the new rule on September 6, 2018.

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

§1.6, Historically Underutilized Businesses

It is the policy of the Department to encourage the use of Historically Underutilized Businesses ("HUB") in the Department's procurement processes. The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the 2009 State of Texas Disparity Study. As required by Tex. Gov't Code §2161.003, the Department adopts the Texas Comptroller of Public Accounts ("Comptroller")

HUB Program rules at 34 TAC §§20.281 - 20.298 (relating to Historically Underutilized Business Program, and as may be amended by the Comptroller so far as the amendments are implementing Tex. Gov't Code §2161.003), which describe the minimum steps and requirements to be undertaken by the Comptroller and state agencies to fulfill the state's HUB policy, and attain aspirational goals identified in the Texas Disparity Study.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.9, Texas Public Information Act Training for Department Employees, and directing its publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code, §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code, §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, 10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees, requires that all Department employees attend TPIA training and lays out certain procedures to be followed in the handling of a public information request;

WHEREAS, there is not a statutory requirement for all employees to have this training nor a requirement that the procedure for training be in rule, and staff therefore recommends that the rule relating to staff training be repealed, and instead be provided for in the Department's Personnel Policies and Procedures Manual (as applicable); and

WHEREAS, such proposed repeal was published in the *Texas Register* for public comment to be received from June 11, 2018, through July 11, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Department has determined during its assessment of 10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees, that as provided for in §2001.039, there is not a continuing need for this rule and the Department adopts its repeal; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preamble.

BACKGROUND

Authority: 10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees, requires that all Department employees attend TPIA training and lays out certain procedures to be followed in the handling of a public information request. While there is a statutory requirement that Board members attend such training, there is not a requirement that all Department employees do so; nor is there a requirement that Department's procedures relating to the handling of public information requests be in rule.

Department Policy: Staff recommends that this rule be repealed. However, because of the importance of strict adherence to the TPIA by any and all employees that are involved in responding to and preparing public

information requests, this policy will continue to exist within the Department's Personnel Policies and Procedures Manual.

Consistency with Executive Direction and Proposed Changes: The repeal of this rule is consistent with the streamlining of Department rules and removal of rules for which there is no statutory basis or clear public purpose. Ongoing commitment to TPIA requirements will continue through inclusion in the Department's personnel manual.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Below is the excerpted rule so the reader can see what is being repealed.

10 TAC §1.9, Texas Public Information Act Training for Department Employees

(a) All employees of the Department shall receive training on the roles and responsibilities of state agency employees under the Texas Public Information Act (the "Act"). Training shall take place at the time of initial employment with the Department, and thereafter from time to time as determined by the Executive Director.

(b) Each division in the Department shall designate a public information liaison for the division and an alternate. In addition to the training received upon initial employment the public information liaisons and alternates shall receive additional specialized training on the requirements of the Public Information Act. Public information liaisons shall be responsible for locating and assembling division documents responsive to public information requests in a timely manner, coordinating public information requests with other divisions including Legal Services and tracking the request in the Department's log used for such purpose. Additional public information liaison training sessions may be required from time to time by the Executive Director.

Attachment 1: Preamble, including required analysis for adopting the repeal of 10 TAC §1.9, Texas Public Information Act Training for Department Employees

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees. After review of this rule in compliance with Tex. Gov't Code, §2001.039, the Department has assessed this rule and determined that there is no longer a need for this rule.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the removal of a training requirement applicable to Department staff that is not required to be in rule.

1. The repeal does not require a change in work that will require the creation of new employee positions; while the repeal will free up approximately two hours per year of each employee's time, that is not a sufficient enough reduction to support the elimination of any employee positions.

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

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

5. The repeal is not creating a new regulation.

6. The action will not limit an existing regulation but as a repeal removes a requirement from rule relating to Department staff training. The required training will still continue, however the requirement will reside in the Department's personnel manual, not in rule.

7. The repeal will decrease the number of individuals subject to the rule's applicability through removing the requirement; however, Department employees will still be required to receive training, as needed, and as required by the Department's personnel manual.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of rule that was not

required statutorily and which can instead be formalized in the Department's personnel manual. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

10 TAC §1.9, Texas Public Information Act ("TPIA") Training for Department Employees

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.7, Staff Appeals Process, and 10 TAC §1.8, Board Appeals Process; and an order adopting new 10 TAC §1.7, Appeals Process, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053 the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039 state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the Department recommends to the Board that there is a continuing need for a rule governing appeals to exist to provide for compliance with Tex. Gov't Code §2306.0321, which requires the board to adopt rules outlining a formal process for appealing board and department decisions, and outlines what the requirements must include; and with Tex. Gov't Code §2306.0504(d), which provides a person debarred by the Department with an appeal right to the Board, and this rule will exist at 10 TAC §1.7, which will be retitled to "Appeals Process;"

WHEREAS, staff has determined that there is not an ongoing need to continue to have a separate 10 TAC §1.8, Board Appeals Process, and that rule is being repealed without readoption;

WHEREAS, these two rules were last acted upon in 2006;

WHEREAS, §1.7, Staff Appeals Process, is in need of changes to: add the purpose and statutory authority for the rule, clarify the exclusion of multifamily programs from the rule, make changes within the definitions section, improve the definition for an Affiliated Party, add a section for Persons Eligible to Appeal which statute requires be in the rule and had not been previously, revise the Grounds for Appeal section to provide for a broader set of grounds for appeal, improve the clarity and wording in the two Process sections, provide clear language on what the Board's decision option may be, clarify the language regarding the handling of a granted appeal that had been related to awards, and specify that appeals may still have an opportunity to be re-heard by the Board in certain circumstances; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.7, Staff Appeals Process, and 10 TAC §1.8, Board Appeals Process, and new 10 TAC §1.7, Appeals Process, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department

to cause the repeal of 10 TAC §1.7, Staff Appeals Process, and 10 TAC §1.8, Board Appeals Process, and new 10 TAC §1.7, Appeals Process, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is Tex. Gov't Code §2306.0321, which requires the board to adopt rules outlining a formal process for appealing board and Department decisions, and outlines what the requirements must include; and with Tex. Gov't Code §2306.0504(d), which provides a person debarred by the Department with an appeal right to the Board. It should be noted Tex. Gov't Code §2306.6715 and §2306.6717 separately govern appeals that relate to the Housing Tax Credit ceiling (*i.e.*, 9% credits) and specifically states that the tax credit appeal process must be in the Qualified Allocation Plan ("QAP"). In this rule as it currently exists, and reflective of statute, subsection (c) of this rule says this rule applies to all appeals except credit ceiling appeals, meaning that that bond and bond-related credits (*i.e.*, 4% credits) and other multifamily loans fall under this rule at 10 TAC §1.7 (and not the MF rules). Only the 9% credit appeals fall under 10 TAC §10.902 in the Uniform Multifamily Rules.

Department Policy: While Tex. Gov't Code §2306.0321 and Tex. Gov't Code §2306.0504(d) do require that the Department provide for appeals processes and rights, the statute does not specify what those procedures must be. Therefore, these rules do set Department procedures not specifically provided for in state statute for how appeals will be handled.

Consistency with Executive Direction and Proposed Changes: Staff recommended that only one appeal rule was needed and proposed the repeal of both 10 TAC §1.7, Staff Appeals Process, and §1.8, Board Appeals Process, and one new adoption of only 10 TAC §1.7, retitled as Appeals Process. This action allows the Department to evidence compliance with Tex. Gov't Code §2306.0321 and §2306.0504(d) while removing an unnecessary rule at 10 TAC §1.8. The new proposed rules do reflect a significant change in Department direction as it relates to the Grounds for Appeal section; this section, as revised, moves the Department away from a very narrow basis for what constituted grounds for an appeal (i.e., more of a "gotcha" approach") and toward a broader scope for what constitutes grounds for appeal.

Changes are also made to 10 TAC §1.7 to: add the purpose and statutory authority for the rule, clarify the exclusion of multifamily programs from the rule, make changes within the definitions section, improve the definition for an Affiliated Party, add a section for Persons Eligible to Appeal which statute requires be in the rule and had not been previously, revise the Grounds for Appeal section to provide for a broader set of grounds for appeal, improve the clarity and wording in the two Process sections, provide clear language on what the Board's decision option may be, clarify the language regarding the handling of a granted appeal that had been related to awards, and specify that appeals may still have an opportunity to be re-heard by the Board in certain circumstances.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.7. Staff Appeals Process

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.7, Staff Appeals Process. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for the handling of Department appeals.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for Department appeals.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.7 Staff Appeals Process

Attachment 2: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.8. Board Appeals Process

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.8, Board Appeals Process. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action at 10 TAC §1.7.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption at 10 TAC §1.7 making changes to the existing procedure for the handling of Department appeals.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption at 10 TAC §1.7 making changes to the existing procedure for Department appeals.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.8 Board Appeals Process

Attachment 3: Preamble, including required analysis, for adopting new of 10 TAC §1.7. Appeals Process

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.7, Appeals Process without changes to the proposed text as published in the July 13, 2018, issue of the Texas Register (43 TexReg 4607). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0321 and §2306.0504. Changes add the purpose and statutory authority for the rule, clarify the exclusion of multifamily programs from the rule, make changes within the definitions section, improve the definition for an Affiliated Party, add a section for Persons Eligible to Appeal which statute requires be in the rule and had not been previously, revise the Grounds for Appeal section to provide for a broader set of grounds for appeal, improve the clarity and wording in the two Process sections, provide clear language on what the Board's decision option may be, clarify the language regarding the handling of a granted appeal that had been related to awards, and specify that appeals may still have an opportunity to be re-heard by the Board in certain circumstances.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under item (9), relating to implementation of legislation. The rule ensures Department compliance with Tex. Gov't Code §2306.0321, which requires the board to adopt rules outlining a formal process for appealing board and department decisions, and outlines what the requirements must include; and with Tex. Gov't Code §2306.0504(d), which provides a person debarred by the Department with an appeal right to the Board. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have warranted a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for the handling of appeals filed with the Department.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit or repeal an existing regulation, but does expand the appeal process to provide for a broader grounds for the basis of an appeal. The new rule moves away from a narrow basis for what constituted grounds for an appeal, and moves toward a broader scope.

7. The new rule may increase the number of individuals who may take advantage of the Department's appeal process; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for how an appeal can be filed with the Department in regards to a Department decision. Other than in the case of a small or micro-business that is a participant in one of the Department's programs that also wants to file an appeal on an issue, no small or micro-businesses are subject to the rule. If a small or micro-business is participating in a Department program and whishes to appeal, the new broadened scope for appeals provides a clear easy to use process for doing so.

3. The Department has determined that because this rule relates only to a process for the appeal of a Department decision by program participants there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to procedural changes to the Department's appeal process, not locally based activities; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's appeal process there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Gov't Code §2306.0321 and §2306.0504, a more clear process, and a broader opportunity for those to file an appeal who may have a disagreement with a Department determination. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.7. Appeals Process

(a) Purpose. The purpose of this rule is to provide the procedural steps by which an appeal can be filed relating to Department decisions as authorized by Tex. Gov't Code §§2306.0321 and 2306.0504 which together require an appeals process be adopted by rule for the handling of appeals relating to Department decisions and debarment. Appeals relating to low income housing tax credits, multifamily mortgage revenue bonds, multifamily loans, and their associated underwriting are governed by a separate appeals process provided at §10.902 of this Title.

(b) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. If not defined below, Capitalized terms used in this section have the meaning in the rules that govern the applicable program under which the appeal is being filed.

(1) Affiliated Party--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(2) Appeal--An Appealing Party's notice to challenge a decision or decisions made by staff and/or the Executive Director regarding an Application, Commitment, Contract, Loan Agreement, Debarment, or LURA as governed by this section.

(3) Appeal file--The written record of an Appeal that contains the applicant's Appeal; the correspondence, if any, between Department staff or the executive director and the Appealing Party; and the final Appeal decision response provided to the Appealing Party.

(4) Appealing Party--The Administrator, Affiliated Party, Applicant, Person, or Responsible Party (as provided for in §2.401 of this Title regarding Debarment from Programs Administered by the Department) who files, intends to file, or has filed on their behalf, an Appeal before the Department.

(c) Persons Eligible to Appeal. An Appeal may be filed by any Administrator, Applicant, Person, or Responsible Party (as provided for in §2.401 of this Title regarding Debarment from Programs Administered by the Department), or Affiliated Party of the Administrator, Applicant, Person or Responsible Party who has filed an Application for funds or reservation with the Department, or has received funds or a reservation from the Department to administer.

(d) Grounds to Appeal Staff Decision. Appeals may be filed using this process on the following grounds:

(1) Relating to applying for funds or requesting to be approved for reservation authority an Appealing Party may appeal if there is:

(A) disagreement with the determination of staff regarding the sufficiency or appropriateness of documents submitted to satisfy evidence of a given threshold or scoring criteria, including the calculation of any scoring based items;

(B) disagreement with the termination of an application;

(C) disagreement with the denial of an award or reservation request;

(D) disagreement with the amount of the award recommended by the Department, unless that amount is the amount requested by the Applicant;

(E) concern that the documents submitted were not processed by Department staff in accordance with the Application and program rules in effect; and/or

(F) a determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(2) Relating to issues that arise after the award or reservation determination by the Board, an Appealing Party may appeal if there is:

(A) disagreement with a denial by the Department of a Contract, Commitment, Loan Agreement, or LURA amendment that was requested in writing; or

(B) a determination by the Board or the Executive Director that there is good cause for an Appeal because there are implicated interests to be protected by due process.

(3) Relating to debarment a Responsible Party may appeal a determination of debarment, as further provided

for in §2.401(k) of this Chapter.

(4) Affiliated Party Appeals. An Affiliated Party has the ability to appeal only those decisions that directly impact the Affiliated Party, not the underlying agreements. An Affiliated Party may appeal a finding of failure to adequately perform under an Administrator's Contract, resulting in a "Debarment" or a similar action.

(e) Process for Filing an Appeal of Staff Decision to the Executive Director.

(1) An Appealing Party must file a written Appeal of a staff decision with the Executive Director not later than the seventh calendar day after notice has been provided to the Appealing Party. For purposes of this section, posting of materials or logs on the Department's website is considered "notice" when identified as such in the application process as a public notification mechanism.

(2) The written appeal must include specific information relating to the disposition of the Application or written request for change to the Contract, Commitment, Loan Agreement, and/or LURA. The Appealing Party must specifically identify the grounds for the Appeal based on the disposition of underlying documents.

(3) Upon receipt of an Appeal, Department staff shall prepare an Appeal file for the Executive Director. The Executive Director shall respond in writing to the Appealing Party not later than the fourteenth day after the date of receipt of the Appeal. The Executive Director may take one of the following actions.

(A) Concur with the Appeal and make the appropriate adjustments to the staff's decision; or

(B) Disagree with the Appeal, in concurrence with staff's original determination, and provide the basis for rejecting the Appeal to the Appealing Party.

(f) Process for Filing an Appeal of the Executive Director's Decision to the Board.

(1) If the Appealing Party is not satisfied with the Executive Director's response to the Appeal provided under (e)(3) above, they may appeal in writing directly to the Board within seven days after the date of the Executive Director's response.

(2) In order to be placed on the agenda of the next scheduled meeting of the Department's Board, the Appeal must be received by the Department at least fourteen days prior to the next scheduled Board meeting. Appeals requested under this section received after the fourteenth calendar day prior to the Board meeting will generally be scheduled at the next subsequent Board meeting. However, the Department reserves the right to place the Appeal on a Board meeting agenda if an Appeal that is timely filed under paragraph (1) is received fewer than fourteen calendar days prior to the next scheduled Board meeting. The Executive Director shall prepare Appeal materials for the Board's review based on the information provided.

(3) If the Appealing Party receives additional information after the Executive Director has denied the Appeal, but prior to the posting of the Appeal for Board consideration, the new information must be provided to the Executive Director for further consideration or the Board will not consider any information submitted by the Applicant after the written Appeal. New information will cause the deadlines in this subsection to begin again. The Board will review the Appeal de novo and may consider any information properly considered by the Department in making its prior decision(s).

(4) Public Comment on an Appeal Presented to the Board. The Board will hear public comment on the Appeal under its Public Comment Procedures in §1.10 of this Subchapter. While public comment will be heard, persons making public comment are not parties to the Appeal and no rights accrue to them under this section or any other Appeal process. Nothing in this section provides a right to Appeal any decision made on an Application, Commitment, Contract, Loan Commitment, or LURA if the Appealing Party does not have grounds to appeal as described in subsection (d) of this section.

(5) In the case of possible actions by the Board regarding Appeals, the Board may:

(A) Concur with the Appealing Party and grant the Appeal; or

(B) Disagree with the Appealing Party, in concurrence with the Executive Director's original determination, and provide the basis for rejecting the Appeal.

(C) In instances in which the Appeal, if granted by the Board would have resulted in an award to the Applicant, the Application shall be evaluated for an award as it relates to the availability of funds and staff will recommend an action to the Board in the meeting at which the Appeal is heard, or a subsequent meeting. If no funds are available in the current year's funding cycle, then the Appealing Party may be awarded funds from a pool of deobligated funds or other source, if available.

(D) In the case of actions regarding all other Appeals, the Board shall direct staff on what specific remedy is to be provided, allowable under current laws and rules.

(g) Board Decision. Appeals not submitted in accordance with this section will not be considered, unless the Executive Director or Board, in the exercise of its discretion, determines there is good cause to consider the appeal. The decision of the Board is final unless the Board determines within 45 days of a Board decision that it has erred in fact or law in its determination, in which case an Appeal may be reconsidered by the Board on a motion by a party to the Appeal or the Department.

(h) Limited Scope. The appeals process provided in this rule is of general application. Any statutory or specific rule with a different appeal process will be governed by the more specific statute or rule. Except as provided for in §2.401 of this Title regarding Debarment from Programs Administered by the Department, this Section does not apply to matters involving a Contested Case Proceeding under §1.13 of this Subchapter.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.10, Public Comment Procedures, and an order adopting new 10 TAC §1.10, Public Comment Procedures, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to provide for compliance with Tex. Gov't Code §2306.032(f), which requires that the Board shall provide for public comment after the presentation made by staff and the motions made by the Board on the topic; with Tex. Gov't Code §2306.032(g), which requires the Board to adopt rules that give the public a reasonable amount of time for testimony at meetings; and with Tex. Gov't Code §2306.066(d), which requires that the Board develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board;

WHEREAS, this rule was last acted upon in February 2014, and changes are needed to clarify the use of handouts and large size displays at Board meetings during public comment, to clarify that the Board has the ability to limit comment within reasonable limits, to provide for the requirement that the speaker must sign in, and to make other revisions to readability and clarity; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.10, Public Comment Procedures, and new 10 TAC §1.10, Public Comment Procedures, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of §1.10, Public Comment Procedures, and new §1.10, Public Comment Procedures, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is Tex. Gov't Code §2306.032(f), which requires that the Board provide for public comment after the presentation made by staff and the motions made by the Board on the topic; Tex. Gov't Code §2306.032(g) which requires that the Board adopt rules that give the public a reasonable amount of time for testimony at meetings; and Tex. Gov't Code §2306.066(d), which requires that the Board develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

Department Policy: While Tex. Gov't Code §2306.032(f) and (g) and Tex. Gov't Code §2306.066(d) require that the Department provide for public comment and specify to some extent when that should occur (i.e., after the motions are made by the Board), the statute does not specify what those procedures must be. Therefore, these rules set Department policy for how public comment will be received and heard by the Board.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but done so through repeal and proposal of new rules. This action allows the Department to evidence compliance with with Tex. Gov't Code §2306.032(f) and (g) and §2306.066(d). The new rule reflect changes that clarify the use of handouts and large-size displays at Board meetings during public comment, that provide for the Board having the ability to place reasonable limitations on comment, that provide for the requirement that the speaker must sign in, and that make other revisions to readability and clarity.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.10. Public Comment Procedures

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.10, Public Comment Procedures. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for the handling of public comment during a meeting of the Department's board.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for accepting public comment.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.10. Public Comment Procedures.

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.10. Public Comment Procedures

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.10, Public Comment Procedure without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4610). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.032(f), which requires that the Board shall provide for public comment after the presentation made by staff and the motions made by the Board on the topic; with Tex. Gov't Code §2306.032(g), which requires the Board to adopt rules that give the public a reasonable amount of time for testimony at meetings; and with Tex. Gov't Code §2306.066(d), which requires that the Board develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board. The rule also clarifies the use of handouts and large-size displays at Board meetings during public comment, provides for the Board having the ability to place reasonable limitations on comment, provides for the requirement that the speaker must sign in, and makes other revisions to readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action under items (9), relating to implementing legislation. The rule ensures Department compliance with Tex. Gov't Code §2306.032(f), which requires that the Board shall provide for public comment after the presentation made by staff and the motions made by the Board on the topic; with Tex. Gov't Code §2306.032(g), which requires the Board to adopt rules that give the public a reasonable amount of time for testimony at meetings; and with Tex. Gov't Code §2306.066(d), which requires that the Board develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for acceptance and handling of public comment made at meetings of the Department's board.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation, but merely makes procedural and technical changes to an existing process for accepting public comment.

7. The new rule does not increase nor decrease the number of individuals subject to the rule; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for how public comment will be accepted by the Board at their meetings. Other than in the case of a small or micro-business that is interested in providing public comment at a meeting of the Department's board, no small or micro-businesses are subject to the rule. If a small or micro-business is interested in providing comment, the rule provides a clear easy process for doing so.

3. The Department has determined that because this rule relates only to a process for hearing public comment there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the administrative process used by the Department's board to accept public comment; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's public comment process at meetings of the Department's board there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with §2306.032(f), which requires that the Board shall provide for public comment after the presentation made by staff and the motions made by the Board on the topic; with Tex. Gov't Code §2306.032(g), which requires the Board to adopt rules that give the public a reasonable amount of time for testimony at meetings; and with Tex. Gov't Code §2306.066(d), which requires that the Board develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.10. Public Comment Procedures

(a) Purpose. The purpose of this section is to establish procedures for hearing public comments at Governing Board meetings open to the public held by the Texas Department of Housing and Community Affairs in accordance with §2306.032(f) and §2306.066(d) of the Texas Government Code.

(b) Procedures for taking public comment.

(1) At each meeting open to the public the Governing Board ("Board") shall provide opportunity for members of the public to make:

(A) After the Board has taken action on all posted agenda items on which it intends to take action, general public comment on matters of relevance to the Department's business or requests that the Board place specific items on future agendas for consideration. It is the prerogative of the Board Chair to place reasonable limits on public comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this section; and

(B) Specific public comment on each posted agenda item after the presentation made by Department staff and motions made by the Board. For purposes of this rule, the Board may consider the staff's presentation to be staff's written presentation in the Board's meeting book and posted on the Department's website. It is the prerogative of the Board Chair to place reasonable limits on such comment. Handouts of printed materials are permitted only as provided for in paragraph (6) of this section.

(2) The opportunity for general public comment under paragraph (1)(A) of this subsection may not be used to advocate for or against any specific action relating to any posted item or for or against any pending application, the opportunity for any such testimony is to be limited to the appointed time when action on such matter is requested to be formally considered as a posted agenda item.

(3) At the time general or specific public comment is taken, speakers should be prepared to come promptly to the podium or other place designated for speakers. They may, if they wish, agree among themselves on an order in which they will speak. If a large number of speakers wish to testify, the chair may, in his or her reasonable discretion, establish appropriate limits on the total amount of time to be devoted to testimony on any given item or items. As each individual speaker begins his or her testimony, they must state on the record their name and on whose behalf they are speaking, and sign in on a sheet provided by staff to indicate the correct spelling of their name and on whose behalf they are speaking.

(4) Individuals not speaking who wish to register positions for or against a posted agenda item may register their positions, for or against, with the secretary of the meeting, or another person designated by the chair, on a form, which the person wishing to register must sign, stating their name, whom they represent, the action item to which their comment relates, and their position. At the end of the public comment on the item the chair will have registered positions for and against read into the record.

(5) Additional limits on public comment.

(A) The Board Chair, in her/his sole discretion, may additionally limit the number and length of presentations of public comment, both general and specific, at any time during a meeting based on a consideration of:

(i) the number of persons wishing to give public comment;

(ii) the number of agenda items to be heard;

(iii) the time available for the meeting; and

(iv) the risk of losing a quorum of Board members.

(B) If the Board Chair limits presentations, she or he will not limit them in a manner that inappropriately favors a particular point of view.

(C) The Board Chair may, in her or his reasonable discretion, grant deference to elected officials and other persons who have traveled great distances.

(6) Presenting printed materials. An individual providing testimony to the Board may provide printed materials only if they are provided as outlined in subparagraphs (A) - (C) of this paragraph:

(A) In order to ensure that members of the Board and the public are given an opportunity to review any such materials, they must be provided to the Department staff not less than five (5) business days prior to the

meeting at which they are to be used. This is to enable staff to post them on the Department's website not later than the third day before the date of the meeting, as provided for in Tex. Gov't Code §2306.032(c). They must be made available in Adobe Acrobat (pdf) electronic format;

(B) Department staff will post such materials to the Department's website no later than the third day before the meeting at which they are to be used;

(C) In exceptional circumstances the Board Chair may, in her/his sole discretion, and only after giving Board members an opportunity to object, allow materials to be provided at a meeting in hard copy format provided:

(i) they are delivered to staff prior to the start of the meeting so that staff may log in the materials and the Board Chair may review for acceptance under this subsection. Materials may not be handed directly by the public to a Board member on the dais;

(ii) they are not so voluminous as to cause inordinate delay while members of the Board and public review them;

(iii) they are provided in hard copy format to all members of the public in attendance;

(iv) they are also provided to staff in Adobe Acrobat (pdf) format for inclusion in the electronic records of Board materials available to the public via the Department's website; and

(v) if the materials involve large size photos, maps, charts, or other information to be displayed for the Board, an identical copy must be displayed to the public attendees.

(7) Persons seeking allowance of written materials under paragraph (6)(C) of this subsection should be aware that their proffered materials may be disallowed, and they should always be prepared to proceed with a verbal presentation within the time constraints for public speaking at Board meetings.

1v

BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.17, Alternative Dispute Resolution and Negotiated Rulemaking, and an order adopting new 10 TAC §1.17, Alternative Dispute Resolution, and new 10 TAC §1.12, Negotiated Rulemaking, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, staff recommends to the Board that there is a continuing need for 10 TAC §1.17, and the proposed new 10 TAC §1.12, to exist, which is to provide for compliance with Tex. Gov't Code §2306.082 which requires the Department to encourage the use of appropriate Alternative Dispute Resolution ("ADR") procedures and the use of negotiated rulemaking procedures for the adoption of Department rules;

WHEREAS, 10 TAC §1.17 currently addresses both ADR and Negotiated Rulemaking, and staff finds that greater clarity will be provided if those two issues are addressed in separate rules to be proposed as 10 TAC §1.17 for ADR and 10 TAC §1.12 for Negotiated Rulemaking;

WHEREAS, 10 TAC §1.17 was last acted upon in 2006, and minor changes are needed for clarity, improved readability and corrected citations; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.17, Alternative Dispute Resolution and Negotiated Rulemaking, and new 10 TAC §1.17, Alternative Dispute Resolution, and new 10 TAC §1.12, Negotiated Rulemaking, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.17, Alternative Dispute Resolution and Negotiated Rulemaking, new 10 TAC §1.17, Alternative Dispute Resolution, and new 10 TAC §1.12, Negotiated Rulemaking, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is Tex. Gov't Code §2306.082 and §2009.051(c) which requires the Department to encourage the use of appropriate ADR procedures under Tex. Gov't Code, Chapter 2009, to assist in the fair and expeditious resolution of internal and external disputes under the Department's jurisdiction. These ADR procedures are intended to work in conjunction with the guidelines and rules of the State Office of Administrative Hearings found at Tex. Gov't Code, Chapter 2001; 1 TAC Part 7, Chapter 155; and with Chapter 154, Civil Practices and Remedy Code. Tex. Gov't Code, Chapter 2008 describes the procedures for negotiated rulemaking including appointment of a convener; publishing notice of proposed negotiated rulemaking and requesting comments on the proposal; appointing a negotiated rulemaking committee; appointing an impartial third party facilitator; and proposing the resulting draft rule for public comment.

Department Policy: Tex. Gov't Code §2306.082 and by reference, Tex. Gov't Code, Chapters 2008 and 2009, provide for not only the requirements to encourage Alternative Dispute Resolution and Negotiated Rulemaking but also the regulations under the State Office of Administrative Hearings that must be followed. The only policy being established by the Department in excess of statutory and regulatory requirements is outlining procedurally how such process will be administratively handled at the Department, and providing for what circumstances may be reasonable considerations in using Alternative Dispute Resolution or Negotiated Rulemaking.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but done so through repeal and proposal of new rules. This action allows the Department to evidence compliance with Tex. Gov't Code §2306.082 and Chapters 2008 and 2009. Greater clarity is provided by separating the two topics covered in the current rule into two different rules to be proposed at 10 TAC §1.17 for Alternative Dispute Resolution and 10 TAC §1.12 for Negotiated Rulemaking, and by making minor changes within each component for clarity, improved readability and corrected citations.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.17. Alternative Dispute Resolution and Negotiated Rulemaking

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.17 Alternative Dispute Resolution and Negotiated Rulemaking. The purpose of the repeal is to eliminate an outdated rule while adopting two new updated rules under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for the handling of public comment during a meeting of the Department's board.

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

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

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

5. The repeal is not creating a new regulation, except that it is being divided out by subject area and replaced by two new rules simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with the simultaneous readoption of two rules making changes to the existing procedure for alternative dispute resolution and negotiated rulemaking.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while

adopting two new updated rules under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.17. Alternative Dispute Resolution and Negotiated Rulemaking.

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC §1.12. Negotiated Rulemaking

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.12, Negotiated Rulemaking without changes to the proposed text as published in the July 13, 2018, issue of the Texas Register (43 TexReg 4612). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code 2306.082 and Chapter 2008, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations.

Tex. Gov't Code §2001.0045(b) does not apply to the rules being adopted under item (9), relating to implementing legislation. The rule provides for compliance with Tex. Gov't Code §2306.082 which requires the Department to encourage the use of appropriate Alternative Dispute Resolution ("ADR") procedures and the use of negotiated rulemaking procedures for the adoption of Department rules.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the activity of negotiated rulemaking which had previously been included in 10 TAC §1.17 along with alternative dispute resolution. The two topics have been separated into two different rules, with negotiated rulemaking now addressed here at 10 TAC §1.12. This rule which provides for the Department's compliance with Tex. Gov't Code §2306.082 which requires the Department to encourage the use of negotiated rulemaking procedures for the adoption of Department rules.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is moving a subject previously addressed in 10 TAC §1.17 and moving it 10 TAC §1.12 so that the topic of negotiated rulemaking can be handled separately. 10 TAC §1.17 is being repealed and replaced simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation, other than as noted in item five above, and merely makes procedural and technical changes to an existing process for negotiated rulemaking.

7. The new rule does not increase nor decrease the number of individuals subject to the rule; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to requirements relating to the possible use of negotiated rulemaking by the Department in conformance with Tex. Gov't Code §2306.082. Other than in the case of a small or micro-business that wants to engage the Department in negotiated rulemaking, no small or micro-businesses are subject to the rule. If a small or micro-business does desire to engage the Department in negotiated rulemaking, the rule provides a straightforward process for doing so.

3. The Department has determined that because this rule relates only to a possible means for engaging with the Department for rulemaking there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to an additional way to engage the Department in the rulemaking process; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's rule regarding the procedures for negotiated rulemaking there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Gov't Code 2306.082 and Chapter 2008, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at 10 TAC §1.17, which is being repealed. The rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to technical changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.12. Negotiated Rulemaking.
(a) Purpose. In accordance with Tex. Gov't Code §2306.082, the Department encourages the use of negotiated rulemaking procedures for the adoption of Department rules. Tex. Gov't Code Chapter 2008 describes the procedures for negotiated rulemaking including appointment of a convener; publishing notice of proposed negotiated rulemaking and requesting comments on the proposal; appointing a negotiated rulemaking committee; appointing an impartial third party facilitator; and proposing the resulting draft rule for public comment.
(b) Request for Negotiated Rulemaking Process.
(1) Any person or organization that would like for the Department to use negotiated rulemaking for the adoption of a Department rule may submit such a request to the Department's Board Secretary. The proposal must identify: the rule proposed for negotiated rulemaking, potential participants for the negotiated

rulemaking committee, possible third party facilitators, and a suggested timeline for the process. The Department may also on its own propose to use negotiated rulemaking.

(2) In determining whether a proposed negotiated rulemaking is appropriate in a particular situation, the Department and interested parties may consider any relevant factors, including:

(A) The number of identifiable interests that would be significantly affected by the proposed rule;

(B) The probability that those interests would be adequately represented in a negotiated rulemaking;

(C) The probable willingness and authority of the representatives of affected interests to negotiate in good faith;

(D) The probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule;

(E) The probability that negotiated rulemaking will not unreasonably delay notice and eventual adoption of the proposed rule;

(F) The adequacy of agency and public resources to participate in negotiated rulemaking; and

(G) The probability that the negotiated rulemaking committee will provide a balanced representation among all interested and affected parties. (Tex. Gov't Code §2008.052(d)).

(3) The Department generally will respond to the request within seven calendar days. If the negotiated rulemaking is not pursued, the Department will provide the party making the request with an explanation for the basis of the decision.

(c) If the Department decides to proceed with a negotiated rulemaking, it shall follow the process outlined in Tex. Gov't Code Chapter 2008 and costs associated with the negotiated rulemaking process will be handled as specified in Tex. Gov't Code §2008.003.

Attachment 3: Preamble, including required analysis, for adopting new 10 TAC §1.17. Alternative Dispute Resolution

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.17, Alternative Dispute Resolution. The purpose of the new section is to provide compliance with Tex. Gov't Code 2306.082 and Chapter 2009, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations.

Tex. Gov't Code §2001.0045(b) does not apply to the rules being adopted under item (9), relating to implementing legislation. The rule provides for compliance with Tex. Gov't Code §2306.082 which requires the Department to encourage the use of appropriate Alternative Dispute Resolution ("ADR") procedures and the use of negotiated rulemaking procedures for the adoption of Department rules.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the continuation of an activity previously addressed in this rule which provides for the Department's compliance with Tex. Gov't Code §2306.082 which requires the Department to encourage the use of alternative dispute resolution.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation, but merely makes procedural and technical changes to an existing process for alternative dispute resolution.

7. The new rule does not increase nor decrease the number of individuals subject to the rule; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to requirements relating to the possible use of alternative dispute resolution by the Department in conformance with Tex. Gov't Code §2306.082. Other than in the case of a small or micro-business that is wanting to engage the Department in alternative dispute resolution, no small or micro-businesses are subject to the rule. If a small or micro-business does desire to engage the Department in alternative dispute resolution, the rule provides a straightforward process for doing so.

3. The Department has determined that because this rule relates only to a possible means for engaging with the Department for alternative dispute resolution there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to an method for settling disputes with the Department; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's rule for dispute resolution there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Gov't Code 2306.082 and Chapter 2008, to provide greater clarity by considering the issue of Negotiated Rulemaking separately from that of Alternative Dispute Resolution, and to make minor changes for clarity, improved readability and corrected citations. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.17. Alternative Dispute Resolution.
(a) Purpose. In accordance with Tex. Gov't Code, §2306.082, and as authorized by Tex. Gov't Code, §2009.051(c), the Department encourages the use of appropriate Alternative Dispute Resolution ("ADR") procedures under Tex. Gov't Code, Chapter 2009 to assist in the fair and expeditious resolution of internal and external disputes under the Department's jurisdiction. These ADR procedures are intended to work in conjunction with the guidelines and rules of the State Office of Administrative Hearings found at Tex. Gov't Code, Chapter 2001; 1 TAC Part 7, Chapter 155; and with Chapter 154, Civil Practice and Remedies Code.

(b) Definitions. For purposes of this rule, terms used herein shall have the following meaning:
(1) Alternative Dispute Resolution ("ADR")--a procedure or combination of procedures described in Chapter 154, Civil Practice and Remedies Code.
(2) Dispute Resolution Coordinator--One or more trained persons employed by the Department, who may not be in the Legal Division, designated by the Executive Director to coordinate and process requests for the ADR procedures.
(3) Mediation--a dispute resolution procedure in which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them.

The mediator may not impose his or her own judgment on the issues for that of the parties (§154.023(a) and (b), Texas Civil Practice and Remedies Code).

(4) Impartial third party--A person who meets the qualifications and conditions of Tex. Gov't Code §2009.053. An Impartial Third Party must possess the qualifications required under the Texas Civil Practice and Remedies Code §154.052 (a minimum of 40 classroom hours of training in dispute resolution techniques), is subject to the standards and duties prescribed by Texas Civil Practice and Remedies Code §154.053 and has the qualified immunity prescribed by Texas Civil Practice and Remedies Code §154.055 for volunteer third parties not receiving compensation in excess of expenses, if applicable. (Tex. Gov't Code §2009.053(d).

(c) Preliminary Considerations.

(1) The Department encourages communication between Department staff and applicants to the Department programs, and other interested persons, to exchange information and informally resolve disputes.

(2) The Department has appeal procedures found at 10 TAC §1.7, and at 10 TAC §10.902. ADR procedures supplement and do not limit any available procedure for the resolution of disputes (Tex. Gov't Code §2009.052(a)). Pursuing an ADR procedure does not suspend or delay application, appeal, or other deadlines. For example, if a tax credit applicant desires to appeal a Department decision using the procedures promulgated under §2306.6715 and also desires to pursue an ADR procedure, the applicant may independently pursue the two procedures. Each procedure will proceed independently of the other. However, ADR does not suspend any statutory deadlines or grant any additional authority to resolve issues beyond statute.

(3) Consistent with Tex. Gov't Code §2306.082(e), the ADR procedure must be requested before the Department's Board makes a final decision on an issue.

(4) Consistent with Tex. Gov't Code §2306.082(f), the ADR procedure may not be used to unnecessarily delay an appeal proceeding, or other deadline.

(d) Appropriateness of ADR

(1) Assessment of the Dispute. In determining whether an ADR procedure is appropriate, the parties to the dispute, including the Department, should consider the following factors:

(A) whether direct discussions and negotiations between the parties have been unsuccessful and/or the parties believe there is a misunderstanding involving the facts or interpretations that could be improved with the assistance of an Impartial Third Party;

(B) whether the use of ADR potentially could use fewer resources and take less time than other available procedures, and that there is a reasonable likelihood that the use of ADR will result in an agreement to resolve the dispute;

(C) whether there is a reasonable likelihood that the use of ADR will result in an agreement to resolve the dispute, and there are potential remedies or solutions that are only available through ADR; and/or

(D) whether the need for a final decision with precedential value is less important than other considerations. (Nothing herein should be construed as creating a presumption that a final decision establishes binding precedent in any given manner).

(2) The parties may also consider additional factors found in the State Office of Administrative Hearings' ADR Model Guidelines for assessing whether a dispute is appropriate for mediation.

(3) Independent of any proposal from interested parties outside the Department, the Department may propose using ADR procedures to interested parties to try to resolve a dispute.

(e) ADR Process

(1) Any applicant for Department programs or other interested person may request the use of an ADR procedure to attempt to resolve a dispute with the Department. The ADR request must be submitted in writing to the Department's Dispute Resolution Coordinator at the mailing address or email address listed on the Department's website. The request for ADR must state the nature of the dispute, the parties involved, any pertinent or impending deadlines, whether all parties agree to refer the dispute to ADR, proposed times and locations, and the preferred type of ADR procedure.

(2) If an applicant or other interested person is uncertain whether to propose the possible use of ADR or is uncertain about any particular aspect of a possible proposal, they should contact the Department's Dispute Resolution Coordinator to discuss the matter.

(3) The ADR Coordinator will notify the person requesting the ADR procedure that an ADR decision is not binding on the state and that the Department will mediate in good faith.

(4) The ADR Coordinator will provide copies of the request received, and all other materials received, to any other parties to the dispute.

(5) The Dispute Resolution Coordinator shall provide a copy of the ADR request to the Executive Director and General Counsel and other applicable internal parties.

(6) The Dispute Resolution Coordinator will assess whether ADR would assist in fairly and expeditiously resolving the dispute and will notify all affected parties within seven calendar days of receiving an ADR request of one of the following determinations:

(A) If the parties, including the Department, cannot agree on whether an ADR procedure should be used or on the particulars of the ADR procedure, the Dispute Resolution Coordinator will notify both parties that agreement to utilize ADR could not be reached;

(B) If the Dispute Resolution Coordinator determines not to refer the dispute to ADR, the Dispute Resolution Coordinator shall state the reasons in writing; or

(C) If the Dispute Resolution Coordinator decides to refer the dispute to ADR, the date for the selected ADR process will be included in the notice.

(f) Selection of Mediator or Impartial Third Party.

(1) The Department designates the State Office of Administrative Hearings ("SOAH") as the primary mediator for Department ADR requests as required by Tex. Gov't Code §2306.082(b).

(2) If the Department and SOAH agree to utilize an Impartial Third Party other than one so designated through SOAH, an Impartial Third Party will be identified.

(3) The selection of an Impartial Third Party is subject to the approval of the parties to the dispute. If the parties do not suggest potential third parties, the Dispute Resolution Coordinator will provide a list of potential third parties from which to choose. If all parties agree to use an Impartial Third Party who charges for ADR services, then the costs for the Impartial Third Party shall be apportioned equally among all parties, unless otherwise agreed by the parties.

(g) Voluntary Agreement. All parties participating must have the authority to reach an agreement to make a final recommendation to resolve the dispute. The Executive Director will abide by an agreed upon solution to the dispute and either approve that agreement or offer that recommendation to the Board, if Board authorization is needed. The decision to reach agreement is voluntary. If the parties reach a resolution and execute a written agreement, the agreement is enforceable in the same manner as any other written agreement of the same nature with the State. A written agreement to which the Department is a signatory resulting from an ADR procedure must be approved by the appropriate authority.

(h) A written agreement to which the Department is a signatory resulting from an ADR procedure is subject to Tex. Gov't Code Chapter 552 concerning open records.

(i) Confidentiality of Records and Communications. The confidentiality of the communications, records, conduct, and demeanor of an impartial third party and parties in an ADR procedure are governed by Tex. Gov't Code §2009.054.

(j) The Department may share the results of its ADR process with other governmental bodies, and with the Center for Public Policy Dispute Resolution at the University of Texas School of Law, which may collect and analyze the information and report its conclusions and useful information to governmental bodies and the legislature.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.13, Contested Case Hearing Procedures, and an order adopting new 10 TAC §1.13, Contested Case Hearing Procedures, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs which includes, as needed, procedural requirements to ensure that administrative processes exist for the handling of contested cases and hearings with the State Office of Administrative Hearings;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to provide for clear guidance in those cases in which a contested case is requested of the Department as part of its administrative operations, and to provide a process for situations contemplated in Tex. Gov't Code §2306.044 which provides for the right to request a hearing before the State Office of Administrative Hearings in a contested case proceeding by the Department to assess an administrative penalty;

WHEREAS, this rule was last adopted in 2012 with only minor amendments in 2014 and 2017 that did not satisfy the requirements of a four-year review under Tex. Gov't Code §2001.039, and changes are now needed to ensure compliance with Tex. Gov't Code §2001.039 and to clarify the steps that initiate a hearing, provide for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings, and make other revisions for readability and clarity; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.13, Contested Case Hearing Procedures, and new 10 TAC §1.13, Contested Case Hearing Procedures, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of §1.13, Contested Case Hearing Procedures, and new §1.13, Contested Case Hearing Procedures, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

<u>BACKGROUND</u>

Authority: Tex. Gov't Code §2306.053, authorizes the Department to adopt rules governing the administration of the Department and its programs. This may include, as needed, procedural requirements that are needed to ensure that administrative processes exist for the handling of contested cases and hearings with the State Office of Administrative Hearings. This rule therefore provides clear guidance for those cases in which a contested case is requested of the Department as part of its administrative operations, and also provides a process for situations contemplated in Tex. Gov't Code §2306.044 which provides for the right to request a hearing before the State Office of Administrative Hearings in connection with a contested case proceeding by the Department to assess an administrative penalty.

Department Policy: While Tex. Gov't Code §2306.053 and §2306.044 do not explicitly require that the Department have a rule for the handling of Contested Case Hearings, the statute does allow for that ability and the rule provides no burden, while ensuring the benefits of improved and accurate procedures. Therefore, this rule does set policy from the Department, not provided for explicitly in state statute or federal regulations.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but done so through repeal and proposal of new rules. This action allows the Department to continue to have a clear process for Contested Case Hearings and provides the procedures needed to appropriately comply with Tex. Gov't Code §2306.044. The new rules reflect changes that clarify the steps that initiate a hearing, provide for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings, and make other revisions for readability and clarity.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC §1.13. Contested Case Hearing Procedures.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.13, Contested Case Hearing Procedures. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption of procedural requirements that are needed to ensure that administrative processes exist for the handling of contested cases and hearings with the State Office of Administrative Hearings.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for contested case hearings.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.13. Contested Case Hearing Procedures

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.13. Contested Case Hearing Procedures

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.13, Contested Case Hearing Procedures without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4613). The purpose of the proposed new section is to ensure compliance with Tex. Gov't Code §2306.044, which provides for the right to request a hearing before the State Office of Administrative Hearings in connection with a contested case proceeding by the Department to assess an administrative penalty. The rule also clarifies the steps that initiate a hearing, provides for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings ("SOAH"), and makes other revisions for readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementing legislation. The rule provides a process for several situations contemplated in federal and state law including but not limited to Tex. Gov't Code §2306.044 which provides for the right to request a hearing before the State Office of Administrative Hearings in a contested case proceeding by the Department to assess an administrative penalty, in Tex. Gov't Code §2105.153 which provides for the right to request a hearing before SOAH in a contested case proceeding by the Department regarding the denial or services or benefits, and in Tex. Gov't Code §§2105.204 and 2105.302 which provide for the right to request a hearing before SOAH in a contested case proceedings by the Department regarding reduction or termination of block grant funds. Additionally, the rule provides a contested case mechanism for Department decisions when required by federal regulation such as 24 CFR §42.390.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedural requirements that are needed to ensure that administrative processes exist for the handling of contested cases and hearings with the State Office of Administrative Hearings.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation, but merely makes procedural and technical changes to an existing process for the handling of SOAH hearings.

7. The new rule does not increase nor decrease the number of individuals subject to the rule; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for procedural requirements that are needed to ensure that administrative processes exist for the handling of contested cases and hearings with the State Office of Administrative Hearings. Other than in the case of a small or micro-business that is pursuing a contested case hearing with the Department, no small or micro-businesses are subject to the rule. If a small or micro-business does pursue a contested case hearing, the rule is a clear provision of the process for doing so.

3. The Department has determined that because this rule relates only to a process for the handling of contested case hearings there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the administrative process used for contested case hearings; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides the means by which a contested case hearing will be handled there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be the continued provision by the Department of a clear process for Contested Case Hearings and procedures needed to appropriately comply with Tex. Gov't Code §2306.044. The new rule reflects changes that clarify the steps that initiate a hearing, provides for a timeframe within which the Department will refer a case to the State Office of Administrative Hearings, and makes other revisions for readability and clarity. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the new rule were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.13. Contested Case Hearing Procedures.

(a) Purpose. The purpose of this section is to provide procedures for contested case hearings. This section does not apply to matters such as appeals to the Board of staff decisions or waivers, and this section does not in itself create any right to a contested case hearing but merely provides a process for contested case hearings that are otherwise expressly provided for by law or rule.
(b) SOAH Designation. The Governing Board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") designates the State Office of Administrative Hearings ("SOAH") to hold all contested case hearings on the Board's behalf.
(c) Initiation of Hearing.
(1) Upon receipt of a pleading or other document that is intended to initiate a contested case proceeding before the Department, the Department shall determine if a contested case hearing is indicated under the relevant statutory provisions and rules and, if so, will mark the file as a pending proceeding and refer the matter to SOAH for hearing generally within 45 calendar days, or such other lesser time as an applicable state or federal statute, rule, or regulation may require. The Department will notify the opposing party of any delay.
(2) SOAH shall acquire jurisdiction over a case when the Department completes and files a Request to Docket Case form or other form acceptable to SOAH, together with the notice of report to the Board required under Tex. Gov't Code §2306.043 or other pertinent documents giving rise to the case. Once SOAH acquires jurisdiction, all subsequent documents created, sent, or received in connection with the proceeding that SOAH requires to be filed with it are to be filed with SOAH, with appropriate service upon the opposing party in accordance with this chapter and the rules of SOAH.
(3) Except upon a showing of good cause or as an applicable statute or federal regulation may require, all contested case hearings in which the Department is a party shall be held at the offices of SOAH located in Austin, Texas.
(4) Nothing in this subchapter shall in any way limit, alter, or abridge the ability of the Department to enter into mediation or alternative dispute resolution at any time prior to or after the holding of the administrative hearing but prior to the adoption by the Board of a final order.
(d) Service of Notice of Hearing, Pleadings and Other Documents on Parties.
(1) Service of a notice of hearing shall be made by hand delivery, regular first class mail or certified mail to the party's last known address as shown on the Department's records, in accordance with §1.22 of this Chapter (relating to providing contact information to the Department).
(2) Service of pleadings and other documents shall be made in any manner provided for in SOAH rules.
(e) Proposal for Decision.
(1) After the conclusion of a hearing, the Administrative Law Judge ("ALJ") shall prepare and serve on the parties a proposal for decision that includes the ALJ's findings of fact and conclusions of law, as modified by the ALJ's addressing of any exceptions and replies to exceptions timely filed with the ALJ in accordance with Tex. Gov't Code §2001.062 and SOAH rules. The Executive Director shall place the proposal for decision and a proposed final order on the Board's agenda for discussion and possible action at a subsequent meeting of the Board.
(2) At a meeting of the Board where the proposed final order may be adopted, parties may provide testimony based on the record only, for changes to the proposal for decision or the proposed final order. No new evidence shall be submitted at the Board meeting. The Board may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or, the Board may change a finding of fact or conclusion of law made by the ALJ, but only for reasons stated in Tex. Gov't Code §2001.058(e) . The Board may adopt a final order if it finds that the findings of fact and conclusions of law are supported by the evidence. Motions for rehearing may be filed and served in accordance with the Tex. Gov't Code Chapter 2001 and the rules of SOAH.
(f) Disposition of Contested Cases on a Default Basis.
(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, if appropriate, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to TDHCA for disposition on a default basis. Pursuant to SOAH rules, a party has 15 calendar days after the issuance of a conditional order of dismissal and remand to file with SOAH a motion to set aside the order of dismissal and remand. On the sixteenth day after issuance, if no motion to set aside has been timely filed or if such a motion to set aside is not granted within the time limits provided for in SOAH's rules, the conditional order of dismissal and remand becomes final.

(2) When the order of dismissal and remand is final, the Executive Director shall prepare a proposed order for the Board's action containing findings of fact, as set forth in the notice of hearing, conclusions of law, and granting the relief requested by staff. The matter shall be placed on the Board's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, argument and evidence on the merits will not be considered at the meeting. Motions for rehearing shall be filed and served in accordance with Tex. Gov't Code Chapter 2001 and the rules of SOAH.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and an order adopting new 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and directing publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with Tex. Gov't Code Chapters 2252, 2260, and 2270, which provide guidance relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments, respectively;

WHEREAS, this rule was last adopted in 2004 and changes are now needed to make revisions to the purpose of the rule, and add several sections to bring the rule into compliance with Tex. Gov't Code Chapters 2270 and 2252 which have both been amended, in part, since 2004; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and new 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and new §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

<u>BACKGROUND</u>

Authority: Tex. Gov't Code Chapters 2252, 2260, and 2270 provide guidance relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments, respectively, that are applicable to the contractual relationships the Department has with its Financial Advisors and Service Providers.

Department Policy: No Department policy is established with this rule beyond those established already through Tex. Gov't Code Chapters 2252, 2260, and 2270.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but done so through repeal and proposal of new rules. This action allows the Department to comply with Tex. Gov't Code Chapters 2252, 2260, and 2270.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for the handling of public comment during a meeting of the Department's board.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for disclosures.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.16, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4615). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code Chapters 2252, 2260, and 2270 which provide guidance relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments, respectively, that are applicable to the contractual relationships the Department has with its Financial Advisors and Service Providers.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (9), relating to implementing legislation. The rule provides for compliance with Tex. Gov't Code Chapters 2252, 2260, and 2270, which provide guidance relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments, respectively.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for disclosures relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation, but merely makes procedural and technical changes to an existing process for accepting public comment.
7. The new rule does not increase nor decrease the number of individuals subject to the rule; and
8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to requirements relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments. Other than in the case of a small or micro-business that is providing a contractual service that is subject to these clauses, no small or micro-businesses are subject to the rule. If a small or micro-business is contracting with the Department and subject to this rule, the rule provides a straightforward explanation of the disclosures required.

3. The Department has determined that because this rule relates only to contractual disclosures required of some parties working with the Department there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the disclosures required of those engaging in certain contractual activities with the Department; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's disclosures in certain cases there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Gov't Code Chapters 2252, 2260, and 2270, which provide guidance relating to Contracts with Governmental Entities, Resolution of Certain Contract Claims Against the State, and Prohibition on Investing Public Money in Certain Investments, respectively. The rule adds several sections to bring the rule into compliance with Tex. Gov't Code Chapters 2270 and 2252 which have both been amended, in part, since this rule was last revised.
There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

10 TAC §1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers

(a) Purpose. The purpose of this section is to establish standards of conduct applicable to financial advisors or service providers in accordance with Tex. Gov't Code Chapters 2263, 2270, and 2252.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  (1) Department--The Texas Department of Housing and Community Affairs, (the "Department").
  (2) Board--The Governing Board of the Department.
  (3) Financial advisor or service provider--A person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker who:
    (A) may reasonably be expected to receive, directly or indirectly, more than $10,000 in compensation from the Department during a fiscal year; or
    (B) renders important investment or funds management advice to the Department or a member of the Board.

(c) Anti-Boycott Verification. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2270, which requires a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate):
  (1) does not boycott Israel; and
  (2) will not boycott Israel during the term for which they provide services to the Department.

(d) Iran, Sudan and Foreign Terrorist Organizations. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2252, which requires a representation by each financial advisor or service provider that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is not an entity listed by the Texas Comptroller of Public Accounts under Tex. Gov't Code §2252.153 or §2270.0201.

(e) Exemption from Disclosure of Interested Parties. Financial advisors and service providers are required to comply with the requirements of Tex. Gov't Code Chapter 2252. Financial advisors and service providers that make a representation that their firm (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate) is a publicly traded business entity are exempt from Tex. Gov't Code §2252.908.

(f) Disclosures and Statement.
  (1) A financial advisor or service provider shall disclose in writing to the Executive Director of the Department and to the state auditor:
    (A) any relationship the financial advisor or service provider has with any party to a transaction with the Department, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the Department, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the Department; and
    (B) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the Department, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the Department or to a member of the Board in connection with the management or investment of state funds.
  (2) The financial advisor or service provider shall disclose a relationship described by this subsection without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.
  (3) A financial advisor or service provider shall file annually a statement with the Executive Director of the Department and with the state auditor. The statement must disclose each relationship and pecuniary interest described by this subsection, or if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.
  (4) The annual statement must be filed not later than April 15 in the following form. The statement must cover the reporting period of the previous calendar year.

Attached Graphic

(5) The financial advisor or service provider shall promptly file a new or amended statement with the Executive Director of the Department and with the state auditor whenever there is new information to report under this subsection.

(6) A contract under which a financial advisor or service provider renders financial services or advice to the Department or a member of the Board is voidable by the Department if the financial advisor or service provider violates a standard of conduct adopted under this section.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.18, Colonia Housing Standards, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, 10 TAC §1.18, Colonia Housing Standards, establishes housing quality standards for housing projects located in colonias;

WHEREAS, this rule was created at the direction and in partnership with the U.S. Department of Housing and Urban Development ("HUD"), because the Department and HUD wanted the Department to utilize the Department's HUD funds in the colonias, but that could not be done effectively within the applicable standards at the time, and thus this rule provided an acceptable standard for HUD;

WHEREAS, the standard provided for in this rule is no longer referred to by any other Department rule nor is it used for the Department's HUD funds via the HOME Program or the Colonia Self-Help Centers, as newer and more comprehensive standards apply to those programs including Tex. Gov't Code §2306.514 and the Texas Minimum Construction Standards required by 10 TAC Chapter 20, the Single Family Programs Umbrella Rule rendering this rule no longer necessary; and

WHEREAS, such proposed repeal was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Department has determined during its assessment of 10 TAC §1.18, Colonia Housing Standards, that as provided for in Tex. Gov't Code §2001.039, the original purpose for creating the rule no longer exists, there is not a continuing need for this rule, and staff adopts its repeal; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.18, Colonia Housing Standards, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: Tex. Gov't Code §2306.053, authorizes the Department to adopt rules governing the administration of the Department and its programs, which may include as needed the repeal of rules. This rule was not

statutorily required, and as there is no longer a purpose for this rule, the Department is using its rule-making authority to repeal this rule.

Department Policy: Staff recommends that this rule be repealed. It should be emphasized that this repeal does not eliminate housing standards in colonias, because standards (other than those in the rule) have been in place for quite some time through Tex. Gov't Code §2306.514 and the Texas Minimum Construction Standards required as stated in 10 TAC Chapter 20, the Single Family Programs Umbrella Rule. This repeal merely eliminates an unused rule no longer referenced by program administration.

Consistency with Executive Direction and Proposed Changes: The repeal of this rule is consistent with the streamlining of Department rules and removal of rules for which there is no clear public purpose.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Below is the excerpted rule so the reader can see what is proposed for repeal. Attached is the proposed preamble for the repeal action.

10 TAC §1.18, Colonia Housing Standards

(a) Purpose. The purpose of this section is to establish housing quality standards for housing projects located in colonias. A colonia is defined in Tex. Gov't Code Ann. §2306.581 to mean a geographic area located in a county some part of which is within 150 miles of the international border of this state and that:

(1) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Water Code, or
(2) has the physical and economic characteristics of a colonia, as determined by the Texas Department of Housing and Community Affairs.
(b) Colonia Housing Standards.
(1) Site and Neighborhood. The site and neighborhood shall not be subject to serious adverse environmental conditions, including at a minimum, but not limited to,
(A) flooding;
(B) open sewers; and
(C) accumulation of trash or refuse.
(2) Access.
(A) the dwelling unit shall have direct access for the occupants from public roadways;
(B) if new construction, the dwelling unit shall comply with the accessibility requirements specified in Tex. Gov't Code Ann. §2306.514; and
(C) the dwelling unit shall have operable doors and windows with serviceable locks.
(3) Structure and Materials. The structure and materials shall be such that the dwelling is structurally sound and does not pose a threat to the health and safety of the occupants, including:
(A) the structure shall be free from any serious defects such as leaning, buckling, or tripping hazards;
(B) roof shall be firm and weather tight; and
(C) in the case of a manufactured home, the home must be permanently anchored to the site to prevent movement.
(4) Lead-Based Paint. All structures shall be inspected for defective paint surfaces in units constructed prior to 1978 which are occupied by families with children under seven years of age. In the event a structure built before 1978 has been identified as having been painted with lead-based paint, it must comply with the requirements of §302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4822, and the following abatement measures shall be taken if:
(A) the painted surfaces have cracking, peeling, scaling, chipping, or loose paint; or
(B) the family that occupies the unit has a child under seven years of age who is confirmed to have a concentration of lead in whole blood of 25 micrograms of lead per deciliter of whole blood, or higher;
(5) Water Supply. The water supply shall be free of contamination; the water heater shall not be located in a bathroom, bedroom, or clothes closet; and potable water shall be supplied to all kitchens and bathrooms.
(6) Sanitary Facilities. The dwelling unit shall contain its own sanitary facilities which shall be connected to an approved sewer or septic system, shall be in proper working condition and which shall be separate from

other rooms to insure privacy. A bathroom shall contain a lavatory sink, a bathtub and/or shower, and a flush toilet.

(7) Interior Air Quality. The air in the dwelling unit shall be free of pollutants, such as carbon monoxide, sewer gas, and fuel gas.

(A) Bathrooms shall have at least one operable window or other adequate exhaust ventilation; and

(B) All windows in the dwelling unit shall have screens to cover each window opening.

(8) Food Preparation. The dwelling unit shall contain space and equipment in the proper operating condition to prepare and serve food in a sanitary manner. Each dwelling unit shall have:

(A) a working stove with a minimum of four operating burners;

(B) provisions for mechanical refrigeration of food at a temperature of not more than 45 degrees Fahrenheit;

(C) adequate sinks with hot and cold water under pressure which shall drain into an approved public or private sewer or septic system; and

(D) adequate lighting and ventilation.

(9) Electrical. Each room in the dwelling unit shall have natural or artificial lighting to permit normal indoor activities.

(A) living areas and bedrooms shall have at least one window;

(B) a ceiling or wall type light fixture shall be present and working in the bathroom and kitchen;

(C) at least two electrical outlets shall be present in the living area, kitchen, and bedrooms;

(D) all rehabilitation and new construction shall comply with the National Electric Code which includes the installation of Ground Fault Interruption Circuits (GFIC) in the kitchen and bathroom; and

(E) all new construction shall comply with the construction standards of Tex. Gov't Code Ann. §2306.514 which require accessibility and specify the location of electrical panels or breaker boxes, light switches, electrical plugs, and thermostats. Each breaker box is required to be located inside the dwelling on the first floor.

(10) Thermal Environment. The dwelling unit shall have and be capable of maintaining a healthy thermal environment.

(A) the dwelling unit shall be energy efficient;

(B) the dwelling unit shall have operable windows to provide cross ventilation; and

(C) room heaters that burn natural gas, heating oil, or kerosene, or other flammable fuels shall be vented to prevent fire and safety hazards. All vents shall extend above the peak of the roof.

(11) Security. The dwelling unit shall be secure.

(A) all exterior doors and windows shall be secured with operable locks; and

(B) at a minimum, there shall be one Underwriters Laboratories (UL) approved, battery operated or hardwired smoke detector on each level of the unit.

(c) Appeals and Alternative Dispute Resolution.

(1) The Department provides a process for appeal of decisions made under 10 T.A.C. §1.7 and §1.8.

(2) The Department encourages the use of alternative dispute resolution as outlined in 10 T.A.C. §1.17.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.18. Colonia Housing Standards

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.18, Colonia Housing Standards. After review of this rule in compliance with Tex. Gov't Code §2001.039, the Department has assessed this rule and determined that there is no longer a need for this rule.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the removal of an unused and outdated housing standard.

1. The repeal does not require a change in work that will require the creation of new employee positions nor will it support the elimination of any employee positions.

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

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

5. The repeal is not creating a new regulation.

6. The action will not limit an existing regulation but as a repeal removes a requirement that has become obsolete.

7. The repeal will neither increase nor decrease the number of individuals subject to the rule's applicability as it has not been required of any Department subrecipients for several years.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of rule that was not required statutorily and had become obsolete. This repeal does not eliminate housing standards in colonias, because standards other than those in this rule have been in place for quite some time through Tex. Gov't Code §2306.514 and the Texas Minimum Construction Standards required as stated in 10 TAC Chapter 20. This repeal merely eliminates an unused rule no longer referenced by program administration. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

10 TAC §1.18. Colonia Housing Standards

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.19, Reallocation of Financial Assistance, and an order adopting new 10 TAC §1.19, Reallocation of Financial Assistance, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with Tex. Gov't Code §2306.111(h), which requires that the Department adopt by rule a policy providing for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated;

WHEREAS, this rule was last adopted in January 2014 and changes are now needed to add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that $1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity; and

WHEREAS, such proposed rulemaking was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.19, Reallocation of Financial Assistance, and new 10 TAC §1.19, Reallocation of Financial Assistance, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of §1.19, Reallocation of Financial Assistance, and new §1.19, Reallocation of Financial Assistance, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: Tex. Gov't Code §2306.111(h) requires that the Department adopt by rule a policy providing for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

Department Policy: While Tex. Gov't Code §2306.111(h) does require that the Department provide for the reallocation policy, the statute does not specify what those procedures must be. Therefore, these rules do set Department policy not specifically provided for in state statute for what funds warrant reallocation and the handing of such reallocation.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but done so through repeal and proposal of new rules. This action allows the Department to continue to comply with Tex. Gov't Code §2306.111(h). The new proposed rules reflect changes that add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that $1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.19. Reallocation of Financial Assistance

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.19, Reallocation of Financial Assistance. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.
1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to the existing procedure for the reallocation of Department resources when an obligation with respect to that assistance has been prematurely terminated.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure for the reallocation of Department resources.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while

adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1.19. Reallocation of Financial Assistance

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.19. Reallocation of Financial Assistance

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.19, Reallocation of Financial Assistance without changes to the proposed text as published in the July 13, 2018, issue of the Texas Register (43 TexReg 4621). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2161.003 and §2306.111(h), add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that $1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (9), relating to implementing legislation. The rule ensures Department compliance with Tex. Gov't Code §2306.111(h), which requires the Department adopt by rule a policy for providing for the reallocation of financial assistance administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for reallocation of Department resources.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation, but merely makes procedural and technical changes to an existing process for reallocating Department resources.

7. The new rule does not increase nor decrease the number of individuals subject to the rule; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for how Department resources may be reallocation if the Department's obligation with respect to that assistance is prematurely terminated. No small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a process for reallocation of Department resources there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the administrative process used by the Department's in reallocating resources; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides changes to the Department's reallocation process there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Gov't Code §2306.111(h). The new rule also reflects changes that add the purpose of the rule, make some sections more concise, add that the receipt of program income is an instance when reallocation may need to occur, add that Notices of Funding Availability may also be a governing document for reallocation decisions, remove the requirement that $1 million in HOME funds is set aside annually for disaster relief as this is now addressed in the program planning documents, and improve readability and clarity. There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing technical changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to procedural changes to a process that already exists.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between July 16, 2018, and August 16, 2018. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the repeal on September 6, 2018.

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

§1. 1.19. Reallocation of Financial Assistance

(a) Purpose. As provided for by Tex. Gov't Code §2306.111(h), this rule provides the policy for the reallocation of financial assistance, including assistance related to bonds, administered by the Department if the Department's obligation with respect to that assistance is prematurely terminated.

(b) It is the policy of the Department to take prudent measures to ensure that, when funds are provided to recipients for assistance, they are timely and lawfully utilized and that, if they cannot be timely and lawfully utilized by the initial recipient, there are mechanisms in place to reallocate those funds to other recipients in order to ensure their full utilization while maximizing assistance to beneficiaries.

(c) The reallocation of federal or state financial assistance administered by the Department may be required when:

(1) an administrator, subrecipient, owner, or contractor returns contracted funds;
(2) reserved funds are not fully utilized at completion of an activity;
(3) balances on contracts remain unused;
(4) funds in a contract or reservation are partially or fully recaptured or terminated; or
(5) required benchmarks or expenditure deadlines have not been achieved within the time frames agreed; or
(6) there is program income.

(d) Reallocation of financial assistance for specific federal or state funding sources or programs administered by the Department is also governed by or provided for in:

(1) federal regulations and requirements; (2) state rules adopted in other Sections of this Part;
(3) funding plans authorized by the Board governing federal or state resources that may have been reviewed and approved by the federal funding agency;
(4) Notices of Funding Availability or NOFAS; or
(5) written agreements and contracts relating to the administration of such funds.

(e) To the extent that programs or funding sources are governed by any of the items provided for in subsection (d) of this section, and the specific documents listed in subsection (d) do not require further Board approval, no additional approval to take action on such reallocation is required. Reallocation of funding not governed by subsection (d) of this section will require Board approval.

(f) To the extent that certain programs are required to regionally allocate their annual allocations of funds, funds reallocated under this section do not require subsequent regional allocation.

(g) Funds made available under this section may be aggregated over a period of time prior to being reallocated.

(h) Consistent with the requirements of Tex. Gov't Code §2306.111(h), if the Department's obligation of financial assistance related to bonds is terminated prior to issuance, the assistance will be reallocated among other activities permitted by that bond issuance and any indenture associated with those bonds, as approved by the Board.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the rule review in compliance with Tex. Gov't Code, §2306.039, without changes, for 10 TAC §1.22, Providing Contact Information to the Department, and directing publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs which includes, as needed, procedural requirements that may ensure the smooth efficient operation of Department programs and communications, such as the requirement that contact information of those we work with be accurately maintained on a current basis;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed; and

WHEREAS, the Department determined that readoption without changes – entitled a rule review under this process - was published in the *Texas Register* for public comment to be received from July 16, 2018, through August 16, 2018, and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Department has determined during its assessment of 10 TAC §1.22, Providing Contact Information to the Department, that as provided for in Tex. Gov't Code §2001.039, there is a continuing need for this rule and the Department adopts this rule review without changes; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of this review, without changes, for 10 TAC §1.22, Providing Contact Information to the Department, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. This may include, as needed, procedural requirements that are needed to ensure that programs are able to be run efficiently and that communication with those we do business with can be consistently and correctly provided. As such, this rule continues to be needed to require that parties doing business with the Department provide the Department with current accurate contact information.

Department Policy: While Tex. Gov't Code §2306.053 does not explicitly require that the Department gather and require updated contact information for those we do business with, the statute does allow for that ability and the rule provides little burden while ensuring the benefits of improved and accurate communication. Furthermore, this rule provides a mechanism for subgrantees to provide the Department with updated contact information that the Department needs to fulfill the requirements in 2 CFR §200.331(a).

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained without changes. This action allows the Department to continue to provide for accurate and efficient communication with those who do business with the Department.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment A: Preamble, with required analysis, and adoption of rule review for 10 TAC §1.22. Providing Contact Information to the Department

The Texas Department of Housing and Community Affairs (the "Department") adopts the review of 10 TAC §1.22, Providing Contact Information to the Department, pursuant to Tex. Gov't Code §2306.039. The Department proposed the review in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4773).

Relating to the review of 10 TAC §1.22, Providing Contact Information to the Department, the Department finds that the reasons for adopting this rule continue to exist and readopts this rule without changes. The Department received no comment related to the review.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The readopted rule, without changes, does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for submitting contact information to the Department.

2. The readopted rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The readopted rule does not require additional future legislative appropriations.

4. The readopted rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The readopted rule is not creating a new regulation, nor eliminating a regulation.

6. The rule will not limit, expand or repeal an existing regulation, but merely readopts a rule without changes.

7. The readopted rule does not increase nor decrease the number of individuals subject to the rule; and

8. The readopted rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for submitting contact information to the Department. Other than in the case of a small or micro-business that do business with the Department and must submit contact information, , no small or micro-businesses are subject to the rule. If a small or micro-business does need to submit contact information, the rule provides a clear easy process for doing so.

3. The Department has determined that because this rule is a readoption without changes there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule is a readoption without changes and relates only to the administrative process used by the Department for obtaining contact information from those it does business with.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule relates only to the process for obtaining contact information there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be assurance of programs running efficiently by requiring that methods of communication with those who do business with the Department are being provided consistently and correctly. There will not be any economic cost to any individuals required to comply with the readopted rule because the activity described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not recommended for change.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment on the rule review between July 16, 2018, and August 16, 2018. Comments regarding the rule review were accepted in writing and by e-mail. No comments regarding the repeal were received.

The Board approved the final order adopting the rule review on September 6, 2018.

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

§1.22. Providing Contact Information to the Department

(a) Any person or entities doing business with the Department shall notify the Department, of any change in contact information, including names, addresses, telephone numbers, electronic mail addresses and fax numbers. In addition, the notification shall include all Departments contract numbers, project numbers or property names of any type. The notification shall be made as described in paragraphs (1) and (2) of this subsection:

(1) by mail: Texas Department of Housing and Community Affairs, Contact Information Update, P.O. Box 13941, Austin, Texas 78711-3941; or

(2) by electronic mail: contactinformationupdate@tdhca.state.tx.us.

(b) All persons or entities doing business with the Department are responsible for keeping their contact information current pursuant to subsection (a) of this section and as required by other Department rules. The Department is entitled to rely solely on the most recent contact information on file with the Department at the time any notice or other communication is sent.
(c) The notification requirements of this section are in addition to any other change of contact information notification requirements of the Department.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 1, Subchapter C, Previous Participation, lays out the process used to review the past performance and participation of applicants prior to the Department making new awards, and also provides for a means of appealing recommendations made by the Executive Award Review and Advisory Committee ("EARAC");

WHEREAS, the Department has identified the need for revisions to 10 TAC Chapter 1, Subchapter C, Previous Participation to streamline the review in certain instances, provide a clear set of conditions that may be placed upon an award, and provide more Board involvement in determining if an award is warranted in cases of egregious non-compliance;

WHEREAS, staff has consulted on this issue with industry participants at the May 23, 2018, QAP Work Group and at the recent Texas Housing Conference in late July, and several of the ideas and considerations raised by participants have been included in the draft proposed; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation, and proposed new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation, and proposed new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

10 TAC Chapter 1, Subchapter C, Previous Participation, lays out the process used to review the past performance and participation (called "Previous Participation Review" or "PPR") of those entities who apply for program resources prior to awards being made. This subchapter currently has 3 sections: §1.301 currently addresses the PPR process for applicants involved in multifamily applications and ownership transfers; §1.302 addresses the PPR process for applicants for all other programs except multifamily (meaning Single Family,

Community Affairs, and Homelessness activities); and the last section, §1.304 addresses the Appeal process for an EARAC recommendation. There is currently no rule at §1.303.

While EARAC statutorily is only required to be utilized on awards for Housing Tax Credits ("HTC") and HOME Program activities, the Department has an obligation under 2 CFR Part 200 to also perform a similar type of review prior to awarding federal funds. In the past the EARAC process has satisfied that 2 CFR Part 200 requirement. The rule changes now formalize that EARAC is used for this purpose as well.

Staff believes that there is a need for fairly significant revisions to simplify the PPR rule and that there is a need to formalize the process and considerations of EARAC, which until now have not been formalized in rule. Applicants and staff have struggled to formulate appropriate conditions to be placed on awards. Further, the Department feels that conditions have greater enforceability when they exist in rule. Additionally, over time, the direction of EARAC and the Board for that matter, have revealed that certain issues will tend to be voted on in certain ways, and staff is striving to revise the rules so that they are reflective of those preferences at the outset. Therefore, the new proposed rule provides for a more objective, consistent process for PPR review, and the determinations made by EARAC.

<u>Proposed Changes</u>

Staff is recommending that the title of the Subchapter be renamed from "Previous Participation" to "Previous Participation and Executive Award Review and Advisory Committee" to more accurately reflect the content of the subchapter. The subchapter is proposed to have three sections: §1.301 will continue to address the PPR process for applicants involved in multifamily applications and ownership transfers; §1.302 will continue to address the PPR process for applicants for all other programs except multifamily; §1.303 will be newly added and titled Executive Award and Review Advisory Committee ("EARAC"); and the last section, §1.304 will no longer exist. The significant changes being proposed for Chapter 1, Subchapter C, are listed below:

- Provide a clear purpose for each of the sections;
- More clearly align the processes being described in the rule with 2 CFR Part 200 and UGMS which govern the review required prior to awarding federal funds;
- Remove the concept of portfolio size and differential treatment based on the size of a portfolio;
- Make changes to the method of classification for multifamily portfolios including going from four categories down to three and making the criteria for what constitutes a category three only those issues that are most egregious;
- Simplify and streamline what PPR findings trigger inclusion into the different classifications and thereby what recommendation will be made to EARAC by Compliance, including that Category 3 portfolios will, by rule, not be recommended by Compliance;
- Clearly state when an application will not be recommended based on compliance history;
- Clarify several additional circumstances in which the Previous Participation Review ("PPR") will prompt a clear approval, which should improve efficiency;
- Reflect that events of non-compliance that are resolved during the PPR process may change the categorization of an application;
- Clarify the submission requirements of the Single Audit as part of the PPR review process and where the requirement applies, what its role in consideration of a decision may be;
- Provide for a clear process for EARAC notifying an applicant of their recommendation;
- Reflect that all conditions to be recommended by EARAC must be conditions that are provided for in rule;
- Provide a comprehensive list of all conditions that may be placed on an application, and clarify that conditions may be placed on a property, a portfolio, a region of a portfolio, or a subrecipient;

- Provide a clear dispute process for disagreements (in lieu of the prior Appeal process) with EARAC which can include disagreements relating to category determination, EARAC determination, and/or EARAC conditions;
- Describe the Board's discretion in accepting, rejecting, or revising recommendations from EARAC; and
- State that an EARAC vote is not utilized in determinations relating to ownership transfers.

This proposed rule action also has included an evaluation by staff of whether a rule is:

- Statutorily required and, if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation and, if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Board.

Authority: The authority for this rule is Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719. Tex. Gov't Code §2306.057 requires that prior to awarding funds or other assistance from the Department a review of the entity's compliance history must be performed by the Compliance Division. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Additionally, Tex. Gov't Code §2306.6719 addresses Housing Tax Credit monitoring of compliance and indicates that the Department may not consider issues of noncompliance that have been resolved within the corrective action period when making award decisions. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding federal funds for certain applicable federal programs, which may include multifamily activities.

Department Policy: While Tex. Gov't Code §§2306.057, and 2306.1112 jointly require that EARAC exist and that, combined in certain instances with UGMS and 2 CFR Part 200, require the consideration of previous participation and performance occurs prior to award, these governing statutes and applicable rules and regulations do not specify how EARAC must be set up, or how previous participation should be assessed (for instance, it does not require category determinations used by the Department, nor does it require that conditions be outlined in rule). Therefore, these rules set Department policy not specifically contemplated in state statute for how EARAC will be handled, how PPR will be reviewed, and how recommendations from EARAC will be made.

Consistency with Executive Direction and Proposed Changes: Staff recommends that it is necessary to revise the rules in Subchapter C, but proposes doing so through the repeal and proposed adoption of the Subchapter. This action allows the Department to evidence compliance with those statutes noted above. It should be emphasized that the rule revisions contemplated in the proposed rule are simplifying the review process for PPR, and bringing the policy of EARAC and PPR into alignment with the policy direction of the Board, as noted through their patterns and trends in voting, and verbal comments to moving away from any perceived "gotcha" approach."

Upon approval in draft form by the Board, rules under review will be released for public comment in the Texas Register.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the proposed new action a draft of the rule is shown in its clean new form. However, to assist reviewers with understanding what has changed from the current version of the rule at 10 TAC Chapter 1, Subchapter C, a blacklined version is also provided.

Attachment 1: Preamble for proposed repeal, including required analysis, of 10 TAC Chapter 1, Subchapter C, Previous Participation

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the existing procedure for the review of applicant previous participation and the recommendation of awards by the Executive Award and Review Advisory Committee ("EARAC").

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedure the existing procedure for the review of applicant previous participation and the recommendation of awards by the Executive Award and Review Advisory Committee ("EARAC").

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while

adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 22, 2018.

STATUTORY AUTHORITY. The repeal is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

Chapter 1, Subchapter C, Previous Participation

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719, and 2 CFR 200.331(b) and (c) and to make changes to make the process contemplated in the rule more transparent and efficient.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementation of legislation. The rule ensures compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719. Tex. Gov't Code §2306.057 requires that prior to awarding funds or other assistance from the Department a review of the entity's compliance history must be performed by the Compliance Division. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Additionally, Tex. Gov't Code §2306.6719 addresses Housing Tax Credit monitoring of compliance and indicates that the Department may not consider issues of noncompliance that have been resolved within the corrective action period when making award decisions. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c) which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding federal funds for certain applicable federal programs, which may include multifamily activities. In spite of the exception noted above, it should be noted that no costs are associated with this action that would have warranted a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the existing procedure for the review of an applicant's previous participation and the process used by EARAC.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will the repeal reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand, or repeal an existing regulation.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures for how an appeal can be filed with the Department in regards to a Department decision. Other than in the case of a small or micro-business that is a program participant in one of the Department's programs that also has applied for funds and is in need of a previous participation review, no small or micro-businesses are subject to the rule. If a small or micro-business is in need of such a review, the new rule provides for a more clear, transparent process for doing so.

3. The Department has determined that because this rule relates only to a process for the review of the previous participation of program participants there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because this rule relates only to changes to the Department's previous participation and EARAC procedures, not locally based activities; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule merely provides for the previous participation review and procedures for EARAC there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will compliance with Tex. Gov't Code §§2306.057, 2306.1112 and 2306.6719, and 2 CFR Part 200. Further, the rule revisions are fairly significant in an effort to simplify the PPR rule and to formalize the process and considerations of EARAC, which until now have not been formalized in rule. Applicants and staff have struggled to formulate appropriate conditions to be placed on awards. Further, the Department feels that conditions have greater enforceability when they exist in rule. Additionally, over time, the direction of EARAC and the Board for that matter, have revealed that certain issues will tend to be voted on in certain ways, and staff is striving to revise the rules so that they are reflective of those preferences at the outset. Therefore, the new proposed rule provides for a more objective, transparent, consistent process for PPR review and the determinations made by EARAC.

There will not be any economic cost to any individuals required to comply with the new section because the activity described by the rule has already been in existence through the rule found at this section being repealed and the rule adoption is merely formalizing changes.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to changes to a process that already exists.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 22, 2018.

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

10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §§2306.057, 2306.6713, and 2306.6719 which require, among other things, that prior to awarding funds or other assistance through the Department's Multifamily Housing Programs or approving an entity to acquire an existing multifamily Development monitored by the Department a previous participation review will be performed by the Compliance Division. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards ("UGMS"), where applicable, which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions, if appropriate, prior to awarding funds for certain applicable programs, which may include multifamily activities.

(b) Definitions. The following definitions apply only as used in this section. Other capitalized terms used in this section shall have the meaning ascribed in the rules governing the program for which the Application has requested funds or is participating.
(1) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in 10 TAC Chapter 11.
(2) Events of Noncompliance--see 10 TAC, Subchapter F.
(3) Monitoring Event--Means an onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include but not be limited to responding to a tenant complaint.
(4) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered.
When conducting a previous participation review the following will not be taken into consideration:
(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three (3) years ago unless required by federal or state law, by court order or voluntary compliance agreement;
(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming Owner's period of control if the event(s) is currently corrected;
(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming Owner's period of Control within the incoming Owner's first full year of Acquisition if the event(s) is currently uncorrected;
(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";
(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at properties participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department

of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired; and

(7) Events of Noncompliance that the Applicant or proposed incoming Owner believes can never be corrected and the Department agrees in writing.

(8) Events of Noncompliance corrected within their Corrective Action Period.

(d) Applicant Process. Applicants or proposed incoming Owners must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions. A recommendation will not be made if an Applicant or proposed incoming Owner fails to provide the required form fails to provide timely responsive information when requested.

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or ownership transfer request using the criteria in paragraphs (1) through(3) of this subsection. The Application will be classified in the highest applicable category.

(1) Category 1. An Application will be considered a Category 1 if the Developments affiliated with the Application have no issues that are currently uncorrected, all Monitoring Events were responded to during the corrective action period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the corrective action period total at least three (3) but total less than 50% of the number of properties in the combined portfolio;

(B) There are three (3) or fewer (but not zero) Events of Noncompliance that are currently uncorrected at the Developments affiliated with the application. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System ("CMTS") or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Since January 1, 2017, no response was received during the corrective action period for three (3) or fewer Monitoring Events; or

(D) Within five (5) years preceding the date the Application for funds is submitted, a Development affiliated with the Application that is or was controlled by the Applicant has been the subject of a final order by the Board and the terms have not been violated.

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the corrective action period total at least 3 and equal or exceed 50% of the number of properties in the combined portfolio.

(B) There are more than (3) three Events of Noncompliance that are currently uncorrected at the Developments affiliated with the Application. If corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Since January 1, 2017, no response was received during the corrective action period for more than three (3) Monitoring Events;

(D) A Development affiliated with the Application that is or was controlled by the Applicant or proposed incoming owner has been the subject of a final order and the terms have been violated;

(E) The Applicant or proposed incoming owner failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents;

(G) The Department has requested and not been timely provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department;

(H) The Department has requested and not been timely provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or

(I) Fees or other amounts owed to the Department are thirty days or more past due.

(J) Despite past condition(s) agreed upon by the Applicant to improve their compliance operations, three (3) or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) The Applicant has or had control of a Development that is no longer participating in the program for reasons other than termination through a Qualified Contract within the initial term of its LURA or end of the Affordability Period; or

(L) Any member of the Applicant or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) Compliance Recommendation to EARAC. After determining the appropriate category as described in subsection (e) of this section, the Compliance Division will make a recommendation in accordance with the following paragraphs, as applicable.

(1) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliances purposes only) without further review or discussion.

(2) Category 2.

(A) The applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an application will be classified as a Category 2 and provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, or propose one or more of the conditions listed in §1.303 of this Subchapter or propose other conditions for consideration. If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the owner will not be required to provide comment on the prior events of noncompliance, but will be provided the opportunity to propose conditions or mitigations;

(B) Based on the compliance history and Applicant response, the Compliance Division will recommend award, award with conditions, or denial. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the compliance history will be deemed acceptable by EARAC.

(C) Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. Failure to correct noncompliance or meet conditions by the date established by the Board based on the recommendation of EARAC and/or meet terms and conditions related to a recommendation or award may be considered by the Board in their consideration of future actions for the Applicant or Application and may serve as grounds for the initiation of proceedings to take other disciplinary actions such as imposition of administrative penalties or debarment as further provided for in Chapter 2 of this Title.

(D) EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division for awards with conditions or denials, and the Applicant may, if they desire, exercise their right to file a dispute under §1.303 of this Subchapter.

(3) Category 34.

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, or propose one or more of the conditions listed in §1.303 of this Subchapter or propose other conditions for consideration.

(B) After review of any corrective action submitted during the seven (7) calendar day period, if the application is still considered a Category 3, the Compliance Division will recommend denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from

the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative EARAC recommendation as described in §1.303 of this Subchapter.

(g) Other Possible Conditions to be Made to an Award by the Compliance Division.
(1) If the Applicant is required to have a Single Audit, the Compliance Division will obtain the required audit and may propose conditions or recommend denial based on the single audit findings or a relevant and germane issue identified in the Single Audit (e.g., Notes to the Financial Statements).
(2) If the Applicant is applying for a Direct Loan award and it or its Affiliate has monitoring from the U.S. Department of Housing and Urban Development, from the U.S. Department of Housing and Urban Development, Office of Inspector General, or another state agency in the past three years, the Compliance Division will obtain the required information and review the required information, and may propose conditions based on the disclosure or relevant and germane issue identified in the monitoring report.
(3) If the Applicant has a Finding or Deficiency associated with activities other than multifamily activities, the Compliance Division may propose conditions or recommend denial based on a Finding or Deficiencies if it is relevant and germane to the award being considered.

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of This Subchapter

(a) Purpose and applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §2306.057 which requires that prior to awarding project funds a review of the applying entity's previous participation will be performed by the Compliance Division, and, as applicable, with 2 CFR §200.331(b) and (c), and UGMS which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs. This section applies to program awards not covered by §1.301 of this Subchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:
(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter regarding Providing Contact Information to the Department, and if applicable with §6.6 of this Part regarding Subrecipient Contact Information and Required Notifications.
(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;
(3) Identification of all Department programs that the Applicant has participated in within the last three years;
(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter. If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;
(5) A copy of the most recent three years federal or state agency monitoring reports that resulted in a finding or disallowed costs (only if the Applicant is applying for a federal award);
(6) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this section if the requirement to submit such information is made in a NOFA or Application for funding.

(7) Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:
(1) The Applicant or entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this Chapter, and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;
(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or
(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:
(1) The information provided by the Applicant,
(2) Information contained in the most recent Single Audit,
(3) Issues identified in subsection (d) of this section;
(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the corrective action period), and
(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.
(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable without EARAC review or discussion.
(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.
(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.
(4) After review of materials submitted by the Applicant during the seven (7) day period, the Compliance Division will make a final recommend regarding the award. EARAC will provide notice to the Applicant of a final recommendation that is an award with conditions or denial. The Applicant may, if they desire, exercise their right to file a dispute under §1.303 of this Subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, concerning Single Audit Requirements, the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any entity who has an, Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the federal debarred and suspended listing. Applicants will be notified of the debarred status of a board member and will be given an opportunity to remove and replace that board member so that funding may proceed. However, individual Board member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Except as required by law, the Department will not enter into a Contract with any Applicant who is currently debarred by the Department or is currently on the federal debarred and suspended listing.

(k) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(l) For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration subsections (i) and (j) of this section.

(m) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

§1.303. Executive Award and Review Advisory Committee ("EARAC")

(a) Authority and Purpose. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c). EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule is to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations.

(b) EARAC may meet to discuss matters within its statutory scope and as noted in subsection (a) of this section, including (without limitation) recommendations on awards, deficiencies in needed information to make a recommendation, proposed or recommended conditions on awards, and addressing inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members have not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award.

(2) A positive recommendation of funding or allocation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, they will be provided an opportunity to dispute the conditions as described in subsection (g) of this section, regarding EARAC Disputes.

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in subsection (e) of this section. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in subsection (g) of this section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single property, a portfolio of properties, a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in subsection (e) of this section may be customized to provide specificity regarding affected properties, individuals or dates for meeting conditions.

(1) Applications made and reviewed under §1.301 of this Subchapter that are considered a category 2 because of any of the following Events of Noncompliance may be awarded with the conditions listed in subsection (e)(1) through (17) of this section:

(A) Noncompliance related to Affirmative Marketing,

(B) Development is not available to the general public because of leasing issues,

(C) Project Failed to meet minimum set aside,

(D) No evidence of or failure to certify to the material participation of a non-profit or HUB,

(E) Development failed to meet additional state required rent and occupancy restrictions,

(F) Noncompliance with social service requirements,

(G) Development failed to provide housing to the elderly as promised at application,

(H) Failure to provide special needs housing as required by LURA,

(I) Changes in Eligible Basis or Applicable percentage,

(J) Failure to submit all or parts of the Annual Owner's Compliance Report,

(K) Failure to submit quarterly reports,

(L) Noncompliance with utility allowance requirements,

(M) Noncompliance with lease requirements,

(N) Noncompliance with tenant selection requirements,

(O) Program Unit not leased to Low-Income household,

(P) Program unit occupied by nonqualified full-time students,

(Q) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction,

(R) Failure to provide Tenant Income Certification and documentation,

(S) Failure to collect required tenant data,

(T) Development evicted or terminated the tenancy of a low-income tenant for other than good cause,

(U) Household income increased above 80 percent at recertification and Owner failed to properly calculate rent (HOME and MFDL only), and

(V) Noncompliance with 10 TAC Chapter 8.

(2) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of any of the following Events of Noncompliance may be awarded with the conditions listed in subsection (e)(10) through (12) of this section:

(A) Violations of the Uniform Physical Condition Standards

(B) TDHCA has referred an unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division

(C) Failure to provide amenity as required by LURA

(D) Unit not available for rent

(E) Failure to resolve final construction deficiencies within corrective action period

(F) Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B.

(3) For Applications with subrecipient monitoring Findings, Concerns, or Deficiencies or Single Audit information that indicates a risk to Department, funds may be awarded with the conditions listed in subsection (e)(1), (3), (9), (13), (14), (15), or (16) of this section.

(4) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of non-responsiveness may be awarded with conditions listed in subsection (e)(5), (6), or (7).

(e) Possible Conditions.

(1)Applicant/Owner is required to ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract or LURA will cause such entities to correct all identified issues of non-compliance on or before a specified date and provide the Department with evidence of such correction within thirty calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a onetime review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments,

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise control.

(6) Owner agrees to replace the existing management company, or management personnel, with another of their choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend the trainings below, listed in (A) and/or (B) of this subsection (only for applications made and reviewed under §1.301 of this Subchapter) and/or review one or more of the trainings listed in (C) for applications made and reviewed under §1.301 of this Subchapter and/or (D) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association

(B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) How to properly use the Income and Rent Tool;

(iii) 2012 Supportive Services Webinar Video;

(iv) How to identify and properly implement Supportive Services;

(v) Income Eligibility Presentation Video;

(vi) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(vii) 2015 Tenant Selection Criteria Webinar Video;

(viii) 2015 Tenant Selection Criteria Presentation;

(ix) 2015 Tenant Selection Criteria- Q and A's;

(x) §10.610 – Tenant Selection Criteria;

(xi) 2015 Affirmative Marketing Requirements Webinar Video;

(xii) 2015 Affirmative Marketing Requirements Presentation;

(xiii) 2015 Affirmative Marketing Requirements- Q and A's;

(xiv) Fair Housing Webinars (including but not limited to the 2017 FH webinars); or

(D) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all developments subject to a TDHCA LURA for review.

(11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted upon request.

(12) Within sixty days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection.

(14) Applicant/Owner is required to ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract will cause such entities to provide all such documentation relating to the Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted upon request.

(f) Failure to meet conditions

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) With the exception of awards considered for CSBG funds required to be distributed to Eligible Entities by formula, if any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for assessment of an administrative penalty or recommended for debarment.

(g) Dispute of EARAC Recommendations.

(1) The purpose of EARAC is to make recommendations to the Board on certain awards. As such, the Appeal provisions in 10 TAC §1.7 relating to the appeals of a staff decision to the Executive Director, are not applicable.

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with paragraph (3) of this section.

(A) their category as determined under §1.301(f) of this Subchapter;

(B) any conditions proposed by EARAC; or

(C) a negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant may submit to the Department (to the attention of the Chair of EARAC), as provided herein, a letter (the "Dispute") setting forth:

(A) the condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) the reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) In the case of conditions, provides any suggested alternate condition language;

(D) In the case of a negative recommendation, provides any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any documentation supporting their reasons not already submitted to EARAC.

(4) An Applicant must file a written dispute not later than the seventh calendar day after notice has been provided and include a hard copy and pdf version of all materials, if any, that the Applicant wishes to have provided to the Board in connection with its consideration of the matter, if heard by the Board. An Applicant should note if they are requesting to be present at the dispute meeting.

(5) EARAC is not required to reconsider the matter prior to making its recommendation to the Board.

(6) Staff will not propose to an Applicant conditions other than those set forth in this Subchapter. However, if an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A dispute will be included on the Governing Board agenda if received at least five Department business days prior to the required posting of that agenda. The Applicant may provide the secretary of EARAC with materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth Department business day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the applicant and may include a staff response to the dispute and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials must comply with the requirements of §1.10 of this chapter regarding Public Comment Procedures. There is no assurance the board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The board and staff will make reasonable efforts to accommodate properly and timely filed disputes under this subsection, but there may be unanticipated circumstances in which the continuity of assistance or other exigent circumstances dictate proceeding with an award notwithstanding the fact that an Applicant disagrees with an EARAC finding or recommendation. These situations, should they arise, will be addressed on an ad hoc basis.

(h) In the event that this Subchapter does not adequately address specific facts and circumstances which may arise, nothing herein shall serve to limit the ability of staff to bring to the Board as information or to seek guidance or interpretation through a properly posted item on any manner relating to the administration of the previous participation review process in general or as it may relate to any one or more specific applications, awards, or other matters.

(i) Board discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to an award recommendation or in response to a dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by staff, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

(j) In the event that the Board adopts a treatment of any matter subject to this Subchapter that varies from the prescribed manner in which the strict application of this Subchapter would have treated it, the Board adopted outcome shall automatically and without need of any further request or action by Applicant or staff constitute a waiver to the extent required.

(k) Treatment of Previous Participation Reviews for Ownership Transfers.
By statute responsibility to approve or deny ownership transfers is vested in the Executive Director. He or she may consider whether the results of a previous participation review constitute "good cause" to withhold approval of the requested transfer. If the Executive Director determines that the results of the previous

participation review constitute good cause to withhold approval, he or she shall so notify the parties requesting the transfer and give them an opportunity to propose conditions to address the Executive Director's concerns. Any agreed conditions are not limited to the conditions specified under subsection (e) of this section although any or all of them may be utilized if appropriate. Any agreement to effectuate the addressing of such concerns shall take effect only upon acceptance by the Board. If no agreement can be reached and the Executive Director believes there is no good cause basis to grant the transfer approval, the matter may be appealed to the Board under §1.7 of this Title, relating to Appeals.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers

(a) ~~General.~~ Purpose and Applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §§2306.057, 2306.6713, and 2306.6719 which require, among other things, that ~~P~~prior to awarding funds or other assistance through the Department's Multifamily Housing Programs or approving an entity to acquire an existing multifamily Development monitored by the Department a previous participation review will be performed by the Compliance Division. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards ("UGMS"), where applicable, which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions, if appropriate, prior to awarding funds for certain applicable programs, which may include multifamily activities.

(b) Definitions. The following definitions apply only as used in this section. Other capitalized terms used in this section shall have the meaning ascribed in the rules governing the program for which the Application has requested funds or is participating.

(1) Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in 10 TAC Chapter 11.

(2) Events of Noncompliance--see 10 TAC, Subchapter F.

(3) Monitoring Event--Means an onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include but not be limited to responding to a tenant complaint.

(4) Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

~~When conducting a previous participation review:~~

~~(1) Events of noncompliance that were corrected over three (3) years ago are not taken into consideration unless required by federal or state law or by court order or voluntary compliance agreement.~~

~~(2) Events of noncompliance with an "out of compliance date" prior to the applicant's or proposed incoming owner's period of control are not taken into consideration if the event(s) are currently corrected, regardless of whether or not they were corrected during the corrective action period.~~

~~(3) Events of noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming owner's period of control are taken into consideration if the event(s) are currently uncorrected.~~

(c) Items Not Considered.

~~(4)~~ When conducting a previous participation review ~~T~~the following ~~events of noncompliance~~ will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three (3) years ago unless required by federal or state law, by court order or voluntary compliance agreement;

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's or proposed incoming Owner's period of control if the event(s) is currently corrected;

(3) Events of Noncompliance with an ""out of compliance date" prior to the Applicant's or proposed incoming Owner's period of Control within the incoming Owner's first full year of Acquisition if the event(s) is currently uncorrected;

(4~~A~~) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice" ~~to households that have vacated if the date of noncompliance was within the first six (6) months of calendar year 2013~~;

(5B) The Event of Noncompliance "Household income above the income limit upon initial occupancy" "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at properties participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture , if the household resided in the unit prior to an allocation of Department funds resources and Federal Regulations prevent the oOwner from correcting the issue; and

(6C) The Event of Noncompliance "Casualty loss" if the restoration period has not expired.; and

(7) Events of Noncompliance that the Applicant or proposed incoming Owner believes can never be corrected and the Department agrees in writing.

(8) Events of Noncompliance -corrected within their Corrective Action Period.

(5) If the applicant or any affiliate of the applicant is required to have a Single Audit, the Compliance Division will advise the Executive Award Review Advisory Committee ("EARAC") of Single Audit Findings and events of noncompliance identified by the Community Affairs Monitoring and/or Contract Monitoring Sections of the Compliance Division.

(d) Applicant Process. (6) Applicants or proposed incoming oOwners must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions. A recommendation will not be made Iif an aApplicant or proposed incoming oOwner fails to provide this the required form fails to provide timely responsive information when requested. this failure shall be reported to EARAC.

(b) Definitions. The following definitions apply only as used in this section. Other capitalized terms used in this section shall have the meaning ascribed in chapter 10 of this title.

(1) Extra Large Portfolios--Applications in which the Applicant and its Affiliates collectively Control more than twenty (20) Developments;

(2) Large Portfolios--Applications in which the Applicant and its Affiliates collectively Control thirteen (13) to nineteen (19) Developments;

(3) Medium Portfolios--Applications in which the Applicant and its Affiliates collectively Control six (6) to twelve (12) Developments;

(4) Monitoring Event--Means an onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, or any other instance when the Department's Compliance Division provides written notice to an owner requesting a response by a certain date (e.g., responding to a tenant complaint); Example 1.301(1): A Development was monitored in 2011 and 2014. During both monitoring visits, Department staff identified units that were occupied by ineligible households. At the time of the previous participation review, all identified events of noncompliance have been corrected. However, some of the units from the 2011 and some of the units from the 2014 onsite file review were not corrected during the corrective action period. Although the same finding was cited, it would be considered two events of noncompliance.

(5) Portfolio Sizes--Refers collectively to Small Portfolios, Medium Portfolios, Large Portfolios and Extra Large Portfolios;

(6) Small Portfolios--Applications in which the Applicant and its Affiliates collectively Control five (5) or fewer Developments.

(ec) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Aaffiliated multifamily Developments, staff will determine the applicable category for the Aapplication or ownership transfer request using the criteria in paragraphs (1) through--(3)(4) of this subsection. and EARAC will recommend appropriate remedies, actions, and/or conditions in accordance with subsection (d) of this section. The aApplication will be classified in the highest applicable category. Example 1.301(2): If an application is category 1 for a particular issue but meets the standard to be classified as category 4 for another issue or issues, then the application shall be considered a category 4 application under this section.

(1) Category 1. For all Portfolio Sizes, An Aapplication will be considered a Category 1 if the Developments affiliated with the aApplication have no issues that are currently uncorrected, and no events of noncompliance that were not corrected during the corrective action period all Monitoring Events were

responded to during the corrective action period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the corrective action period total at least three (3) but total less than 50% of the number of properties in the combined portfolio;

(B) There are three (3) or fewer (but not zero) Events of Noncompliance that are currently uncorrected at the Developments affiliated with the application. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System ("CMTS") or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Since January 1, 2017, no response was received during the corrective action period for three (3) or fewer Monitoring Events; or

(D) Within five (5) years preceding the date the Application for funds is submitted, a Development affiliated with the Application that is or was controlled by the Applicant has been the subject of a final order by the Board and the terms have not been violated.

~~(A) Small Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period equals one (1).~~

~~(B) Medium Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but fewer than three (3).~~

~~(C) Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but five (5) or fewer.~~

~~(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than zero (0) but less than seven (7).~~

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the corrective action period total at least 3 and equal or exceed 50% of the number of properties in the combined portfolio.

(B) There are more than (3) three Events of Noncompliance that are currently uncorrected at the Developments affiliated with the Application. If corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;

(C) Since January 1, 2017, no response was received during the corrective action period for more than three (3) Monitoring Events;

(D) A Development affiliated with the A~~a~~pplication that is or was controlled by the Applicant or proposed incoming owner has been the subject of a final order and the terms have been violated;

~~(A) Small Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than one (1) but fewer than six (6).~~

~~(B) Medium Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than two (2) but fewer than eight (8).~~

~~(C) Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than five (5) but fewer than eleven (11).~~

~~(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is more than six (6) but fourteen (14) or fewer.~~

~~(E) For all Portfolio Sizes:~~

~~(i) There are three (3) or fewer events of noncompliance that are currently uncorrected at the developments affiliated with the application. If corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System ("CMTS") it will be reviewed before this determination is made; however, evidence of corrective action submitted during the five day period referenced in subsection (d) of this section will not be considered;~~

~~(ii) No response was received during the corrective action period for three (3) or fewer monitoring events that occurred within the last three (3) years; or~~

~~(iii) A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have not been violated.~~

~~(4) Category 4.~~

~~(A) Small Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is six (6) or more;~~

~~(B) Medium Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is eight (8) or more;~~

~~(C) Large Portfolios: The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is eleven (11) or more;~~

~~(D) Extra Large Portfolios. The number of events of noncompliance that are uncorrected plus the number of events of noncompliance that were not corrected during the corrective action period is fifteen (15) or more.~~

~~(E) For all Portfolio Sizes:~~

~~(i) There are more than three events of noncompliance that are uncorrected at the Developments affiliated with the application. If corrective action has been uploaded to CMTS it will be reviewed before this determination is made, however, evidence of corrective action submitted during the five day period referenced in subsection (d) of this section will not be considered;~~

~~(ii) No response was received during the corrective action period for more than three (3) monitoring events that occurred within the last three (3) years;~~

~~(iii) A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have been violated;~~

(E~~iv~~) The ~~a~~Applicant or proposed incoming owner failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F~~v~~) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents;

(G~~vi~~) The Department has requested and not been timely provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department;

(H~~vii~~) The Department has requested and not been timely provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or

(I~~viii~~) Fees or other amounts owed to the Department are thirty days or more past due.

(J) Despite past condition(s) agreed upon by the Applicant to improve their compliance operations, three (3) or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) The Applicant has or had control of a Development that is no longer participating in the program for reasons other than termination through a Qualified Contract within the initial term of its LURA or end of the Affordability Period; or

(L) Any member of the Applicant or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(fd) Compliance Recommendation to EARAC Review. After determining the appropriate category as described in subsection (e) of this section, the Compliance Division EARAC will make a recommendation review the previous participation in accordance with the following paragraphs, as applicable.

(1) Category 1. The compliance history of cCategory 1 applications will be deemed acceptable (for Compliances purposes only) by EARAC without further review or discussion.

(2) Category 2. The compliance history of category 2 applications will be deemed acceptable by EARAC without further review or discussion and the Governing Board will be advised of category 2 applications that are recommended for award.

(3) Categories 3 and 4.

(A) Prior to EARAC review, tThe applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an application will be classified as a Category 2 and provided a sevenfive (57) calendarbusiness day period to review the documentation that will be provided to EARAC and provide written comment, submit any remaining evidence of corrective action for uncorrected events, or propose one or more of the conditions listed in §1.303 of this Subchapter or propose other conditions for consideration. If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the owner will not be required to provide comment on the prior events of noncompliance, but will be provided the opportunity to propose conditions or mitigations; or mitigations;

(B) Based on Tthe compliance history and Applicant response, the Compliance Division will will be reviewed by EARAC for a recommendation to recommend award, or award with conditions, or denial. In making this decision, the Compliance Division may not consider the EARAC may request any other information from the Compliance Division that is documented in the compliance history with the exception of events of noncompliance precluded by Tex.as Gov'ternment Code §2306.6719(e). If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the compliance history will be deemed acceptable by EARAC.;

(C) Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. Failure to correct noncompliance or meet conditions by the date established by the Board based on the recommendation of EARAC and/or meet terms and conditions related to a recommendation or award may be considered by the Board in their consideration of future actions for the Applicant or Application and may serve as grounds for the initiation of proceedings to take other disciplinary actions such as imposition of administrative penalties or debarment as further provided for in Chapter 2 of this Title.
Any award recommendations will be conditioned on the correction of any uncorrected events of noncompliance by dates agreed upon by the applicant or proposed incoming owner and EARAC. In addition, recommendation and approval may be subject to other terms and conditions related to the applicant's or incoming owner's compliance history. Failure to correct events of noncompliance by agreed upon dates and/or meet terms and conditions related to a recommendation or award will be reconsidered by EARAC and awards may be recommended for denial or recession.

(D) EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division for awards with conditions or denials, and the Applicant may, if they desire, exercise their right to file a dispute under §1.303 of this Subchapter.

(34) Category 34.

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, or propose one or more of the conditions listed in §1.303 of this Subchapter or propose other conditions for consideration.

(B) After review of any corrective action submitted during the seven (7) calendar day period, if the application is still considered a Category 3, the Compliance Division will recommend denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative EARAC recommendation as described in §1.303 of this Subchapter.

Applications will be notified of their status and if they wish to pursue the award should be prepared to propose terms and conditions specific to their compliance history, along with identifying specific dates to correct uncorrected events. EARAC may accept, modify or reject the applicant's proposal. If the proposal is modified or rejected, the applicant may appeal in accordance with §1.304 of this subchapter.

(g) Other Possible Conditions to be Made to an Award by the Compliance Division.

(1) If the Applicant is required to have a Single Audit, the Compliance Division will obtain the required audit and may propose conditions or recommend denial based on the single audit findings or a relevant and germane issue identified in the Single Audit (e.g., Notes to the Financial Statements).

(2) If the Applicant is applying for a Direct Loan award and it or its Affiliate has monitoring from the U.S. Department of Housing and Urban Development, from the U.S. Department of Housing and Urban Development, Office of Inspector General, or another state agency in the past three years, the Compliance Division will obtain the required information and review the required information, and may propose conditions based on the disclosure or relevant and germane issue identified in the monitoring report.

(3) If the Applicant has a Finding or Deficiency associated with activities other than multifamily activities, the Compliance Division may propose conditions or recommend denial based on a Finding or Deficiencies if it is relevant and germane to the award being considered.

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of This Subchapter

(a) Purpose and applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §2306.057 which requires that prior to awarding project funds a review of the applying entity's previous participation will be performed by the Compliance Division, and, as applicable, with 2 CFR §200.331(b) and (c), and UGMS which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs. This section applies to program awards not covered by §1.301 of this Ssubchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.

(b) Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state laws. For this Section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicants will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this Subchapter regarding Providing Contact Information to the Department, and if applicable with §6.6 of this Part regarding Subrecipient Contact Information and Required Notifications. in the Community Affairs contract system is current and accurate;

(2) A description of any pending state or federal litigation (including administrative proceedings including, but not limited to, proceedings to impose any penalty or revoke or suspend any funding, license, or permit) and any final decrees within the last three years that involve federal or state program administration or funds (if the requested judgment or notice against or with respect to an entity would represent a twenty percent reduction or more in the entity's current year operating budget) or any conviction of any Applicant or Affiliate for a crime of moral turpitude that would relate to their fitness to act in their Applicant or Affiliate role, or final notice of any termination or reduction of any program or programmatic award;

(23) A list of any multifamily Developments owned or Controlled by the Applicant ~~or Affiliate~~ that are monitored by the Department; ~~and~~

(34) Identification of all Department programs that the Applicant ~~or Affiliate~~ has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this Chapter. If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

(5) A copy of the most recent three years federal or state agency monitoring reports that resulted in a finding or disallowed costs (only if the Applicant is applying for a federal award);

(6) In addition to direct requests for information from the Applicant ~~or Affiliate~~, information is considered to be requested for purposes of this section if the requirement to submit such information is made in a ~~notice of funding availability~~NOFA or ~~a~~Application for funding.

(76) Applicants will be provided a reasonable period of time, but not less than seven~~five business~~ calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant ~~or an Affiliate~~ or entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 ~~of Chapter 1~~ of this ~~Title~~Chapter, and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) The Department has requested and not been provided evidence that the Owner has maintained required insurance on any collateral for any loan held by the Department; or

(3) The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department.

(e) The Single Audit of an Applicant, or entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f~~e~~) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant,

(2) Information contained in ~~the results of~~ the most recent Single Audit,

(3) Issues ~~any noncompliance~~ identified in subsection (d) of this ~~the~~ section~~s above~~; ~~and~~

(4) The ~~summary information regarding monitoring~~ Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the corrective action period), and

(5) The Department's record of complaints concerning the Applicant ~~will be compiled and a summary provided to EARAC~~.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single

Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this Subchapter. The Applicant will be provided a seven (7) calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this Subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven (7) day period, the Compliance Division will make a final recommend regarding the award. EARAC will provide notice to the Applicant of a final recommendation that is an award with conditions or denial. The Applicant may, if they desire, exercise their right to file a dispute under §1.303 of this Subchapter.

~~(f) EARAC will review the information and may recommend approval, denial or approval with conditions. During the monitoring process and the Single Audit review process Subrecipients will be notified that Deficiencies, Findings, and Concerns are reported to EARAC, and provided the opportunity to submit comments for consideration. If an Applicant submitted comments during the monitoring or Single Audit process, those will be shared with EARAC. EARAC may request any other information from the Department staff or the Applicant.~~

~~(g) Any Applicant which will be recommended for denial or an award with conditions will be informed in writing. If EARAC recommends denial or if the Applicant does not agree with the conditions recommended by EARAC, the Applicant will have the opportunity to appeal EARAC's recommendation in accordance with §1.304 of this subchapter.~~

(h) Consistent with §1.403 of Subchapter D of this chapter, concerning Single Audit Requirements, the Department ~~will~~may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any entity who has an, Affiliate, Board member, or person identified in the Application that is currently debarred by ~~on~~ the Department~~'s debarment list~~ or is currently on the federal debarred and suspended listing. Applicants will be notified of the debarred status of a board member and will be given an opportunity to remove and replace that board member so that funding may proceed. However, individual Board member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

(j) Except as required by law, the Department will not enter into a Contract with any Applicant who is currently debarred by~~on~~ the Department~~'s~~ or is currently on the federal debarred and suspended listing.

(k) Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

(l) For ~~non-discretionary~~ CSBG funds required to be distributed to Eligible Entities by formula, ~~EARAC~~ the recommendation of the Compliance Division will only take into ~~evaluate the~~ consideration~~s under~~ subsections (i) and (j) of this section.~~, but the Board Action on the award may contain the information gathered as part of the previous participation review.~~

(m) Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve. ~~if the increase in funds is 15% or less of the initial award of funds. Previous Participation reviews~~

~~will be conducted for Contract amendments if the increase in funds from the initial award is greater than 15%.~~

§1.303. Executive Award and Review Advisory Committee ("EARAC")

(a) Authority and Purpose. The Executive Award and Review Advisory Committee ("EARAC") is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of Subchapter D of this Chapter. It is also the purpose of this rule is to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations.

(b) EARAC may meet to discuss matters within its statutory scope and as noted in subsection (a) of this section, including (without limitation) recommendations on awards, deficiencies in needed information to make a recommendation, proposed or recommended conditions on awards, and addressing inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.
(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members have not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award.
(2) A positive recommendation of funding or allocation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.
(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, they will be provided an opportunity to dispute the conditions as described in subsection (g) of this section, regarding EARAC Disputes.
(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in subsection (e) of this section. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in subsection (g) of this section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single property, a portfolio of properties, a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in subsection (e) of this section may be customized to provide specificity regarding affected properties, individuals or dates for meeting conditions.
(1) Applications made and reviewed under §1.301 of this Subchapter that are considered a category 2 because of any of the following Events of Noncompliance may be awarded with the conditions listed in subsection (e)(1) through (17) of this section:
(A) Noncompliance related to Affirmative Marketing,
(B) Development is not available to the general public because of leasing issues,
(C) Project Failed to meet minimum set aside,
(D) No evidence of or failure to certify to the material participation of a non-profit or HUB,

(E) Development failed to meet additional state required rent and occupancy restrictions,
(F) Noncompliance with social service requirements,
(G) Development failed to provide housing to the elderly as promised at application,
(H) Failure to provide special needs housing as required by LURA,
(I) Changes in Eligible Basis or Applicable percentage,
(J) Failure to submit all or parts of the Annual Owner's Compliance Report,
(K) Failure to submit quarterly reports,
(L) Noncompliance with utility allowance requirements,
(M) Noncompliance with lease requirements,
(N) Noncompliance with tenant selection requirements,
(O) Program Unit not leased to Low-Income household,
(P) Program unit occupied by nonqualified full-time students,
(Q) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction,
(R) Failure to provide Tenant Income Certification and documentation,
(S) Failure to collect required tenant data,
(T) Development evicted or terminated the tenancy of a low-income tenant for other than good cause,
(U) Household income increased above 80 percent at recertification and Owner failed to properly calculate rent (HOME and MFDL only), and
(V) Noncompliance with 10 TAC Chapter 8.

(2) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of any of the following Events of Noncompliance may be awarded with the conditions listed in subsection (e)(10) through (12) of this section:

(A) Violations of the Uniform Physical Condition Standards
(B) TDHCA has referred an unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division
(C) Failure to provide amenity as required by LURA
(D) Unit not available for rent
(E) Failure to resolve final construction deficiencies within corrective action period
(F) Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B.

(3) For Applications with subrecipient monitoring Findings, Concerns, or Deficiencies or Single Audit information that indicates a risk to Department, funds may be awarded with the conditions listed in subsection (e)(1), (3), (9), (13), (14), (15), or (16) of this section.

(4) Applications made and reviewed under §1.301 of this Subchapter that are considered a Category 2 because of non-responsiveness may be awarded with conditions listed in subsection (e)(5), (6), or (7).

(e) Possible Conditions.

(1)Applicant/Owner is required to ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract or LURA will cause such entities to correct all identified issues of non-compliance on or before a specified date and provide the Department with evidence of such correction within thirty calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a onetime review of an agreed upon percentage of files and complete the recommended actions of the reviewer on or before a specified deadline for an agreed upon list of Developments,

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the

proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise control.

(6) Owner agrees to replace the existing management company, or management personnel, with another of their choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend the trainings below, listed in (A) and/or (B) of this subsection (only for applications made and reviewed under §1.301 of this Subchapter) and/or review one or more of the trainings listed in (C) for applications made and reviewed under §1.301 of this Subchapter and/or (D) for applications made and reviewed under §1.302 of this Subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association

(B) 1st Thursday Income Eligibility Training conducted by TDHCA staff; or

(C) Review one or more of the TDHCA Compliance Training webinars:

(i) 2012 Income and Rent Limits Webinar Video;

(ii) How to properly use the Income and Rent Tool;

(iii) 2012 Supportive Services Webinar Video;

(iv) How to identify and properly implement Supportive Services;

(v) Income Eligibility Presentation Video;

(vi) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

(vii) 2015 Tenant Selection Criteria Webinar Video;

(viii) 2015 Tenant Selection Criteria Presentation;

(ix) 2015 Tenant Selection Criteria- Q and A's;

(x) §10.610 – Tenant Selection Criteria;

(xi) 2015 Affirmative Marketing Requirements Webinar Video;

(xii) 2015 Affirmative Marketing Requirements Presentation;

(xiii) 2015 Affirmative Marketing Requirements- Q and A's;

(xiv) Fair Housing Webinars (including but not limited to the 2017 FH webinars); or

(D) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all developments subject to a TDHCA LURA for review.

(11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted upon request.

(12) Within sixty days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection.

(14) Applicant/Owner is required to ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract will cause such entities to provide all such documentation relating to the Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.
(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Evidence of inspections and corrections must be submitted upon request.

(f) Failure to meet conditions
(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.
(2) With the exception of awards considered for CSBG funds required to be distributed to Eligible Entities by formula, if any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for assessment of an administrative penalty or recommended for debarment.

(g) Dispute of EARAC Recommendations.
(1) The purpose of EARAC is to make recommendations to the Board on certain awards. As such, the Appeal provisions in 10 TAC §1.7 relating to the appeals of a staff decision to the Executive Director, are not applicable.
(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with paragraph (3) of this section.
(A) their category as determined under §1.301(f) of this Subchapter;
(B) any conditions proposed by EARAC; or
(C) a negative recommendation by EARAC.
(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant may submit to the Department (to the attention of the Chair of EARAC), as provided herein, a letter (the "Dispute") setting forth:
(A) the condition or determination with which the Applicant or potential Subrecipient disagrees;
(B) the reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;
(C) In the case of conditions, provides any suggested alternate condition language;
(D) In the case of a negative recommendation, provides any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and
(E) Any documentation supporting their reasons not already submitted to EARAC.
(4) An Applicant must file a written dispute not later than the seventh calendar day after notice has been provided and include a hard copy and pdf version of all materials, if any, that the Applicant wishes to have provided to the Board in connection with its consideration of the matter, if heard by the Board. An Applicant should note if they are requesting to be present at the dispute meeting.
(5) EARAC is not required to reconsider the matter prior to making its recommendation to the Board.
(6) Staff will not propose to an Applicant conditions other than those set forth in this Subchapter. However, if an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.
(7) A dispute will be included on the Governing Board agenda if received at least five Department business days prior to the required posting of that agenda. The Applicant may provide the secretary of EARAC with materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth Department business day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the applicant and may include a staff response to the dispute and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials must

comply with the requirements of §1.10 of this chapter regarding Public Comment Procedures. There is no assurance the board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The board and staff will make reasonable efforts to accommodate properly and timely filed disputes under this subsection, but there may be unanticipated circumstances in which the continuity of assistance or other exigent circumstances dictate proceeding with an award notwithstanding the fact that an Applicant disagrees with an EARAC finding or recommendation. These situations, should they arise, will be addressed on an ad hoc basis.

(h) In the event that this Subchapter does not adequately address specific facts and circumstances which may arise, nothing herein shall serve to limit the ability of staff to bring to the Board as information or to seek guidance or interpretation through a properly posted item on any manner relating to the administration of the previous participation review process in general or as it may relate to any one or more specific applications, awards, or other matters.

(i) Board discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to an award recommendation or in response to a dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by staff, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

(j) In the event that the Board adopts a treatment of any matter subject to this Subchapter that varies from the prescribed manner in which the strict application of this Subchapter would have treated it, the Board adopted outcome shall automatically and without need of any further request or action by Applicant or staff constitute a waiver to the extent required.

(k) Treatment of Previous Participation Reviews for Ownership Transfers.
By statute responsibility to approve or deny ownership transfers is vested in the Executive Director. He or she may consider whether the results of a previous participation review constitute "good cause" to withhold approval of the requested transfer. If the Executive Director determines that the results of the previous participation review constitute good cause to withhold approval, he or she shall so notify the parties requesting the transfer and give them an opportunity to propose conditions to address the Executive Director's concerns. Any agreed conditions are not limited to the conditions specified under subsection (e) of this section although any or all of them may be utilized if appropriate. Any agreement to effectuate the addressing of such concerns shall take effect only upon acceptance by the Board. If no agreement can be reached and the Executive Director believes there is no good cause basis to grant the transfer approval, the matter may be appealed to the Board under §1.7 of this Title, relating to Appeals.

~~§1.304. Appeal of an EARAC Recommendation under the Previous Participation Review Rule~~

~~(a) An applicant or possible subrecipient of an award may appeal an EARAC recommendation by submitting to the Department (to the attention of the Chair of EARAC), as provided herein, a letter (the "Appeal") setting forth:~~
~~(1) That the applicant or subrecipient disagrees with the EARAC recommendation;~~
~~(2) The reason(s) why the applicant disagrees with EARAC's recommendation; and~~
~~(3) If desired, a request for an in person meeting with EARAC.~~
~~(b) An appealing party must file a written Appeal not later than the seventh day after notice has been provided and include a hard copy and pdf version of all materials, if any, that the applicant wishes to have provided to the board in connection with its consideration of the matter.~~
~~(c) An Appeal will be included on the Governing Board agenda if received at least three business days prior to the required posting of that agenda. The agenda item will include the materials provided by the applicant and may include a staff response to the appeal and/or materials. It is within the board chair's discretion whether~~

or not to allow an applicant to supplement its response. An applicant who wishes to provide supplemental materials must comply with the requirements of §1.10 of this chapter regarding Public Comment Procedures. There is no assurance the board chair will permit the submission, inclusion, or consideration of such supplemental materials.

(d) The board and staff will make reasonable efforts to accommodate properly and timely filed Appeals, but there may be unanticipated circumstances in which the continuity of assistance or other exigent circumstances dictate proceeding with an award notwithstanding the fact that an EARAC recommendation has been appealed. These situations, should they arise, will be addressed on an ad hoc basis.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule; and an order proposing new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and directing publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP") Rule, provides the procedures for implementation of the NSP, which was funded through the Housing and Economic Recovery Act of 2008 and the Dodd Frank Act of 2010;

WHEREAS, staff has determined that there is a continuing need for this rule to exist, which is to continue to have rules in place governing the Neighborhood Stabilization Program, but that changes are required that involve the deletion of 10 TAC §29.3(c)(4) and 10 TAC §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts, the deletion of 10 TAC §29.4(b) as it is no longer applicable, and the deletion of 10 TAC §29.5, relating to Compliance and Monitoring, because that section which is applicable to multifamily activities is no longer needed as the multifamily NSP requirements are now addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment;

NOW, therefore, it is hereby

RESOLVED, that the order adopting the proposed repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and order adopting the proposed new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP") Rule, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, and proposed new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Rule Review Overview

Tex. Gov't Code §2001.039 requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist; based on the assessment the rule can then be readopted as is, readopted with amendments, or repealed. Even rules that have been amended within the last four years require this review if the amendment did not specifically state that it included this review step. Several of the Department's rules exceed this four year review period and a project has been initiated to evaluate all rules and bring them into compliance with these timelines. One of the results of such a review is that the rule is determined to be necessary, but that there are significant enough revisions to warrant repeal and proposal of a new rule in its place. This type of action also is an acceptable response to the four year review requirement and "resets the clock" on that review period.
This rule review initiative also includes a management-wide evaluation of whether a rule is:

- Statutorily required, and if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation, and if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Executive Director and the Board.

Upon approval in draft form by the Board, rules under review will be released for public comment in the *Texas Register*.

Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

Authority: Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. This may include, as needed, procedural requirements that are needed to ensure that programs are able to be run efficiently. As such, this rule was established in 2012 to provide rules to govern the Neighborhood Stabilization Program, a program allocated to the Department under the Housing and Economic Recovery Act of 2008. While no new funds have been issued to the Department the original program continues to operate as activities are closed out and as land bank properties, which had an extended period for completion, are brought into a final eligible use.

Department Policy: While Tex. Gov't Code §2306.053 does not explicitly require that the Department have rules for the NSP, the statute does allow for that ability and the rule provides greater transparency by having in rule stipulations that would originally only have been reflected in contract.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained with changes that involve minor edits throughout, as well as the removal of several sections including 10 TAC §29.3(c)(4) and 10 TAC §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts, the deletion of 10 TAC §29.4(b) as it is no longer applicable, and the deletion of 10 TAC §29.5, relating to Compliance and Monitoring, because that section which is applicable to multifamily activities is no longer needed as the multifamily NSP requirements are now addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule. This action allows the Department to continue to provide clear regulation relating to NSP activities still underway.

Upon Board approval, the proposed rule actions will be published in the *Texas Register* and released for public comment from September 21, 2018, through October 22, 2018. Behind the preamble is a copy of the rule in its clean new form and then to provide the reader a view of what changes are proposed is a version in blackline.

Attachment 1: Preamble, including required analysis, for the proposed repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP") Rule. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Timothy K. Irvine, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the NSP Rules.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the NSP activity.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Irvine has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941,

by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 22, 2018.

STATUTORY AUTHORITY. The repeal is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 29, Texas Single Family Neighborhood Stabilization Program ("NSP"). The purpose of the proposed new section is to make changes that involve minor edits throughout, as well as the removal of several sections including §29.3(c)(4) and §29.3(c)(5), relating to thresholds for Administrative draw requests, because these sections are no longer applicable to remaining open Contracts, the deletion of §29.4(b) as it is no longer applicable, and the deletion of §29.5, relating to Compliance and Monitoring, because that section which is applicable to multifamily activities is no longer needed as the multifamily NSP requirements are now addressed in 10 TAC Chapter 13, the Multifamily Direct Loan Rule.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule changes only involve the removal of several obsolete sections which are no longer applicable, and minor edits. The rule provides for how a federal program, the Neighborhood Stabilization Program, is administered. There are no costs associated with this proposed rule, therefore no costs or impacts warrant a need to be offset.

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

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

Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Neighborhood Stabilization Program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

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

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

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

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

2. This rule relates to the procedures in place for administrators of the Neighborhood Stabilization Program. Other than in the case of a small or micro-business that participates in this program, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so.

3. The Department has determined that because this rule relates only to a process for applicants of an existing program, and the rule changes primarily remove outdated sections and make minor edits, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the existing processes used in administering the Neighborhood Stabilization Program; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that the rule relates only to the continuation of the program regulations for the Neighborhood Stabilization Program there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Irvine has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be an updated clear rule and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activity described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not recommended for change.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from September 21, 2018, through October 22, 2018. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, October 22, 2018.

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

Chapter 29, Texas Single Family Neighborhood Stabilization Program Rule

§29. 1. Purpose

This chapter clarifies the administration of the Texas Single Family Neighborhood Stabilization Program (Texas SFNSP). Texas SFNSP funds are administered by the Department. The Texas SFNSP awards funding to Subgrantees to acquire foreclosed, abandoned, or vacant property in order to redevelop it and prevent it from~~that property to prevent it from otherwise~~ becoming a source of blight ~~and a~~ which could contribute~~cor~~ to declining property values.

§29.2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Notice of Funding Availability (NOFA) indicates otherwise. Lack of capitalization of a term or word in this chapter does not indicate that the term is undefined. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 20 of this title (relating to Single Family Programs Umbrella Rule).

(1) Developer--A nonprofit entity that receives Texas SFNSP assistance for the purpose of:

(A) acquiring homes and residential properties to rehabilitate ~~for use~~ for residential purposes; and

(B) constructing new housing in connection with the redevelopment of demolished or vacant properties.

(2) Expended--For the purposes of contract milestones and thresholds, "Expended" means that a complete draw~~down~~ request is submitted with adequate back-up documentation~~ adequate to process a draw~~; it is not necessary for staff to have processed a draw to meet a benchmark. For all other purposes, "Expended" means that an eligible cost was incurred and staff has processed a draw to reimburse the expense with Texas SFNSP funds.

(3) Land Bank--A governmental or nongovernmental nonprofit organization established, at least in part, to assemble, temporarily manage and dispose of vacant land for the purposes of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.

(4) Obligated--When Texas SFNSP funding has been encumbered through contracts for goods, services or acquisition of property, or other forms of similar transactions requiring payment that have been determined by the Department to meet Texas SFNSP requirements.

(5) Subgrantee--A Subrecipient or a Developer.

(6) Subrecipient--Units of General Local Government and nonprofit organizations with whom the Department contracts and provides funding in order to undertake activities eligible for such assistance.

(7) Texas SFNSP--Texas Single Family Neighborhood Stabilization Program.

§29.3. General Provisions

(a) All assisted properties must be located in eligible areas as defined by HUD and by the applicable NOFA.

(b) The Contract term is based upon varying types of activities included in the Contract between the Department and the Department's Subgrantee. Exhibit C, Project Implementation Schedule, of the ~~c~~Contract, provides an outline of specific timelines, milestones and thresholds. Performance under the ~~c~~Contract will be evaluated according to the benchmarks described in each Contract.

(c) Administrative Threshold. Administrative draw requests are funded from the administration or developer fee line item in Exhibit B, Budget, of the Contract. Reimbursement of eligible administrative expenses is regulated as described in paragraphs (1) - (5) of this subsection:

(1) Threshold 1. Cumulative administrative draw requests may allow up to 10 percent of the administration or developer fee line item to be drawn ~~down~~ prior to the start of any project activity included in the performance statement of the Contract~~contract~~ (provided that all pre-draw requirements, as described in the Contract, for administration have been met). This draw may be limited by NOFA, underwriting report, or by Contract. Subsequent administrative expenditures will be reimbursed in the percentage amounts indicated, provided that all Contract benchmark requirements have been met, as identified in Exhibit C, Project Implementation Schedule, described in subsection (b) of this section;

(2) Threshold 2. Subsequent administrative draw requests are allowed in proportion to the direct project funds drawn on the Contract~~contract,;~~ up to 90 percent of the total administration or developer fee line item. The cumulative total percentage of administrative funds requested may not exceed the cumulative total percentage of project funds expended for hard and/or soft costs directly attributable to activities under the Contract;

(3) Threshold 3. The final 10 percent of the administration or developer fee line item is the administrative retainage. The final 10 percent may be drawn after the final loan closing or upon Contract close-out. ~~Half of the retainage or, in other words, an additional 5 percent (95 percent of the total), may be drawn down after submission of complete Contract close-out documents;~~

~~(4) Threshold 4. The final 5 percent (100 percent of the total), less any administrative funds reserved for audit costs as noted on the project completion report, may be drawn down following receipt of the programmatic Contract close-out letter issued by the Department; and~~

~~(5) Threshold 5. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit and a documented drawdown request for the expenses. Only the portion of audit expenses reasonably attributable to the contract is eligible.~~

(d) Forbearances. Contract expenditure thresholds and milestones are included in Exhibit C, Project Implementation Schedule, of the Contract~~contract~~; violations of which will subject the Subgrantee to the requirements found in this chapter. At the Department's discretion, forbearances of thresholds and milestones may be granted upon request and documentation of extenuating circumstances.

(e) Waivers. Program administrative regulations set forth in any Texas SFNSP NOFA by the Department's Governing Board or terms in the Contract~~contract~~ may be waived by the Department, acting by and through its Executive Director or his/her designee, up to the limits of Texas SFNSP regulations and guidance as previously established, periodically updated, or updated in the future by HUD. The Executive Director or his/her designee may waive the Texas SFNSP purchase discount to the limits of the purchase discount as allowed by the NSP Bridge Notice. The Texas NSP NOFA and the NSP *Federal Register* Notice (Docket No. FR-5255-N-01) published in the *Federal Register* (73 FR 58330), require a minimum discount of 5 percent for any individual property and 15 percent for a portfolio of properties to be acquired utilizing Texas SFNSP funds. (If only acquiring one property, the one property constitutes a portfolio.) The NSP Bridge Notice allows for up to a 1 percent discount for individual properties and portfolios.

§29.4. Reassignment of Funds

~~(a)~~ Deobligated funds~~Funds deobligated~~ may either be reassigned utilizing the amendment ~~procedure~~ process described 10 TAC §20.14 of this Title, or be subject to redistribution through a methodology to be approved by the Board.

~~(b) If the Texas SFNSP Program Income Reservation System has a fund balance of $1,000,000 for more than thirty (30) days, the Executive Director may lower the target score required for funding of a project to twelve, if the project fulfills a local at-risk priority as identified on the Department's website.~~

~~**§29.5 Compliance and Monitoring**~~

~~(a) All properties will be monitored using the procedures outlined in Chapter 60 of this title (relating to Compliance Administration).~~

~~(b) All owners will be required to file reports with the Department as outlined in Chapter 60 of this title.~~

~~(c) Owners of rental properties will be required to pay the monitoring and compliance fees established by the Department from time to time, as assessed, in this title, by NOFA, or by Contract.~~

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BOARD ACTION REQUEST

811 PROGRAM

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting amendments to 10 TAC §8.3, Participation as a Proposed Development, relating to the Section 811 Project Rental Assistance Program, and directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") awarded the Department with two awards of Section 811 Project Rental Assistance Program ("811 PRA Program") funds, in 2013 and 2014 respectively, for a total award of $24 million to provide rental assistance for approximately 681 units;

WHEREAS, the Department's Governing Board adopted 10 TAC Chapter 8, concerning the 811 PRA Program on November 9, 2017, and those rules became effective on January 23, 2018;

WHEREAS, this amendment harmonizes requirements in the 811 PRA Program rule with new 10 TAC §1.15 regarding Integrated Housing, also being adopted at this meeting of the Board;

WHEREAS, at the Board meeting of May 24, 2018, the Board approved the proposed amendment of 10 TAC §8.3, Participation as a Proposed Development, and directed publication for public comment in the *Texas Register*; and

WHEREAS, public comment was accepted from June 11, 2018, through July 11, 2018, and no comments were received;

NOW, therefore, it is hereby

RESOLVED, that the amendments to 10 TAC §8.3, Participation as a Proposed Development, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the amendments of 10 TAC §8.3, Participation as a Proposed Development, , in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Authority: The authority for this rule is Tex. Gov't Code §2306.111(g) which directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing.

Department Policy: While Tex. Gov't Code §2306.111(g) does promote integrated housing, the statute does not specify how that concept must be applied to the Department's programs. The Department provides for that integration through 10 TAC §1.15, Integrated Housing Rule, currently being adopted in a separate item during this Board meeting with changes. This rule amendment to 10 TAC §8.3 ensures consistency between those new changes at 10 TAC §1.15 and this revision to the 811 PRA Program.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to ensure consistency between 10 TAC §1.15, Integrated Housing Rule, and this rule at §8.3, relating to Participation as a Proposed Development, for the 811 PRA Program.

The amendment being adopted for §8.3(c) removes a reference to "special needs housing" which is no longer a correct reference based on changes proposed to 10 TAC §1.15, the Integrated Housing Rule, and revises the integration limit from the previous standard of 18% for large properties and 25% for small properties, to 25% for all properties, which is the maximum allowed under HUD's integration standard for the 811 PRA Program. This revision brings this rule into consistency with changes proposed to the Integrated Housing Rule, and with HUD's integration rule.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting amendments to 10 TAC §8.3 Participation as a Proposed Development

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §8.3, Participation as a Proposed Development, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3712). The purpose of the amendments is to provide compliance with Tex. Gov't Code §2306.111(g) and to ensure consistency between this rule and recent changes to 10 TAC §1.15, the Integrated Housing Rule, that are referenced in this 10 TAC §8.3 Rule. Substantively, this adoption removes a reference to "special needs housing" which is no longer a correct reference based on changes proposed to 10 TAC §1.15, the Integrated Housing Rule; and revises the integration limit from the previous standard of 18% for large properties and 25% for small properties, to the standard reflected in 10 TAC §1.15.

Tex. Gov't Code §2001.0045(b), does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the only change that was proposed to be made was a change that provides for more expansive leveraging opportunities for participants of the program, and encourages greater unit availability for persons with disabilities. Further, no changes are being made since the rule was posted for public comment. The rule revision ensures that this rule remains consistent with other changes being made in Department rules at 10 TAC §1.15, relating to the Integrated Housing Rule. There are no costs associated with this rule, therefore no costs or impacts warrant a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the amended rule will be in effect:

1. The amended rule does not create or eliminate a government program. This amendment provides for uniformity with 10 TAC §1.15, Integrated Housing Rule.

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

3. The amended rule changes do not require additional future legislative appropriations.

4. The amended rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The amended rule is not creating a new regulation. It is modifying an existing rule.

6. The rule will not limit or repeal an existing regulation, and is necessary to ensure compliance with the amended 10 TAC §1.15 Integrated Housing Rule and HUD program requirements.

7. The amended rule will not increase nor decrease the number of individuals subject to the rule's applicability, however the amended rule provides greater opportunity for multifamily developers to expand integrated housing options for households with disabilities in their properties.

8. The amended rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at 10 TAC§8.3 further the full community participation of persons with disabilities, many of which would otherwise remain homeless or live in institutions because of a lack of affordable, accessible and integrated housing options. Many people who exit

institutions and homelessness are able to fully participate in their communities and the economy at large through the 811 PRA Program.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.11(g).

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

2. This rule change relates to Developments voluntarily participating in the 811 PRA Program and those properties offering an integrated housing opportunity for Households with Disabilities. Other than in the case of a small or micro-business that is voluntarily participating in the 811 PRA Program, no small or micro-businesses are subject to the rule. However, if a small or micro-business is an 811 PRA Program participant, this rule which provides consistency with 10 TAC §1.15, Integrated Housing Rule, was drafted to preserve the ability of rural properties to continue to have the ability to leverage multifamily housing development funds through a higher integrated housing cap than for larger properties.

3. The Department has determined that because the rule provides for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for households with disabilities, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule may provide a possible positive economic effect on local employment in association with this rule because it has been shown that people who have access to affordable housing versus those who are homeless or reside in institution increase their economic contribution to the community and productivity of the economy at large, however because it is difficult to quantify the precise economic impact a family has when moving out of homelessness or an institutional setting, that impact is not able to be quantified for any given community.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that this amended rule provides changes to the Department's Section 811 Program regarding an integration standard for properties subject to 10 TAC §1.15 and the HUD program rules, there are no "probable" effects of the amended rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be an updated rule that serves to provide for ongoing assurance that the properties and programs funded by the Department that are subject to 10 TAC §1.15, the Integrated Housing Rule and the HUD Section 811 Program, produce integrated housing opportunities for households with disabilities. There are not any economic costs to any individuals required to comply with the amended section because the processes described by the rule have already been in place, though with a slightly different implementation.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule only makes changes to an existing rule, which provides changes to the Department's Section 811 Program regarding an integration standard for properties subject to 10 TAC §1.15 and the HUD program rules.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail and no comments were received.

The Board adopted the final order adopting the amended rule on September 6, 2018.

STATUTORY AUTHORITY. The amended sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amended sections affect no other code, article, or statute.

10 TAC §8.3 Participation as a Proposed Development

(a) To the extent that Applications under Multifamily Rules allow for and/or require use of a Proposed Development to participate in the 811 PRA Program, the Proposed Development must satisfy the following criteria:

(1) Unless the Development is also proposing to use any federal funding or has received federal funding after 1978, the Development must not be originally constructed before 1978;

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

(3) No new construction of structures shall be located in the mapped 500-year floodplain or in the 100-year floodplain according to FEMA's Flood Insurance Rate Maps (FIRM). Rehabilitation Developments that have previously received HUD funding or obtained HUD insurance do not have to follow subparagraphs (A) - (C) of this paragraph. Except for sites located in coastal high hazard areas (V Zones) or regulatory floodways, existing structures are eligible in these areas, but must meet the following requirements:

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

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

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

(b) The following requirements must be satisfied for the Units that participate in the 811 PRA Program. Failure for a Unit to meet these requirements does not make the entire Development ineligible, rather only those Units.

(1) Units in the Development are not eligible for Section 811 assistance if they have an existing or proposed project-based or operating housing subsidy attached to them or if they have received any form of long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

(2) Units with an existing or proposed age restriction are not eligible.

(3) Units with an existing or proposed limitation for persons with disabilities are not eligible. A Development having a preference for Persons with Disabilities, or a use restriction for Special Needs Populations, which could include but is not limited to Persons with Disabilities, is not a Unit limitation for purposes of this item.

(4) Units with an existing or proposed occupancy restriction for households at 30% or below are not eligible, unless there are no other Units at the Development.

(c) Developments cannot exceed the integration requirements of the Department and HUD. Properties that are exempt from the Department's Integrated Housing Rule at §1.15 of this Title are not exempt from HUD's Integration Requirement maximum of 25%. The maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units is 25%.

(d) Section 811 PRA units must be dispersed throughout the Development.

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BOARD ACTION REQUEST

HOUSING RESOURCE CENTER

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order to readopt with changes 10 TAC §1.11, Definition of Service-Enriched Housing, and directing that it be published for readoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, Tex. Gov't Code §2306.1091(b), requires the Department, with the advice and assistance of the Housing and Health Services Coordination Council ("Council"), to define Service-Enriched Housing by rule which it does through 10 TAC §1.11, Definition of Service-Enriched Housing;

WHEREAS, at the Board meeting of May 24, 2018, the Board approved the proposed readoption, without changes, and directed publication for public comment in the *Texas Register*;

WHEREAS, public comment was accepted from June 11, 2018, through July 11, 2018, with comments received from two organizations; and

WHEREAS, based on public comments received, changes to the rule are being made as part of the rule's readoption to provide clarification of the term "off-site services" within the Definition of Service-Enriched Housing;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the readoption with changes to 10 TAC §1.11 Definition of Service-Enriched Housing, in the form presented to this meeting, to be published in the *Texas Register* for readoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Rule Review Overview

Tex. Gov't Code §2001.039 requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist; based on the assessment the rule can then be readopted as is, readopted with amendments, or repealed. Even rules that have been amended within the last four years require this review if the amendment did not specifically state that it included this review step. Several of the Department's rules exceed this four

year review period and a project has been initiated to evaluate all rules and bring them into compliance with these timelines. One of the results of such a review is that the rule is determined to be necessary, but that there are significant enough revisions to warrant repeal and proposal of a new rule in its place. This type of action also is an acceptable response to the four year review requirement and "resets the clock" on that review period.

This rule review initiative also includes a management-wide evaluation of whether a rule is:

- Statutorily required, and if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation, and if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Executive Director and the Board.

10 TAC §1.11 Definition of Service-Enriched Housing

Authority: The Housing and Health Services Coordination Council ("HHSCC" or the "Council") is codified in Tex. Gov't Code §2306.1091. The purpose of the Council is to increase state efforts to offer service-enriched housing through increased coordination of housing and health services. In accordance with Tex. Gov't Code §2306.1091(b): "With the advice and assistance of the council, the Department by rule shall define 'service-enriched housing' for the purposes of this subchapter." In January 2010, the Department, with the advice and assistance of the Council, developed the definition of Service-Enriched Housing. The definition was brought before stakeholders at four statewide public forums in order to receive additional opinions and feedback. After receiving feedback a revised definition was approved by Council at its March 2010 meeting. The TDHCA Governing Board adopted a final rule using the approved definition on May 12, 2010, and effective in the *Texas Register* in June 2010.

Department Policy: While Tex. Gov't Code §2306.1091 does require that the Department adopt a definition for the term Service-Enriched Housing, the statute does not specify what that definition must be. Therefore, this rule does set policy, from the Department and the Council, not provided for in state statute or federal regulations, for how the term is defined.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained with changes. This action allows the Department to continue to ensure compliance with Tex. Gov't Code §2306.1091, and continue to have a required definition for Service-Enriched Housing.

Following Board approval, the proposed rule review was published in the *Texas Register* and released for public comment from June 11, 2018, through July 11, 2018. A total of two comments were received from two organizations. A summary of comments and reasoned responses are provided in Attachment A as part of the preamble as required. Changes were made based on discussion at the July 11, 2018, HHSCC Quarterly Council meeting and the public comments received. Changes provide clarity to the definition of Service-Enriched Housing that the two public comments addressed regarding "off-site services."

Attachment A: Preamble, including required analysis, for readoption with changes to 10 TAC Chapter 1, §1.11, Definition of Service-Enriched Housing

The Texas Department of Housing and Community Affairs (the "Department") readopts 10 TAC §1.11, Definition of Service-Enriched Housing, with changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3805). The purpose of the readoption with changes is to provide clarification of the term "off-site services" within the Definition of Service-Enriched Housing.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9), relating to implementing legislation. The rule provides for compliance with Tex. Gov't Code §2306.1091(b) which requires the Department, with the advice and assistance of the Housing and Health Services Coordination Council ("Council"), to define Service-Enriched Housing by rule.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.
a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Irvine has determined that, for the first five years the readopted rule will be in effect:

1. The rule does not create or eliminate a government program. This rule defines Service-Enriched Housing for the Housing and Health Services Coordination Council, which is not required to be applied to activities funded by the Department.

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

3. The rule changes do not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule is not creating a new regulation, except that it is readopting a rule with changes.

6. The rule will not expand, limit, or repeal an existing regulation.

7. The rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.1091(b).

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

2. There are no small or micro-businesses subject to the rule. There are no rural communities subject to the rule.

3. The Department has determined that because the rule defines Service-Enriched Housing, which is not required to be applied to activities funded by the Department, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because it merely

provides a definition for the term Service-Enriched Housing, which is not required to be applied to activities funded by the Department; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that this rule is a definition eligible to the entire state there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the readopted rule is in effect, the public benefit anticipated as a result of the readoption with changes will provide clarification to the definition of Service-Enriched Housing. There will not be any economic cost to any individuals required to comply with the new section because the rule has already been in place and is only being changed to clarify the definition.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule provides clarification to the definition of Service-Enriched Housing for the Housing and Health Services Coordination Council, as required by Tex. Gov't Code, §2306.1091(b).

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed readoption were accepted in writing and by e-mail with two comments received from two organizations: (1) National Church Residences and (2) The Adult Mental Health Unit at the Texas Health and Human Services Commission ("HHSC").

COMMENT 1 SUMMARY: National Church Residences commented that the clause or "off-site" should be taken out of the definition of Service-Enriched Housing. The commenter does not believe that housing providing services "off-site" is considered Service-Enriched Housing. The commenter believes that when services are off-site, it is difficult to confirm if the appropriate services are being provided and to monitor the level of quality of services. Furthermore, the commenter noted that off-site services require transportation, which could be a barrier for a resident to receive appropriate services. National Church Residences believes the designation of Service-Enriched Housing should carry a meaningful benefit and only on-site, appropriate services can effectively accomplish this designation.

> STAFF RESPONSE: The Department thanks National Church Residences for their comment and appreciates their feedback on the definition of Service-Enriched Housing. While staff acknowledges the comment, alternative comment, noted below, counters this input. Further, the Council believes that off-site services can provide the same quality services as on-site and can provide tenants with client-choice, by not limiting them to only housing with on-site services, an important aspect of service provision. However, the rule will be clarified relating to what is meant by "off-site" services as associated with Service-Enriched Housing.

COMMENT 2 SUMMARY: The Adult Mental Health Unit at HHSC commented that it is imperative to include both "on-site and off-site" within the definition of Service-Enriched Housing. The commenter expressed understanding of the concern stated by National Church Residences that properties may not follow through with services off-site, but that the opportunity for off-site service provision is an important tenet of Permanent Supportive Housing to promote choice in options for services to be separate from the housing of an individual's choice, be it on-site or off-site. The commenter suggested adding clarifying language such as "... housing that provides residents with the opportunity to receive assistance in coordination of on-site and/or off-site health-related and other services..."

> STAFF RESPONSE: The Department thanks HHSC for their comment and appreciates their feedback on the definition of Service-Enriched Housing. Staff agrees that it is important to keep both "on-site and off-site" services in the definition of Service-Enriched Housing. Off-site services provide tenant-choice. Service-Enriched Housing properties typically have service coordinators who ensure the coordination of quality services are accessible to residents. Changes to the Definition of Service-Enriched Housing will be made to clarify what is meant by "off-site services" as associated with Service-Enriched Housing.

The Board adopted the final order readopting with changes the rule on September 6, 2018.

STATUTORY AUTHORITY. The readoption with changes is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the readoption with changes affects no other code, article, or statute.

§1.11. Definition of Service-Enriched Housing.

(a) Purpose. It is the purpose of this section to define service-enriched housing for the Housing and Health Services Coordination Council.

(b) Definition. For the purpose of directing the work of the Housing and Health Services Coordination Council and its work products, including the biennial plan, Service-Enriched Housing is defined as integrated, affordable, and accessible housing that provides residents with the opportunity to receive assistance in coordination of on-site and/or off-site health-related and other services and supports that foster independence in living and decision-making for individuals with disabilities and persons who are elderly.

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.15, Integrated Housing Rule, and an order adopting new 10 TAC §1.15, Integrated Housing Rule, and directing publication for adoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, the provision of integrated housing through the Department's programs is authorized by Tex. Gov't Code §2306.111(g) which directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing;

WHEREAS, the Department recommends to the Board that there is a continuing need for this rule to exist, which is to provide for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for Households with Disabilities;

WHEREAS, this rule was last acted upon in December 2003, and is in need of changes to remove definitions now provided elsewhere in rule, update the definition for Households with Disabilities, improve readability, remove several exceptions to the rule that are no longer recommended, and revise the integrated housing cap to be in alignment with the approach used by the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, at the Board meeting of May 24, 2018, the Board approved the proposed repeal and proposed new 10 TAC §1.15, Integrated Housing Rule, and directed publication for public comment in the *Texas Register*; and

WHEREAS, public comment was accepted from June 11, 2018, through July 11, 2018, and no comments were received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC §1.15, Integrated Housing Rule, and new 10 TAC, §1.15, Integrated Housing Rule, are adopted; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC §1.15, Integrated Housing Rule, and new 10 TAC §1.15, Integrated Housing Rule, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Rule Review Overview

Tex. Gov't Code §2001.039 requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist; based on the assessment the rule can then be readopted as is, readopted with amendments, or repealed. Even rules that have been amended within the last four years require this review if the amendment did not specifically state that it included this review step. Several of the Department's rules exceed this four year review period and a project has been initiated to evaluate all rules and bring them into compliance with these timelines. One of the results of such a review is that the rule is determined to be necessary but that there are significant enough revisions to warrant repeal and proposal of a new rule in its place. This type of action also is an acceptable response to the four year review requirement and "resets the clock" on that review period.

This rule review initiative also includes a management-wide evaluation of whether a rule is:

- Statutorily required, and if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation, and if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Executive Director and the Board.

10 TAC §1.15 Integrated Housing Rule

Authority: The authority for this rule is Tex. Gov't Code §2306.111(g) which directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing.

Department Policy: While Tex. Gov't Code §2306.111(g) does promote integrated housing, the statute does not specify how that concept must be applied to the Department's programs. Therefore, this rule does set Department policy, not provided for in state statute or federal regulations, for how the Department ensures integration in its programs. This rule was originally established in 2003 in collaboration with disability advocates and program participants. The rule ensures that housing developments that are subject to the rule do not restrict occupancy solely to households with disabilities, with a maximum integration limit dependent on the size of the housing development. In the rule now being adopted, the maximum set-aside is 25% for developments with 50 or more units and 36% for developments with less than 50 units.

Prior to this rule being proposed in May 2018, the proposed rule changes were discussed with the Department's Disability Advisory Workgroup twice, and with the Housing and Health Services Coordination Council and the QAP Roundtable. Additionally, an Online Survey and Online Forum were conducted April 26, 2018, through May 7, 2018. Staff believed that the policy presented in May was a balanced proposal which was confirmed by the fact that no comment was received indicating any concerns with the rule.

Consistency with Executive Direction and Proposed Changes: Staff recommends that this rule be retained but done so through repeal and proposal of a new rule. This action allows the Department to continue to ensure compliance with Tex. Gov't Code §2306.111(g) and provide a transparent process for participants in the Department's programs of what integration standards will apply to their program activity. The new rule reflects changes that include: removing definitions now provided elsewhere in rule, updating the definitions for 'Household with Disabilities' and 'Integrated Housing,' improving readability, removing previous exceptions to the rule for elderly and special needs populations, clarifying that the marketing only to Households with Disabilities is not permitted, revising the integrated housing cap for large properties from 18% to 25%, and revising the waiver language.

It should be noted that a new preamble format has been used for this adoption which now addresses a series of analyses required by statute and by the Office of the Governor. Behind the proposed preamble for the adopted action the final rule is shown in its clean new form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.15, Integrated Housing Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.15, Integrated Housing Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous new rule, which serves to provide a standard by which Developments voluntarily participating in programs funded by the Department provide an integrated housing opportunity for Households with Disabilities.

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous new rule to provide greater opportunity for multifamily developers to expand integrated housing options for Households with Disabilities on their properties.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability, however through a simultaneous new rule being adopted, the new rule provides greater opportunity for multifamily developers to expand integrated housing options for Households with Disabilities in their properties.

8. The repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule that serves to provide for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for Households with Disabilities. There will not be economic costs to individuals required to comply with the repealed section.

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

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail with no comments received.

The Board adopted the final order adopting the repeal on September 6, 2018.

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

10 TAC §1.15, Integrated Housing Rule

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.15, Integrated Housing Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.15, Integrated Housing Rule, without changes to the proposed text as published in the June 8, 2018, issue of the *Texas Register* (43 TexReg 3692-3). The purpose of the new section is to align with Tex. Gov't Code §2306.111(g) which directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing. The updated rule reflects changes that include: removing definitions now provided elsewhere in rule, updating the definitions for 'Household with Disabilities' and 'Integrated Housing,' improving readability, removing previous exceptions to the rule for elderly and special needs populations, clarifying that the marketing only to Households with Disabilities is not permitted, revising the integrated housing cap for large properties from 18% to 25%, and revising the waiver language.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and no changes are being made since the rule was posted for public comment. The rule provides for ongoing assurance that the multifamily properties funded by the Department produce integrated housing opportunities for Households with Disabilities. There are no costs associated with this rule, therefore no costs or impacts warrant a need to be offset.

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

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

Mr. Irvine has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities.

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

3. The new rule does not require additional future legislative appropriations.

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

5. The new rule is not creating a new regulation, except that it is replacing a repealed rule simultaneously to provide for revisions.

6. The action is associated with a simultaneous repeal; the new rule makes changes to provide greater opportunity for multifamily developers to expand integrated housing options for Households with Disabilities in their properties.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability, however the rule provides greater opportunity for multifamily developers to expand integrated housing options for Households with Disabilities in their properties.

8. The new rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

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

2. This rule relates to the Department ensuring that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities. Other than in the case of a small or micro-business that is voluntarily participating in one of the Department's multifamily programs, no small or micro-businesses are subject to the rule. However, if a small or micro-business is pursuing a multifamily activity with the Department, this rule was drafted to preserve the ability of rural properties to continue to have the ability to leverage multifamily housing development funds through a higher integrated housing cap than for larger properties.

3. The Department has determined that because the rule provides for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for Households with Disabilities, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule relates only to an integration standard for properties and programs voluntarily seeking funding by the Department, therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that this rule merely provides changes to the Department's rule regarding an integration standard for properties and programs funded by the Department, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a rule that serves to provide for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for Households with Disabilities. There will not be any economic cost to any individuals subject to the new rule as the processes described by the rule have already been in existence through a simultaneously repealed rule.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments the rule only makes changes to an existing rule, which provides for ongoing assurance that the properties and programs funded by the Department produce integrated housing opportunities for households with disabilities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between June 11, 2018, and July 11, 2018. Comments regarding the proposed repeal were accepted in writing and by e-mail and no comments were received.

The Board adopted the final order adopting the new rule on September 6, 2018.

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

§1.15. Integrated Housing Rule

(a) Purpose. It is the purpose of this section to provide a standard by which Developments funded by the Department offer an integrated housing opportunity for Households with Disabilities. This rule is authorized by Tex. Gov't Code, §2306.111(g) promotes projects that provide integrated affordable housing.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the funded or awarded Development, or assigned by federal or state law.
(2) Integrated housing--Living arrangements typical of the general population. Integration is achieved when Households with Disabilities have the option to choose housing units that are located among units that are not reserved or set aside for Households with Disabilities. Integrated housing is distinctly different from assisted living facilities/arrangements.
(3) Households with Disabilities--A Household composed of one or more persons, at least one of whom is an individual who is determined to have a physical or mental impairment that substantially limits one or more major life activities; or having a

record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or disability as defined by other applicable federal or state law.

(c) Applicability. This rule applies to:

(1) All Multifamily Developments subject to Chapter 10 of this Title, Uniform Multifamily Rules, with the exclusion of Transitional Housing Developments;

(2) Single Family Developments subject to Chapter 23, Subchapter G, of this Title, relating to HOME Program Single Family Developments, or done with Neighborhood Stabilization Program funds, with the exclusion of Scattered-site developments, meaning one to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site; and

(3) Only the restrictions or set asides placed on Units through a Contract, LURA, or financing source that limits occupancy to Persons with Disabilities. This rule does not prohibit a Development from having a higher percentage of actual occupants who are Persons with Disabilities.

(4) Previously awarded Multifamily Developments that would no longer be compliant with this rule are not considered to be in violation of the percentages described in (d)(2) or (d)(3) of this rule if the award is made prior to September 1, 2018, and the restrictions or set asides were already on the Development or proposed in the Application for the Development.

(d) Integrated Housing Standard. Units exclusively set aside or containing a preference for Households with Disabilities must be dispersed throughout a Development.

(1) A Development may not market or restrict occupancy solely to Households with Disabilities unless required by a federal funding source.

(2) Developments with 50 or more Units shall not exclusively set aside more than 25 percent of the total Units in the Development for Households with Disabilities.

(3) Developments with fewer than 50 Units shall not exclusively set aside more than 36 percent of the Units in the Development for Households with Disabilities.

(e) Board Waiver. The Board may waive the requirements of this rule if the Board can affirm that the waiver of the rule is necessary to serve a population or subpopulation that would not be adequately served without the waiver, and that the Development, even with the waiver, does not substantially deviate from the principle of Integrated Housing.

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BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §6.404 Distribution of WAP Funds, and an order proposing new 10 TAC §6.404 Distribution of WAP Funds, and directing publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs ("the Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department has identified the need to revise 10 TAC §6.404 to address the process the Department will utilize when allowing a subrecipient of funds to move a portion of funds from their Low Income Home Energy Assistance Program ("LIHEAP") Weatherization Assistance Program ("WAP") activity to the LIHEAP Comprehensive Energy Assistance Program ("CEAP") activity;

WHEREAS, the revision will allow for greater subrecipient flexibility and provide clear steps for how the Department will handle the movement of funds from the LIHEAP WAP to the LIHEAP CEAP, and it is the Department's intent that the change in the rule be clear and understandable to Subrecipients and compliant with federal rules and guidelines; and

WHEREAS, upon authorization of this item, the proposed rule actions will be published in the *Texas Register* for public comment from September 21, 2018, through October 22, 2018;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC §6.404 Distribution of WAP Funds, and proposed new 10 TAC §6.404 Distribution of WAP Funds, are approved for publication in the *Texas Register* for public comment; and

FURTHR RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

Staff has identified a necessary revision within 10 TAC §6.404 that would allow for Department and subrecipient flexibility in the expenditure of LIHEAP funds. Currently, the Department's rules does not explicitly state that LIHEAP WAP funds can be transferred to the LIHEAP CEAP activity. At times it may become necessary to do so as in the case of a subrecipient who is not able to fully expend their LIHEAP WAP funding due to a shortage in contractor capacity. Because utility assistance (i.e., CEAP) is often in high demand by low income Texans, it is reasonable to permit the transfer of WAP funds to CEAP in certain cases.

Based on the proposed rule, when a subrecipient has notified the Department they would like to undergo a transfer of WAP funds to CEAP, the Department will review the request and, if approved, will determine by

the allocation formula written in 10 TAC §6.303 how the funds will be distributed among the CEAP subrecipients serving the counties in the service area for which the WAP funds are being reduced. The allocation formula will ensure that a proportional share of the funds are distributed among the subrecipients involved in CEAP provision in the counties served.

While the proposed rule reflects changes as blackline revisions to the current rule, the changes will be submitted to the *Texas Register* as proposed repeals and proposed new rules. Staff will, upon action by the Board, publish the proposed rule in the *Texas Register* for public comment from September 21, 2018, through October 22, 2018. Staff anticipates returning for final adoption of the rule no earlier than the November 8, 2018, Board meeting, and estimates the rule becoming effective in late November 2018.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC §6.404 Distribution of WAP Funds

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of §6.404 Distribution of WAP Funds. The purpose of the proposed repeal is to eliminate an outdated rule which warrants revision while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making a change to an existing activity, the administration of the Low Income Home Energy Assistance Program ("LIHEAP").

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, of the rules governing the administration of the LIHEAP.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

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

2. This rule relates to the Department ensuring that subrecipients of LIHEAP have the flexibility to pursue changing the activity type of those funds. Other than a LIHEAP subrecipient who may consider itself to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rule. However, if a LIHEAP subrecipient considers itself a small or micro-business, this rule provides greater flexibility in their opportunity request changes in how their LIHEAP funds are used among activity types.

3. The Department has determined that because the rule applies only to existing LIHEAP subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

   The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rule relates only to flexibility to move LIHEAP funds among activities for existing LIHEAP providers; therefore no local employment impact statement is required to be prepared for the rule.

   Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that this rule provides the same opportunity for changes to any LIHEAP recipient, regardless of location, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be greater flexibility for LIHEAP recipients in how they program their funds. There will not be economic costs to individuals required to comply with the repealed section.

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the proposed repealed section. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM Austin local time OCTOBER 22, 2018.

h. STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repeal affects no other code, article, or statute.

10 TAC §6404 Distribution of WAP Funds

Attachment 2: Preamble for proposed new 10 TAC §6.404 Distribution of WAP Funds

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC §6.404, Distribution of WAP Funds. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306, Subchapter E, and to update the rule to provide greater clarity to Subrecipients on how Low Income Home Energy Assistance Program ("LIHEAP") funds can be moved from one activity to another and explains how that request will be handled.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. This rule establishes a method by which the Department may act upon a request by a subrecipient to transfer its Low Income Home Energy Assistance Program ("LIHEAP") Weatherization Assistance Program ("WAP") funds to LIHEAP Community Energy Assistance Program ("CEAP"). This is sometimes necessary such as in the case of a subrecipient who is not able to fully expend their LIHEAP WAP funding due to a shortage in contractor capacity. Because utility assistance (i.e., CEAP) is often in high demand by low income Texans, it is reasonable to permit the transfer of WAP funds to CEAP in certain cases. This revision is being proposed to provide more clarity to the process that will be used in response to such a request. The Department does not anticipate any costs associated with this proposed rule action. Compliance with the proposed rule is intended to ensure adherence to federal statute while operating federal grants.

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

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

   Mr. Irvine has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Low Income Home Energy Assistance Program ("LIHEAP").

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

3. The proposed rule change does not require additional future legislative appropriations.

4. The proposed rule change will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not expand, limit, or repeal an existing regulation.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rule will not negatively nor positively affect this state's economy.

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

§2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306, Subchapter E.

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

2. This rule relates to the Department ensuring that subrecipients of LIHEAP have the flexibility to pursue changing the activity type of those funds. Other than a LIHEAP subrecipient who may consider itself to be a small or micro-business, which would not generally be the case, no small or micro-businesses are subject to the rule. However, if a LIHEAP subrecipient considers itself a small or micro-business, this rule provides greater flexibility in their opportunity request changes in how their LIHEAP funds are used among activity types.

3. The Department has determined that because the rule applies only to existing LIHEAP subrecipients, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the proposed repeal will be in effect there would be no economic effect on local employment because the rule relates only to flexibility to move LIHEAP funds among activities for existing LIHEAP providers; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that this rule provides the same opportunity for changes to any LIHEAP recipient, regardless of location, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be greater flexibility for LIHEAP recipients in how they program their funds. There will not be economic costs to individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

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

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the proposed new section. Written comments may be mailed to the Texas Department of Housing and Community Affairs, Gavin Reid, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3935; or email to gavin.reid@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM Austin local time OCTOBER 22, 2018.

h. STATUTORY AUTHORITY. The new section is proposed pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

[Note that this rule is shown in blackline form below for the purpose of the posting of Board materials but will be shown as clean proposed new language when submitted to the Texas Register.]

§6.404 Distribution of WAP Funds

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40%), number of poverty Households with at least one member who is 60 years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(i) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Household Population Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) Total sum of clauses (i) - (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.

(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent that Contract funds have been deobligated, or should additional funds become available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) In the event that a Subrecipient who has been awarded LIHEAP WAP funds elects to voluntarily transfer some portion of their LIHEAP WAP funds to the LIHEAP CEAP activity, a request to do so must be submitted prior to August 1 of the first year of the federal LIHEAP award period. The amount of funds being voluntarily transferred will be returned to the Department and redistributed among LIHEAP CEAP providers to ensure appropriate coverage among counties. This may mean the LIHEAP funds are awarded to that same Subrecipient having made the request, but alternatively could mean that the funds may be

awarded to one or more other CEAP Subrecipients providing CEAP services in the counties for which the WAP funds were transferred. The Department will distribute the funds proportionally to the affected counties and CEAP Subrecipients in the service area using the allocation formula in §6.303 of this Subchapter.
(e) Subrecipients that do not expend more than 20% of Program Year formula allocation (excluding any additional funds that may be distributed by the Department and any funds voluntarily transferred to LIHEAP CEAP) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP-WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.
(fe) The cumulative balance of the funds made available through subsections (ed) above will be allocated proportionally by formula to the entities that expended 90% of the prior year's Contract, excluding adjustments made in subsection (e), by the end of the original Contract Term.
(gf) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.
(hg) The Department may, in the future, undertake to reprocure the Subrecipients that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

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BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, and directing publication for public comment in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Transportation Code §502.415(g), the Department shall adopt rules governing applications for grants from the Ending Homelessness Fund ("EH Fund") and the issuance of those grants;

WHEREAS, on November 9, 2017, the Board adopted a policy that directed the staff initially to reserve all funds held by the Comptroller in the EH Fund to potentially be utilized as matching funds for the Emergency Solutions Grants ("ESG") Program until such a time as donations to the EH Fund exceed $100,000 per state fiscal year;

WHEREAS, Department staff has held four roundtables and an online forum to gather public input on the use of the EH Fund;

WHEREAS, Department staff has developed a proposed rule that makes the EH funds available to eligible ESG and Homeless Housing and Services Program ("HHSP") Applicants until such a time as donations to the EH Fund exceed $500,000 per state fiscal year;

WHEREAS, the rule, if adopted, will supersede and replace the Board's adopted policy on November 9, 2017; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, is approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to

effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

EH Fund Overview

The 85th Texas Legislature passed H.B. 4102, which was enacted to be effective on September 1, 2017. The act amended Subchapter H, Chapter 502, Transportation Code to add §502.415, Voluntary Contribution to the EH Fund. This section allows registrants of a motor vehicle in Texas to elect to contribute any amount of funds to the newly established EH Fund. Funds will be sent by the assessor-collector to the Comptroller, and held in trust to be administered by the Department as trustee. The funds must be utilized to provide grants to counties and municipalities to combat homelessness. The act further requires the Department to adopt rules governing applications for grants from the EH Fund, and the issuance of those grants and those rules are the subject of this Board Action Request.

The Board approved a policy on November 9, 2017, that directed the staff to initially reserve all funds held by the Comptroller in the EH Fund to potentially be utilized as matching funds for the ESG Program until such a time as an independent, but related, program is developed through the rulemaking process. The Department's ESG Program receives approximately $8.9 million per year from the U.S. Department of Housing and Urban Development, and is a competitive statewide program that provides funding for street outreach, emergency shelter, rapid re-housing, homelessness prevention, Homeless Management Information System, and administration. Without a reasonable ability to predict the potential level of donations to the EH Fund, the minimum amount of collected funds for an independent program to be considered was set in that Board policy at $100,000 per state fiscal year. It was anticipated that this minimum level would allow the Department to have time to solicit comment and develop a plan for the use of the funds. Contributions to the EH Fund have averaged approximately $12,000 per month since February 2018.

EH Fund Rule Development

Department staff held a preliminary roundtable to gather input on the EH Fund program design on January 30, 2018, during which 45 persons attended in-person or by phone. In June 2018, Department staff held three roundtables (in Dallas, Houston, and Austin) to gather input on the EH Fund and the ESG Program. Forty-six people attended the three roundtables in June 2018. Finally, Department staff held an online forum from July 13, 2018, to July 27, 2018, which received one comment.

This public input had many ideas for uses of the EH Fund, and participants at the roundtables and online also recognized that a new program would require a minimum amount to be effective state-wide. Suggestions for a threshold covered a range up to $1,000,000 before commenters thought it was reasonable to make a new independent program with the EH Fund.

In addition to aligning the EH Fund activities with ESG, the public comment suggested also aligning the EH Fund permissible activities with HHSP. HHSP is funded by Texas general revenue of approximately $4.9 million per year, which is allocated through municipalities with populations over 285,500, as indicated in Tex. Gov't Code §2306.2585. HHSP's activities include administration, case management, construction/rehabilitation/conversion, essential services, homelessness prevention, homelessness assistance, and operation costs. The EH Fund is also statutorily required to be distributed to units of general purpose local government, but without the minimum population

limitation of HHSP; the State's ESG funding recipients do not include all of the HHSP recipients, and also include nonprofit entities that would be statutorily prohibited from receiving EH Funds directly from the Department. Allowing the EH Fund to include HHSP-funded entities would increase the pool of units of general purpose local government that could access the Fund and thereby increase the distribution of the funds across the state.

The proposed rule establishes:

- Uses of the EH Fund to be any eligible activity under the ESG Program or HHSP if the EH Fund does not exceed $500,000, or activities outlined in a Notice of Funding Availability for an independent program if the EH Fund exceeds $500,000 at the end of a state fiscal year.
- EH Fund Subrecipient Application and selection process, including requirements for a proposed budget, proposed performance statement, and activity descriptions.
- Availability of funds, including an equal division among EH Fund Subrecipients of the amount of the EH Fund as of the end of the state fiscal year, unless the amount collected by the EH Fund exceeds $500,000.
- Application review process, and Contract Term and limitations, including Contract terms not exceeding 24 months.

Upon approval in draft form by the Board, rules under review will be released for public comment in the *Texas Register* and returned to the Board for final adoption.

10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund
Authority: Tex. Transportation Code §502.415(g) requires the Department to adopt rules governing application for grants from the EH Fund and the issuance of those grants.

Department Policy: As a result of public input, the Department policy is proposed to align the EH Fund with the Department's existing homeless programs, HHSP and ESG, until the EH Fund reaches more than $500,000 in a state fiscal year.

Consistency with Executive Direction and Proposed Changes: The proposed rule, if adopted, would supersede the adopted policy of November 9, 2017, which set a minimum of $100,000 before developing a new program for the EH Fund. Through public input received at roundtables and online, the proposed rule would set a minimum of $500,000 available at the end of a state fiscal year before developing an independent program from the EH Fund.

Attachment 1: Preamble, including required analysis, for proposed new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 7, Subchapter D, Ending Homelessness Fund. The purpose of the proposed new section is to provide compliance with Tex. Transportation Code §502.415(g) and outline the purpose and use of funds, subrecipient application and selection, availability of funds, application review process, and contract terms and limitations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action pursuant to §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. This proposed rule implements Tex. Transportation Code §502.415, which requires that the Department establish rules to govern the Ending Homelessness Fund.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed new rule would be in effect, the proposed rule provides for the implementation of a new program, the Ending Homelessness Fund, which is established in legislation at Tex. Transportation Code §502.415. To minimize the administrative burden on potential program Subrecipients the new program is proposed to streamline the use of the EH Fund alongside two other existing homeless programs administered by the Department, the Homeless Housing and Services Program ("HHSP") and the Emergency Solutions Grants Program ("ESG"), until the EH Fund exceeds $500,000 in a state fiscal year.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the receipt and review of EH Fund Applications, creation of Contracts, and review of reporting, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce workload such that any existing employee positions could be eliminated.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is creating a new regulation to fulfill requirements of Tex. Transportation Code §502.415(g), which requires that the Department adopt rules governing application for grants from the Ending Homelessness Fund and the issuance of those grants.

6. The proposed rule will not expand, limit, or repeal an existing regulation, since this is a new proposed rule.

7. The proposed rule does increase the number of individuals subject to the rule's applicability as described in item one above.

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because the new rule works to provide activities to decrease the number of persons experiencing homelessness or at-risk of homelessness who may be possibly accessing other more-expensive public options, such as hospitals or jails. The Department is not

able to quantify or determine the possible extent of the reduction at this time because, in addition to the difficulty in fully projecting the full value of these outcomes, the amount of the funding used for this program is dependent on voluntary donations which may vary over time.

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

The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.

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

(2) There are no small or micro-businesses subject to the proposed rule because Tex. Transportation Code §502.415 limits the EH Fund to counties and municipalities. There are minimal rural communities subject to the proposed rule because as proposed, only counties and municipalities that have or will have ESG and HHSP are eligible applicants that generally are not rural communities.

(3) The Department has determined that, based on the considerations in item two above, there will be no adverse economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to counties and municipalities who have ESG or HHSP funds; it is not anticipated the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliance with Tex. Transportation Code §502.415(g), and as EH funds are distributed, will result in decreased number of persons experiencing or at-risk of homelessness. There is no state cost to program participants who participate in the activities proposed under the EH Fund. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule apply to counties and municipalities.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the cost of administering the EH Fund is included in program eligible activities.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Naomi Cantu, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email naomi.cantu@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time, OCTOBER 22, 2018.

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

SUBCHAPTER D. ENDING HOMELESSNESS FUND

§7.61. Purpose and Use of Funds.

(a) As authorized by Tex. Transp. Code §502.415, the Ending Homelessness Fund ("EH Fund") provides grant funding only to counties and municipalities for the purpose of combating homelessness.

(b) Permitted EH Fund eligible activities include any activity determined to be eligible under Subchapter B of this Chapter, Homeless Housing and Services Program ("HHSP"), or under Subchapter C of this Chapter, Emergency Solutions Grants ("ESG"), as applicable, and as otherwise described in this Subchapter and Subchapter A of this Chapter.

(c) Capitalized terms used in this Subchapter shall follow the meanings defined in Subchapter A of this Chapter unless the context clearly indicates otherwise. Additionally any words and terms not defined in this section but defined or given specific meaning in 24 CFR Part 576, or used in that Part and defined elsewhere in state or federal law or regulation, when used in this Chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(d) Funds awarded under the EH Fund are not subject to any Match requirements, but may be used as Match for other programs that do require Match.

§7.62. EH Fund Subrecipient Application and Selection.

(a) The Department will produce an Application which, if properly completed by an eligible Applicant and approved by the Department, may satisfy the Department's requirements to receive an award of funds under the EH Fund. Applicants that have an existing ESG or HHSP Contract or are applying for ESG or HHSP funds may be eligible to submit an abbreviated EH Fund Application if such Application is made available by the Department.

(b) Funds will be available to Applicants determined to be eligible for the EH Fund under §7.63(b)(1) of this Subchapter, or as specified in a NOFA as defined in and under §7.63(b)(2) of this Subchapter, as applicable.

(c) Application for funds. All Applicants for an award from the EH Fund must submit items (1) through (5) of this subsection:

(1) a complete Application including an Applicant certification of compliance with state rules, federal laws, rules and guidance governing the EH Fund as provided in the Application;

(2) all information required under 10 TAC Subchapter C to conduct a Previous Participation and Executive Award Review and Advisory Committee review;

(3) a proposed budget in the format required by the Department;

(4) proposed performance targets in the format required by the Department; and

(5) activity descriptions, including selection of administration under Subchapter B of this Chapter related to HHSP or Subchapter C of this Chapter related to ESG.

(d) For Applications submitted by existing ESG or HHSP Subrecipients or Applicants for ESG or HHSP, eligible activities are limited to those activities in ESG or HHSP, except that the EH Fund is not subject to limitations on the amount of funds that may be spent for any given activity type.

(e) The Department must receive all Applications within 30 calendar days of notification of eligibility to Applicants per §7.63(b)(1) of this Subchapter, or as specified in the NOFA, as applicable.

§7.63. Availability of Funds.

(a) Funds available under the EH Fund will be made available at least once per state fiscal year to eligible Applicants dependant on the amount of funding made available.

(b)The balance of the EH Fund will determine the distribution method.

(1) For an annual balance that does not exceed $500,000 as of the end of the state fiscal year, the total of available EH funds will be distributed equally, up to the amount requested, among the total number of entities satisfying all of the following requirements:

(A) are Subrecipients or awarded Applicants of ESG or HHSP;

(B) are counties or municipalities;

(C) have indicated that they wish to participate in the EH Fund; and

(D) have identified the minimum amount of funds they would accept and the maximum amount of funds they would be able to expend during the Contract Term.

(2) For an annual fund balance that exceeds $500,000 as of the end of the state fiscal year, the total of available EH Funds may be made available through a NOFA, which may include being made available to counties and municipalities that are not existing ESG or HHSP Subrecipients or awarded Applicants. If the amount in the EH Fund is greater than $500,000, an award made available through a NOFA shall not exceed $250,000 per Applicant per state fiscal year, unless there are no other eligible Applicants.

§7.64. Application Review Process.

(a) Review of Applications. When not using a NOFA, an Application received in response to solicitation by the Department will be assigned a "Received Date" and processed as noted below. An Application will be prioritized for review based on its "Received Date." All Applications received by the deadline described in §7.62(e) of this Subchapter will be reviewed by the Department for completeness and administrative deficiencies to prepare for Board action and potential funding.

(b) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email. Responses to the Department's deficiency notice must be submitted electronically to the Department. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements.

(1) An Application with outstanding administrative deficiencies may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application.

(2) Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date."

(3) If all funds available under a solicitation from the Department are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

(c) Responses to administrative deficiencies. The time period for responding to a deficiency notice commences on the first calendar day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on the seventh calendar day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply unless the Application period has closed.

(d) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a

comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this Part, regarding appeals.

§7.65. Contract Term and Limitations.

(a) For EH Fund Applicants that do not have a current ESG or HHSP Contract, and have not been awarded ESG or HHSP funds, the Department requires evidence in the form of a certification or resolution adopted by the governing body of the Applicant specifying who is authorized to enter into a Contract on behalf of the Applicant. This certification or resolution is due to the Department no later than 90 calendar days after the award has been approved by the Board, must be received prior to execution of any Contract for EH funds, and must include:

(1) authorization to enter into a Contract for EH Fund;

(2) title of the person authorized to represent the organization and who also has signature authority to execute a Contract; and

(3) date that the certification or resolution was adopted by the governing body, which must be within 12 months of Application submission.

(b) For the EH Fund, Applicants that have a current Contract or have been awarded ESG or HHSP funds for a subsequent period, the Contract Term of the EH funds may not extend past the Contract Term of the existing ESG or HHSP Contract or the subsequent ESG or HHSP Contract Term. For EH Fund Applicants that do not have current or awarded ESG or HHSP funds, the Contract Term may not exceed 24 months.

Report Items

2a

BOARD REPORT ITEM

FINANCIAL ADMINISTRATION DIVISION

SEPTEMBER 6, 2018

Report on the Department's Balance Sheet/Statement of Net Position for the period ended May 31, 2018

Below is an unaudited condensed Statement of Net Position along with a description of the major categories of this statement.

Texas Department of Housing and Community Affairs
Government Wide
Condensed Statement of Net Position
As of May 31, 2018

	Governmental Activities	Business-Type Activities	Total
Assets			
Current Assets:			
Cash & Cash Equivalents	$ 33,629,290	$ 132,643,115	$ 166,272,405
Legistlative Appropriations	16,931,764		16,931,764
Interest Receivable	48,018	9,261,567	9,309,585
Loan and Contracts	16,626,883	60,062,378	76,689,261
Other Current Assets	94,198	774,681	868,879
Non-current Assets:			
Investments		688,766,022	688,766,022
Loans and Contracts	450,840,908	1,067,595,861	1,518,436,769
Capital Assets	145,319	160,066	305,385
Other Non-Current Assets		42,960	42,960
Total Assets	518,316,380	1,959,306,650	2,477,623,030
DEFERRED OUTFLOWS OF RESOURCES	7,347,994	13,767,542	21,115,536
Liabilites			
Current			
Accounts/Payroll Payables	1,078,456	1,274,131	2,352,587
Interest Payable		10,937,425	10,937,425
Unearned Revenue		7,090,627	7,090,627
Other Current Liabilities		60,364,206	60,364,206
Non-current			
Net Pension Liability	26,302,768	27,843,670	54,146,438
Bonds Payable		1,309,087,102	1,309,087,102
Notes and Loans Payable		97,822,961	97,822,961
Derivative Hedging Instrument		5,797,859	5,797,859
Other Non-current Liabilities	1,453,494	171,747,808	173,201,302
Total Liabilities	28,834,718	1,691,965,789	1,720,800,507
DEFERRED INFLOWS OF RESOURCES	3,348,748	3,201,109	6,549,857
Net Position			
Invested in Capital Assets	145,319	160,066	305,385
Restricted	516,608,325	217,944,762	734,553,087
Unrestricted	(23,272,736)	59,802,466	36,529,730
Total Net Position	$ 493,480,908	$ 277,907,294	$ 771,388,202

Texas Department of Housing and Community Affairs
Major Categories of the Statement of Net Position

Assets **Current Assets:**	**Governmental Activities**	**Business-Type Activities**
Cash & Cash Equivalents	Cash primarily related to Tax Credit Assistance Program ("TCAP"), Neighborhood Stabilization Program ("NSP") and Home Investment Partnership Program ("HOME") loan repayments available for use in current and future Notices of Funding Availability ("NOFAs").	Cash and cash equivalents in the form of overnight repurchase agreements ("Repos") and money market funds primarily associated with Single Family, Multifamily and operating activities.
Legislative Appropriations	Balance of an agency's unexpended legislative appropriations authority on the balance sheet and the total spending authority received on the operating statement associated with Homeless Housing and Services Program ("HHSP"), Texas Housing Trust Fund ("THTF") and Earned Federal Funds.	
Interest Receivable		Interest receivable primarily related to investments and mortgage loans.
Loans and Contracts		Loans and contracts consisting of mortgage loans related to My First Texas Home Program. Loans are funded with advances from Federal Home Loan Bank per an advances and security agreement. Loans are typically settled within 30 days.

Non-current Assets:

Investments		Investments stated at fair value. Primarily in the form of Mortgage Backed Securities ("MBSs") and Guaranteed Investment Contracts ("GICs").
Loans and Contracts	Loans made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP and NSP activities.	Loans and contracts consisting of mortgage loans made from Single Family and Multifamily bond proceeds. In addition, loans and contracts consist of Single Family loans and Multifamily development loans from the Housing Trust Fund and other Housing Initiative Programs. Loans receivable are carried at the unpaid principal balance outstanding, net of the allowance for estimated losses.

Deferred Outflows Of Resources	The effect of changes in actuarial assumptions for pensions are reported as deferred outflows of resources.	The effect of changes in actuarial assumptions for pensions are reported as deferred outflows of resources. In addition, the Department contracted a service provider to measure its derivative effectiveness. Since the derivative instruments were deemed to be effective, the Department will be deferring the changes in fair value for these derivatives and reporting them as deferred outflow of resources.

Liabilities

Current:

Accounts/Payroll Payables	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.
Interest Payable		Accrued interest due on bonds
Unearned Revenue		Fees such as compliance fees that are received in advance of work performed and are recognized over a period of time.
Other Current Liabilities		Primarily consist of funds due to Federal Home Loan Bank related to an advances and security agreement.

Non-current:

Net Pension Liability	The Department's proportionate share of the pension liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
Bonds Payable		Bonds payable reported at par less unamortized discount or plus unamortized premium.
Notes and Loans Payable		Notes to provide funding to nonprofit and for-profit developers of multifamily properties to construct or rehabilitate rental housing. These notes are limited obligations of the Department and are payable solely from the payments received from the assets and guarantors, which secure the notes.
Derivative Hedging Instrument		Interest rate swaps at fair value taking into account non-performance risk. At year end, the fair value of the Department's four swaps is considered to be negative indicating the Department would be obligated to pay the counterparty the fair value as of the termination date. The Department has the option to terminate prior to the maturity date.
Other Non-current Liabilities		Primarily accounts for funds due to Developers as a result of Multifamily bond proceeds. These proceeds are conduit debt issued on behalf of the Developer for the purpose of Multifamily developments and are held by the trustee.

Deferred Inflows Of Resources	The difference between expected and actual experience and the difference between projected and actual investment return related to pension plan.

Net Position

Restricted	Resources that have constraints placed on their use through external parties or by law through contractual provisions associated with HOME, TCAP and NSP.	Amounts restricted through bond covenants.
Unrestricted	Resources not considered restricted per accounting standards but spending authority remains under program related regulations, GAA, Government Code and Board Action. $26.3M Pension Liability for Governmental Activities and $27.8M for Business-Type Activities impact unrestricted Net Position.	

Texas Department of Housing and Community Affairs

Financial Highlights

Some of the primary categories affected were a result of the following financial transactions that transpired from March 1, 2018, through May 31, 2018.

Assets
Current/Non-current:

	Governmental Activities	Business-Type Activities
Cash & Cash Equivalents	• ***Grants Funded - $34.5M –*** *(Decrease Cash)* ▪ Emergency Solutions Grants Program ("ESG") - $2.3M ▪ Community Services Block Grant ("CSBG") - $8.5M ▪ Low Income Home Energy Assistance Program ("LIHEAP") - $21.1M ▪ Department of Energy-Weatherization Assistance Program ("DOE-WAP") - $900K ▪ Section 8 - $1.7M	• ***Fees Received - $2.7M –*** *(Increase Cash & Cash Equivalents)* ▪ Multifamily Fees - $461K ▪ Tax Credit Fees - $560K ▪ Compliance Fees - $1.5M ▪ Asset Management Fees - $157K
Loans and Contracts	• ***Mortgages Funded – $3.1M –*** *(Increase)* ▪ Home Investment Partnership Program ("HOME") - $2.3M ▪ Tax Credit Assistance Program ("TCAP") - $800K • ***Mortgage Loan Repayments - $4.3M –*** *(Decrease)* ▪ HOME - $3M ▪ TCAP - $900K ▪ NSP - $400K	• ***Mortgages Funded - $236.0M*** – *(Increase)* ▪ My First Texas Home-Taxable Mortgage Program ("TMP")- $195.5M ▪ Down Payment Assistance - $7.5M ▪ Multifamily -$33.0M ▪ Texas Housing Trust Fund (Bootstrap) - $405K • ***Mortgage Loan Repayments - $212.4M – (****Decrease)* ▪ Down Payment Assistance - $950K ▪ My First Texas Home-TMP - $187.4M ▪ Multifamily Indentures - $23.0M ▪ Texas Housing Trust Fund - $1.1M

Liabilities Current/Non-current:	Governmental Activities	Business-Type Activities
Bonds Payable/ Notes Payable		• ***Multifamily Bonds Issued - $20.0M*** (2018 Springs Apartments) – (*Increase)* • ***Bonds Redeemed - $33.0M –*** (*Decrease)* ▪ Single Family Indenture - $15.5M ▪ Residential Mortgage Revenue Bonds Indenture - $4.1M ▪ Multifamily Indentures - $13.4M • ***Multifamily Notes Issued - $13.0M –*** (2018 Preserve at Hunters Crossing) -(In*crease)*

2b

BOARD REPORT ITEM

FINANCIAL ADMINISTRATION DIVISION

SEPTEMBER 6, 2018

Report on the Department's 3rd Quarter Investment Report in accordance with the Public Funds Investment Act

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures that are not subject to the Public Funds Investment Act ("PFIA"), and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is $777,763,871, of which $744,278,413 is not subject to the PFIA. This report addresses the remaining $33,485,458 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts, which are all held at the Texas Treasury Safekeeping Trust Company ("TTSTC"), primarily in the form of overnight repurchase agreements. These investments are fully collateralized and secured by the U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date (which in this case was May 31, 2018), with an effective interest rate of 1.62%. These investments safeguard principal while maintaining liquidity.

Below is a description of each fund group and its corresponding accounts.

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.

- The **Housing Trust Fund** accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.

- The **Compliance** accounts maintain funds from compliance monitoring fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements ("LURAs") that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The **Housing Initiative** accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the format required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 3rd Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by $477,451 (See Page 1) for a total of $33,485,458. The decrease is described below by fund groups.

General Fund: The General Fund decreased by $205,566. This consists primarily of $451,412 received in multifamily bond administration fees, $22,443 in loan repayments and $318,500 in MCC Fees, offset by disbursements including $995,000 to fund the operating budget, and $17,360 in bond related expenses.

Housing Trust Fund: The Housing Trust Fund increased by $382,964. This consists primarily of $1,055,918 received in loan repayments, offset by disbursements including $673,812 for loans, grants and escrow payments.

Compliance: Compliance funds decreased by $166,708. This consists primarily of $1,835,795 received in compliance fees, offset by disbursements of $1,986,454 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds decreased by $488,141. This consists primarily of $781,621 received in fees related to tax credit activities, offset by disbursements of $1,311,335 transferred to fund the operating budget.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION

PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING May 31, 2018

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Quarter Ending May 31, 2018

	Investment Type	FAIR VALUE (MARKET) @ 02/28/18	CARRYING VALUE @ 02/28/18	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 05/31/18	FAIR VALUE (MARKET) @ 05/31/18	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 05/31/18	RECOGNIZED GAIN
NON-INDENTURE RELATED:												
General Fund	Mortgage-Backed Securities	31,780.91	31,650.20			(19,605.83)		12,044.37	12,067.72	(107.36)	75.27	
General Fund	Repurchase Agreements	5,455,292.71	5,455,292.71	386,099.62	(572,059.70)			5,269,332.63	5,269,332.63		245.91	
Housing Trust Fund	Repurchase Agreements	8,669,784.17	8,669,784.17	1,747,156.29	(1,364,192.34)			9,052,748.12	9,052,748.12		422.73	
Compliance	Repurchase Agreements	8,613,131.36	8,613,131.36	93,240.46	(259,948.64)			8,446,423.18	8,446,423.18		394.17	
Housing Initiatives	Repurchase Agreements	11,193,050.72	11,193,050.72	63,664.82	(551,805.85)			10,704,909.69	10,704,909.69		499.77	
NON-INDENTURE RELATED TOTAL		**33,963,039.87**	**33,962,909.16**	**2,290,161.19**	**(2,748,006.53)**	**(19,605.83)**	**0.00**	**33,485,457.99**	**33,485,481.34**	**(107.36)**	**1,637.85**	**0.00**

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:
David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 17, 2017

Date 8/29/18
David Cervantes
Director of Administration

Date 8/23/18
Monica Galuski
Director of Bond Finance/Chief Investment Officer

Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending May 31, 2018

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 02/28/18	Beginning Market Value 02/28/18	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value 05/31/18	Ending Market Value 05/31/18	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	376,372.53	376,372.53	9,863.51				386,236.04	386,236.04		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	34,054.35	34,054.35	101.16				34,155.51	34,155.51		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	1,269,562.87	1,269,562.87	320,812.93				1,590,375.80	1,590,375.80		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	1,311,152.09	1,311,152.09		(570,386.78)			740,765.31	740,765.31		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	759,517.29	759,517.29	25,602.24				785,119.53	785,119.53		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	622,052.83	622,052.83	5,840.39				627,893.22	627,893.22		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	243,915.20	243,915.20	909.17				244,824.37	244,824.37		
GNMA	General Fund	7.50	08/31/89	07/20/18	5,080.10	5,092.95			(4,057.07)		1,023.03	1,021.12	(14.76)	
GNMA	General Fund	7.50	10/31/89	09/20/18	1,546.79	1,549.76			(1,220.79)		326.00	325.89	(3.08)	
GNMA	General Fund	7.50	01/01/90	11/20/18	3,788.41	3,803.30			(2,407.56)		1,380.85	1,382.19	(13.55)	
GNMA	General Fund	7.50	01/01/90	12/20/18	4,850.54	4,871.88			(2,283.96)		2,566.58	2,571.17	(16.75)	
GNMA	General Fund				1,064.83	1,066.66			(1,064.83)				(1.83)	
GNMA	General Fund	7.50	03/30/90	01/20/19	7,219.54	7,254.41			(5,406.58)		1,812.96	1,816.21	(31.62)	
GNMA	General Fund	7.50	05/29/90	04/20/19	8,099.99	8,141.95			(3,165.04)		4,934.95	4,951.14	(25.77)	
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	738,298.22	738,298.22	22,970.22				761,268.44	761,268.44		
Repo Agmt	General Fund	1.68	05/31/18	06/01/18	100,367.33	100,367.33		(1,672.92)			98,694.41	98,694.41		
	General Fund Total				5,486,942.91	5,487,073.62	386,099.62	(572,059.70)	(19,605.83)	0.00	5,281,377.00	5,281,400.35	(107.36)	0.00
Repo Agmt	Housing Trust Fund	1.68	05/31/18	06/01/18	106,299.46	106,299.46	50,545.26				156,844.72	156,844.72		
Repo Agmt	Housing Trust Fund	1.68	05/31/18	06/01/18	2,102.81	2,102.81	438.58				2,541.39	2,541.39		
Repo Agmt	Housing Trust Fund	1.68	05/31/18	06/01/18	84,151.17	84,151.17	58,286.51				142,437.68	142,437.68		
Repo Agmt	General Revenue Appn	1.68	05/31/18	06/01/18	31,726.78	31,726.78	11,480.53				43,207.31	43,207.31		
Repo Agmt	General Revenue Appn	1.68	05/31/18	06/01/18	752,215.19	752,215.19		(105,912.65)			646,302.54	646,302.54		
Repo Agmt	General Revenue Appn	1.68	05/31/18	06/01/18	795,591.33	795,591.33		(311,198.09)			484,393.24	484,393.24		
Repo Agmt	General Revenue Appn	1.68	05/31/18	06/01/18	129,769.27	129,769.27	47,742.39				177,511.66	177,511.66		
Repo Agmt	General Revenue Appn	1.68	05/31/18	06/01/18	245,787.30	245,787.30	0.00				245,787.30	245,787.30		
Repo Agmt	Housing Trust Fund-GR				382,881.60	382,881.60		(382,881.60)						
Repo Agmt	Housing Trust Fund-GR	1.68	05/31/18	06/01/18	3,066,006.00	3,066,006.00	827,163.02				3,893,169.02	3,893,169.02		
Repo Agmt	Boostrap -GR	1.68	05/31/18	06/01/18	1,523,476.91	1,523,476.91		(286,200.00)			1,237,276.91	1,237,276.91		
Repo Agmt	Boostrap -GR	1.68	05/31/18	06/01/18	1,271,776.35	1,271,776.35	751,500.00				2,023,276.35	2,023,276.35		
Repo Agmt	Contract for Deed Conversion				278,000.00	278,000.00		(278,000.00)						
	Housing Trust Fund Total				8,669,784.17	8,669,784.17	1,747,156.29	(1,364,192.34)	0.00	0.00	9,052,748.12	9,052,748.12	0.00	0.00
Repo Agmt	Multi Family	1.68	05/31/18	06/01/18	865,864.99	865,864.99	2,448.58				868,313.57	868,313.57		
Repo Agmt	Multi Family	1.68	05/31/18	06/01/18	797,983.57	797,983.57	90,791.88				888,775.45	888,775.45		
Repo Agmt	Low Income Tax Credit Prog.	1.68	05/31/18	06/01/18	6,949,282.80	6,949,282.80		(259,948.64)			6,689,334.16	6,689,334.16		
	Compliance Total				8,613,131.36	8,613,131.36	93,240.46	(259,948.64)	0.00	0.00	8,446,423.18	8,446,423.18	0.00	0.00
Repo Agmt	Asset Management	1.68	05/31/18	06/01/18	1,132,330.12	1,132,330.12	40,102.96				1,172,433.08	1,172,433.08		
Repo Agmt	Low Income Tax Credit Prog.	1.68	05/31/18	06/01/18	1,393,424.35	1,393,424.35	23,561.86				1,416,986.21	1,416,986.21		
Repo Agmt	Low Income Tax Credit Prog.	1.68	05/31/18	06/01/18	8,261,166.51	8,261,166.51		(541,600.26)			7,719,566.25	7,719,566.25		
Repo Agmt	Low Income Tax Credit Prog.	1.68	05/31/18	06/01/18	406,129.74	406,129.74		(10,205.59)			395,924.15	395,924.15		
	Housing Initiatives Total				11,193,050.72	11,193,050.72	63,664.82	(551,805.85)	0.00	0.00	10,704,909.69	10,704,909.69	0.00	0.00
	Total Investment Summary				33,962,909.16	33,963,039.87	2,290,161.19	(2,748,006.53)	(19,605.83)	0.00	33,485,457.99	33,485,481.34	(107.36)	0.00

2c

BOARD REPORT ITEM

BOND FINANCE DIVISION

SEPTEMBER 6, 2018

REPORT ITEM

Report on the Department's 3rd Quarter Investment Report relating to funds held under Bond Trust Indentures

BACKGROUND

- The Department's Investment Policy excludes funds invested under a bond trust indenture for the benefit of bond holders because the trustee for each trust indenture controls the authorized investments in accordance with the requirements of that indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and, while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It details the types of investments, maturity dates, carrying (face amount) values, and fair market values at the beginning and end of the quarter.

- Overall, the portfolio carrying value increased by approximately $14.9 million (see page 3), resulting in an end of quarter balance of $744,278,413. The increase reflects one new multifamily bond issuance.

  The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	Beginning Quarter	Ending Quarter
Mortgage Backed Securities ("MBS")	86%	81%
Guaranteed Investment Contracts/Investment Agreements	4%	4%
Repurchase Agreements	5%	5%
Money Markets and Mutual Funds	3%	5%
Treasury Bills	2%	5%

The decrease in MBS is due to the repayment of principal on the underlying mortgage loans. The increase in Money Markets and Mutual Funds and Treasury Bills is due to the issuance of multifamily bonds.

Portfolio activity for the quarter:

- The maturities in MBS this quarter were $16.2 million which represent loan repayments or payoffs. The table below shows the trend in MBS activity.

	3rd Qtr FY 17	4th Qtr FY 17	1st Qtr FY 18	2nd Qtr FY 18	3rd Qtr FY 18	Total
Purchases		$ 104,005,338	$ 34,700,000	$ 50,000,000	$ -	$ 188,705,338
Sales						$ -
Maturities	$ 21,716,863	$ 21,925,178	$ 20,232,566	$ 21,792,104	$ 16,255,646	$ 101,922,357
Transfers						$ -

- The process of valuing investments at fair market value identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department typically holds MBS investments until maturity.

- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increase $12.7 million (see pages 3 and 4), with fair market value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of May 31, 2018, was 4.56%, up from 4.40% at the end of February 2018. There are various factors that affect the fair market value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.

- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of a general movement toward higher yields in the bond market as a whole.

- The ability of the Department's investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is of more importance than the assessed relative value in the bond market as a whole.

- The more relevant measures of indenture parity are reported on page 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 100.16% to 379.29% which would indicate the Department has sufficient assets to meet its obligations.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOND FINANCE DIVISION
BOND TRUST INDENTURES
Supplemental Management Report
Quarter Ending May 31, 2018

	FAIR VALUE (MARKET) @ 02/28/18	CARRYING VALUE @ 02/28/18	ACCRETION / PURCHASES	AMORT/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 05/31/18	FAIR VALUE (MARKET) @ 05/31/18	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 05/31/18	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	412,212,995	396,311,007	4,756,735	(11,698,594)	(10,618,844)		378,750,304	393,363,187	(1,289,106)	1,702,261	
RMRB	165,066,532	158,431,621	3,844,952	(10)	(5,235,394)		157,041,169	163,176,646	(499,433)	516,460	
CHMRB	2,356,062	2,247,869	120,655		(100,886)		2,267,638	2,361,190	(14,641)	11,934	
Taxable Mortgage Program	5,234,992	5,185,904	122,959		(37,560)		5,271,302	5,316,090	(4,301)	239,743	
Multi Family	162,164,451	167,144,988	42,367,029	(8,301,046)	(262,971)		200,948,000	195,582,643	(384,820)		
TOTAL	747,035,032	729,321,388	51,212,330	(19,999,649)	(16,255,656)	-	744,278,413	759,799,755	(2,192,301)	2,470,397	-

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:
David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 17, 2017

Date 8/29/18
David Cervantes
Director of Administration

Date 8/22/18
Monica Galuski
Director of Bond Finance/Chief Investment Officer

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
BOND FINANCE DIVISION
BOND TRUST INDENTURES
Supplemental Management Report
Quarter Ending May 31, 2018

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 02/28/18	CARRYING VALUE @ 02/28/18	ACCRETION / PURCHASES	AMORT / SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 05/31/18	FAIR VALUE (MARKET) @ 05/31/18	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	639,567,494	621,853,851			(16,255,656)		605,598,195	621,236,734	(2,075,104)	
Guaranteed Inv Contracts	25,956,010	25,956,010	2,710,665	(5,458)			28,661,217	28,661,217	-	
Investment Agreements	566,520	566,520	903,736				1,470,255	1,470,255	-	
Treasury-Backed Mutual Funds	23,429,572	23,429,572	18,216,072	(4,060,234)			37,585,410	37,585,410	-	
Repurchase Agreements	39,922,634	39,922,634	5,230,900	(11,693,146)			33,460,389	33,460,389	-	
Treasury Note	17,592,802	17,592,802	24,150,956	(4,240,812)			37,502,946	37,385,750	(117,197)	
GRAND TOTAL	747,035,032	729,321,388	51,212,330	(19,999,649)	(16,255,656)	0	744,278,413	759,799,755	(2,192,301)	0

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

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Date 8/22/18
David Cervantes
Direct of Administration

Date 8/22/18
Monica Galuski
Director of Bond Finance/Chief Investment Officer

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of May 31, 2018

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:					
PARITY ASSETS					
Cash	$ 170,010			$ 6,313,209	$ 6,483,219
Investments[1]	$ 40,371,007	$ 18,679,639	$ 306,163	$ 199,620,077	$ 258,976,887
Mortgage Backed Securities[1]	$ 338,098,339	$ 138,471,634	$ 1,964,111	$ -	$ 478,534,085
Loans Receivable[2]	$ 58,353			$ 900,469,312	$ 900,527,665
Accrued Interest Receivable	$ 1,700,713	$ 516,460	$ 11,934	$ 6,757,706	$ 8,986,813
TOTAL PARITY ASSETS	$ 380,398,422	$ 157,667,733	$ 2,282,209	$ 1,113,160,304	$ 1,653,508,668
PARITY LIABILITIES					
Loans Payable		$ 10,000,000		$ 87,822,961	$ 97,822,961
Bonds and Notes Payable[1]	$ 334,558,010	$ 127,220,000	$ 600,000	$ 845,453,485	$ 1,307,831,495
Accrued Interest Payable	$ 2,052,306	$ 2,071,973	$ 1,701	$ 6,811,445	$ 10,937,425
Other Non-Current Liabilities[3]				$ 171,342,788	$ 171,342,788
TOTAL PARITY LIABILITIES	$ 336,610,316	$ 139,291,973	$ 601,701	$ 1,111,430,679	$ 1,587,934,669
PARITY DIFFERENCE	$ 43,788,106	$ 18,375,760	$ 1,680,508	$ 1,729,625	$ 65,573,999
PARITY	**113.01%**	**113.19%**	**379.29%**	**100.16%**	**104.13%**

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for rating agencies.
(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.
(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).
Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

2d

TDHCA Outreach Activities, July – September 2018

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Public Consultation Meeting	Analysis of Impediments to Fair Housing Choice	July 27	Corpus Christi, TX	Fair Housing
Training	Income Determination Training	August 2	Austin, TX	Compliance
Public Hearing	Public hearing for Forestwood Apartments	August 14	Balch Springs, TX	Multifamily Finance
REALTOR® Training	United Texas – Housing Initiatives that Work	August 15	Austin, TX	Texas First Time Homebuyer

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Asset Management

- Added a material amendment to be presented to the TDHCA Board related to HTC Land Use Restriction (Rosemont of Hillsboro Phase I and II), Housing Trust Fund LURA (Stone Ranch Apartment Homes), Change in Ownership Structure (The Savannah at Gateway, Reserve at Engel Road, Reserve at Quebec, Reserve at Hagan, Sandstone Foothills Apartments), Housing Tax Credit Application (Cardinal Point), Waiver of 10 TAC Section 10.101 (b)(4)(I) (Alton Plaza)

Board (Executive)

- Added Administrative Penalty Orders (nine additions made to list)

Communications:

- Added 2017 Texas Affordable Housing By the Numbers infographic to Images pages
- Added Bootstrap Program success story from Bryan/College Station area
- Added press announcement and homepage article for 2018 9% Competitive Housing Tax Credit awards
- Added Legislative Appropriations Request FY 2020-2021 to Featured Items
- Added Homeownership mortgage rate announcement to homepage

Community Affairs:

- Added Master List of Community Affairs Subrecipient to main CA page
- Updated links for Result Oriented Management and Accountability (ROMA) model and page
- Replaced Instructions for National Performance Indicators Target Revision Request Form for CSBG
- Updated list of Annual Historic Preservation reporting
- Added 2018 State Plan and 2018 Health and Safety Plan
- Added CEAP Service Delivery Plan 2019 Instructions, Guidance and Community Assessment Tool Instructions

Compliance

- Updated Program Administrative Forms (WAP Inventory List: Tools and Equipment) with fillable document
- Updated Final Construction Inspection Request forms

Fair Housing

- Replaced old links with updated ones for National Affordable Housing Management Association, National Apartment Association Education Institute, and National Center for Housing Management

First Time Home Buyer Program

- Added new FAQ to Buyer Information

HOME and Homeless:

- Updated Rental Assistance Agreement in Spanish (new version linked)
- Added Homeless Housing and Services Program and Emergency Services Grant Public Referral Information Forms (fillable documents)
- Added updated user and overview information for the TDHCA Housing Contract System
- Removed outdated TBRA manuals from compliance pages

Housing Resource Center:

- Updated Housing and Health Services Coordination Council agency representatives list
- Added updated list of members for Texas Interagency Council for the Homeless (July 2018)
- Updated Housing Finance Corporation Annual Report; replaced Request Letter and Annual Report Forms with current versions
- Provided introduction on and link to Housing and Health Services Coordination Council 2018-2019 Biennial Plan and Report
- Added Staff Draft of PPR and EARAC Rule (10 TAC, Chapter 1, Subchapter C)
- Added 2018 State of Texas Consolidated Plan Annual Performance Report (Program Year 2017)

Human Resources:

- Added updated organizational chart

Migrant Housing

- Added information related to staff seeking input on Staff Draft of the Migrant Labor Housing Facilities rule

Multifamily:

- Replaced updated 2018-1 Multifamily Direct Loan Application Log (July 26)
- Added 2018 9% Competitive Housing Tax Credit Local Government Support list and Community Support from State Representative list
- Updated HTC Property Inventory list
- Updated 2018 4% HTC Bond Status Log
- Added 2019 QAP Staff Draft to Announcements and MF Program Rules pages
- Added revised 2018 MF Uniform Application (revision allows for increased maximum DL requests)
- Moved 2017 9% HTC Carryover Allocation Information to the Archive page
- Replaced 2018 Carryover Allocation Manual and Submission Package with updated material
- Moved 2017 9% Competitive HTC section to archived page

NOFA

- Amended Multifamily Direct Loan 2018-1 and revised funding amount and deadline date

Program Services

- Added Interactive Environmental Workshop training event information

Purchasing:

- Updated list of No-Bid contracts as required by state
- Added Invitation to Bid opportunity (Courier/Delivery Services)

811 PRA Program

- Replaced S811 Participation Agreement (2018 Cycle)
- Added updated income level chart for Service Providers' forms and materials

Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
HHSCC	Housing and Health Services Coordination Council	RFA	Request for Applications
HHSP	Homeless Housing and Services Program	RFO	Request for Offer
HRA	Homeowner Rehabilitation Assistance Program	RFP	Request for Proposals
HRC	Housing Resource Center	RFQ	Request for Qualifications
HTC	Housing Tax Credit	ROFR	Right of First Refusal
HTF	Housing Trust Fund	SLIHP	State of Texas Low Income Housing Plan
HUD	U.S. Department of Housing and Urban Development	TA	Technical Assistance
IFB	Invitation for Bid	TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

ACTION ITEMS

3a

What Is TDHCA Responsibility with Regard to Migrant Labor Housing?

In 2005 the Texas Legislature gave TDHCA the responsibility of inspecting facilities and licensing operators of migrant labor housing facilities.

The then existing requirement was housed at another agency and was said to be expensive, complicated and not well known.

2

How Is a Migrant Labor Housing Facility Defined?

A migrant labor housing facility is "a facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility." §2306.921 (3)

3

Who Is a Migrant Agricultural Worker?

" … an individual who:

is working or available for work seasonally or temporarily in primarily an agricultural or agricultural related industry; and

moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment." §2306.921 (2)

4

What is the Current Process?

Prior to operation an provider of housing to migrant laborers must first:

- Submit a $250 fee and application to TDHCA;
- Allow the facility to be inspected by TDHCA;
- Receive and post a license from TDHCA; and
- Repeat process annually.

5

History, Experience and the Future

- Started with approx. 20 facilities licensed 12 years ago, currently over 40 licensed
- Licensing is dependent on housing provider making application
- Department has limited tools to address unlicensed facilities
- Licensing requirement is not well known by the public or providers
- This summer we have reached out to over 180 H2A Visa employers, consultants and growers

6

Rules Being Revisited Right Now

- Last Legislative session several legislators interested in strengthening legislation (Statute)
- TDHCA has been seeking input from those impacted on revisions to the rules
- Current State standard is a modified combination of the 2 Federal standards used for the H2A program (ETA pre 1980, OSHA post 1980)
- Received input on streamlining the standards and accepting the Texas Workforce Commission ("TWC") inspection for H2A as proxy for licensing inspection and keep costs low

7

Key Changes in Proposed Rule

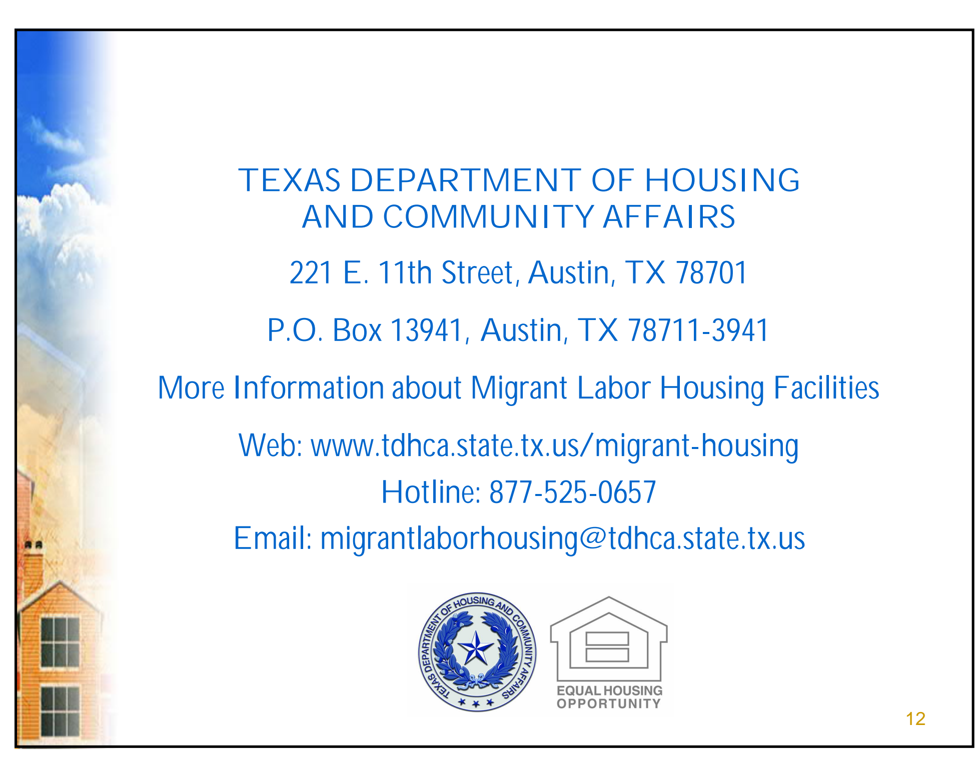
- Reduces the inspection standard to applicable ETA or OSHA standard plus 9 Texas Standards
- Texas standards are mostly crossover ETA or OSHA standards that under the Texas Standard are required to apply to all
- Allows TDHCA to accept other state or federal inspection with documentation/certification of Texas Standards
- Reduces fee to $25 in the first 2 years where other state or federal inspection is accepted (and not previously licensed by TDHCA)

8

Branding Campaign
We have also developed and are ready to implement a branding campaign to enhance awareness of the licensing program
We have a standard logo
and a date stamped version
2018
9

Branding Campaign
TDHCA
Migrant Labor
Housing Facilities
10

Branding Campaign
TDHCA
Unidad de Vivienda para
Trabajadores Migrantes
11


TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS
221 E. 11th Street, Austin, TX 78701
P.O. Box 13941, Austin, TX 78711-3941
More Information about Migrant Labor Housing Facilities
Web: www.tdhca.state.tx.us/migrant-housing
Hotline: 877-525-0657
Email: migrantlaborhousing@tdhca.state.tx.us
EQUAL HOUSING
OPPORTUNITY
12

3b

BOARD REPORT ITEM

FAIR HOUSING, DATA MANAGEMENT, & REPORTING

SEPTEMBER 6, 2018

Report on Department's Fair Housing Activities

Update on the 2019 Analysis of Impediments to Fair Housing Choice

The Analysis of Impediments ("AI") to Fair Housing Choice is a process that recipients of grant funds from the U.S. Department of Housing and Urban Development ("HUD"), such as states and local governments, undertake as part of their obligation to affirmatively further fair housing ("AFFH") under the Fair Housing Act.

At the state level, the Texas General Land Office ("GLO"), Texas Department of State Health Services ("DSHS"), Texas Department of Agriculture ("TDA"), and Texas Department of Housing and Community Affairs ("TDHCA") are responsible for carrying out the work of the AI because these agencies receive and disburse HUD funds for the Community Development Block Grant ("CDBG"), CDBG Disaster Recovery ("CDBG-DR"), Housing Opportunities for Persons With AIDS ("HOPWA"), HOME Program, National Housing Trust Fund ("NHTF"), and Emergency Solutions Grants ("ESG") programs.

Prior to drafting the five-year Consolidated Plan for 2020-2024, all state agencies that receive Community Planning and Developments funds are required by HUD to undertake fair housing planning. The AI is part of the fair housing planning process, and will help the state analyze challenges to fair housing choice. A significant degree of public consultation and engagement was conducted across the state from May to August 2018, seeking input on fair housing issues, prior to drafting the AI. The State conducted over 40 separate consultations, seeking input and feedback regarding fair housing issues particularly issues affecting protected classes under the Fair Housing Act: race, color, religion, national origin, sex, disability, and familial status; and the ability of those persons to exercise housing choice.

Thirty of the AI consultation meetings were conducted around the state and were advertised to the public and to stakeholders alike, and 4 of the 30 public consultation meetings were public hearings that were published in the *Texas Register*, all meetings were posted on TDHCA's external website. E-mail blasts were used to contact local officials, advocacy groups, stakeholder groups, and the public at large, inviting them to provide input on fair housing issues in their community. An Analysis of Impediments webpage was created at: https://www.tdhca.state.tx.us/fair-housing/analysis-impediments.htm listing the AI process and public meetings. The information was translated into Spanish and Vietnamese to reach persons with limited English proficiency, per the State's language access plan. Accommodations were available to individuals requiring auxiliary aids, services, or sign language interpreters to participate in meetings, if requested three days before the meeting so that appropriate arrangements could be made. In addition, notices were made available in Spanish and Vietnamese that interpreters would be made available for meetings if requests were made five days before a specific meeting so that appropriate arrangements could be made.

TDHCA sent e-mail blasts to the Department's various distribution groups including: community affairs, consumer news and info, multifamily program participants, and all single family subrecipients. Media advisories were sent in English, Spanish, and Vietnamese to press contacts in the 12 different markets where

TDHCA held public meetings. Those markets included Amarillo, Abilene, Austin, Brownsville, Corpus Christi, Denton, El Paso, Houston, Midland, Nacogdoches, Seguin, and Texarkana.

Four additional opportunities for consultation were given at already-scheduled meetings with specific stakeholder groups in order to accommodate and reach as many groups as possible. These consultations included meeting with the Texas Interagency Council for the Homeless ("TICH"), Housing and Health Services Coordination Council ("HHSCC"), Disability Advisory Workgroup ("DAW"), and meeting with the Texas Affiliation of Affordable Housing Developers ("TAAHP") during the annual conference. Finally, six targeted online consultations were conducted using webinar software to reach specific stakeholder groups statewide. The online consultations covered the following topics: Fair Housing Initiatives Program ("FHIP") & Fair Housing Assistance Program ("FHAP") recipients, Housing Opportunities for Persons with AIDS Program, disaster related issues, narrowing the digital divide, and health services & fair housing. Input for the AI was accepted during the online consultations and allowed persons to contribute input from their own home, office, or remotely by phone. Out of all scheduled outreach, only one meeting was not attended by any interested parties, and overall there were 495 individuals that attended consultations and meetings. An additional 15 parties submitted written input. See Figure 1 for a map of the outreach activities and Figure 2 for the count of attendees at consultation meetings.

In addition to the meetings and hearings, members of the public and stakeholder groups were encouraged to submit written feedback and input to the Fair Housing and Data Management and Reporting division at TDHCA. Written input was accepted throughout the public outreach process via email or postal mail. Input received by 5:00 pm Austin local time on August 10, 2018, was considered as consultation for the draft Analysis of Impediments to Fair Housing Choice. Written input allowed persons unable to attend a meeting to provide feedback. This early input and participation period allowed the State to gather information, data, and feedback to identify impediments and assess progress made toward removing previously identified impediments to fair housing choice.

Staff is in the process of compiling the results of input along with objective data analysis and research effort. A draft AI will be presented to the Department's Governing Board for consideration in late 2018. The draft will then be published and released for a formal statewide public comment period to follow. Public comment will then be considered and a final AI will be presented to the Department's Governing Board for consideration and approval. That final State AI is due on May 7, 2019.

Figure 1: Map of Outreach, Consultation Meetings for the AI

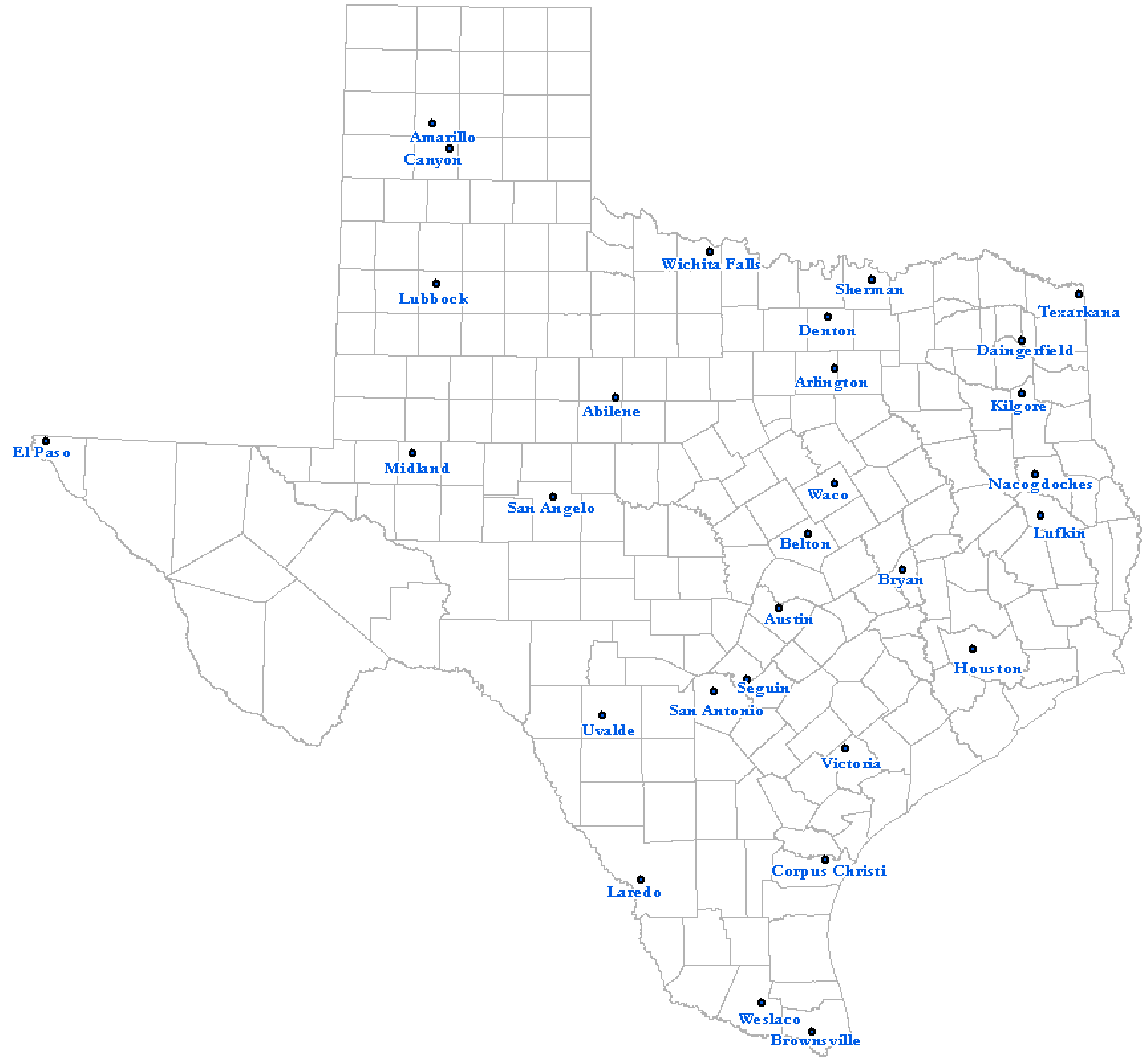


Figure 2 Outreach, Consultation Meetings for the AI

Date	Outreach Type	Location / Subject	Attendees
5/21/2018	Public Meeting	Waco	16
5/24/2018	Public Meeting	San Angelo	14
5/31/2018	Public Meeting	Lufkin	32
6/1/2018	Public Meeting	Kilgore	21
6/8/2018	Public Meeting	Laredo	2

6/11/2018	Public Meeting	Belton	16
6/12/2018	Public Meeting	Amarillo	5
6/12/2018	Public Meeting	Daingerfield	20
6/13/2018	Public Meeting	Midland	6
6/13/2018	Public Meeting	Seguin	1
6/14/2018	Public Meeting	El Paso	2
6/14/2018	Public Meeting	Abilene	2
6/18/2018	Public Meeting	Canyon	20
6/18/2018	Public Meeting	Lubbock	13
6/19/2018	Public Meeting	Abilene	13
6/20/2018	Public Meeting	Texarkana	7
6/20/2018	Public Meeting	Wichita Falls	17
6/21/2018	Public Meeting	Sherman	12
6/21/2018	Public Meeting	Weslaco	15
6/26/2018	Public Meeting	Bryan	12
6/27/2018	Public Meeting	Denton	4
6/28/2018	Public Meeting	Uvalde	20
7/9/2018	Public Meeting	Arlington	33
7/10/2018	Public Meeting	Victoria	29
7/20/2018	Public Meeting	Brownsville	5
7/20/2018	Public Meeting	San Antonio	18
6/14/2018	Public Hearing	Houston	5
6/22/2018	Public Hearing	Austin	2
7/12/2018	Public Hearing	Nacogdoches	0
7/27/2018	Public Hearing	Corpus Christi	7
7/10/2018	Stakeholder Meeting	Texas Interagency Council for the Homeless	15
7/11/2018	Stakeholder Meeting	Housing and Health Services Coordination Council	12
7/24/2018	Stakeholder Meeting	Texas Affiliation of Affordable Housing Providers	16
7/24/2018	Stakeholder Meeting	Disability Advisory Workgroup	11
6/14/2018	Stakeholder Web Meeting	FHIP/FHAP Meeting 1	9
6/14/2018	Stakeholder Web Meeting	Housing Opportunities for Persons Living with AIDS/HIV	48
6/15/2018	Stakeholder Web Meeting	Disaster Related Issues	4
6/21/2018	Stakeholder Web Meeting	Digital Divide and Infrastructure	4
6/25/2018	Stakeholder Web Meeting	Health Services and Providers	4
7/12/2018	Stakeholder Web	FHIP/FHAP Meeting 2	3

	Meeting		
8/10/2018	Submitted Written Input	Written Consultations and Input	15
Total Individuals Attending Consultations			510

Interim Report, Fair Housing Action Steps.

The Fair Housing, Data Management & Reporting ("FHDMR") Team actively works on a variety of fair housing related projects. Attached is an interim report of efforts ("Action Steps") that the Department is currently planning, implementing, or has already incorporated into the rules and processes of the housing and/or community affairs programs that the Department administers. The interim report includes action steps since the last report made to the Board in March 2018.

The report breaks out action steps into two different categories. Ongoing action steps are continuing fair housing steps. Completed or in progress action steps are items that have finished or will finish, and include items such as rule changes and specific outreach efforts.

Understanding this report

The report lists the Department's Fair Housing Action Steps. Action Steps may be associated with one or more of six impediments identified in the 2013 Analysis of Impediments to Fair Housing Choice for the State of Texas. This report includes all Fair Housing Action Steps for both HUD and non-HUD funded activities.

The report is generated from a database maintained by the Fair Housing, Data Management, and Reporting Division. Some elements of the database and report may change in the future as staff works to improve reporting and document the Department's efforts to affirmatively further fair housing.

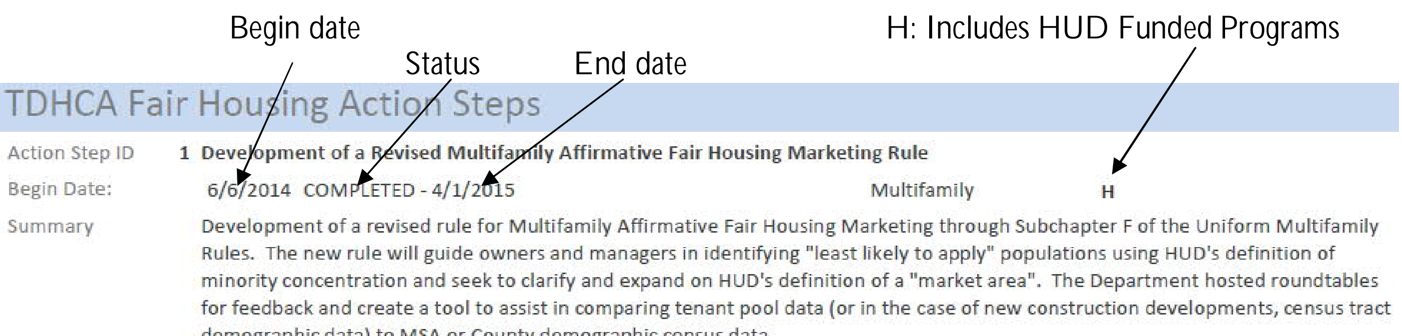
TDHCA Fair Housing Action Steps

Action Step ID 1 **Development of a Revised Multifamily Affirmative Fair Housing Marketing Rule**

Begin Date: 6/6/2014 COMPLETED - 4/1/2015 Multifamily **H**

Summary Development of a revised rule for Multifamily Affirmative Fair Housing Marketing through Subchapter F of the Uniform Multifamily Rules. The new rule will guide owners and managers in identifying "least likely to apply" populations using HUD's definition of minority concentration and seek to clarify and expand on HUD's definition of a "market area". The Department hosted roundtables for feedback and create a tool to assist in comparing tenant pool data (or in the case of new construction developments, census tract demographic data) to MSA or County demographic census data.

The report lists a begin date and status for each entered Action Step. The status will reflect "Completed" for items that are finished. The status of "In Progress" is used for items that are underway and have not yet been completed. The "On Going" status is used for items that are continuing, without a planned end date.



TDHCA Fair Housing Action Steps

Action Step ID 1 **Development of a Revised Multifamily Affirmative Fair Housing Marketing Rule**

Begin Date: 6/6/2014 COMPLETED - 4/1/2015 Multifamily **H**

Summary Development of a revised rule for Multifamily Affirmative Fair Housing Marketing through Subchapter F of the Uniform Multifamily Rules. The new rule will guide owners and managers in identifying "least likely to apply" populations using HUD's definition of minority concentration and seek to clarify and expand on HUD's definition of a "market area". The Department hosted roundtables for feedback and create a tool to assist in comparing tenant pool data (or in the case of new construction developments, census tract demographic data) to MSA or County demographic census data.

Included in the report is a summary of each Action Step and the overhead category describing the activity. Categories include Agency Wide, Single Family, and Multifamily. Community Affairs items, which include the Emergency Solutions Grant Program, are included in the Single Family category. Action Steps are tied to specific TDHCA program areas. The "H" indicates the program area includes HUD funded programs. This report tracks all Fair Housing activity, including activities on non-HUD funded programs.

TDHCA Fair Housing Action Steps

Ongoing Action Steps

Action Step ID **15 State Agency Fair Housing Workgroup**

Begin Date: 5/6/2014 ONGOING Agency Wide **H**

Summary A meeting schedule was established for Texas Department of Agriculture, Texas Department of Housing and Community Affairs ("TDHCA"), Texas Workforce Commission, General Land Office, and Department of State Health Services to assist state agencies in aligning fair housing efforts including efforts associated with the Analysis of Impediments, consider ways to improve fair housing education and outreach across the state, and develop consistency in complaint direction, training, and resource provision. The workgroup is working jointly on the implementation of the new affirmatively furthering fair housing rule ("AFFH") rule and state fair housing planning document. The workgroup has been meeting since May 2014, and continues to meet quarterly or as needed.

Action Step ID **16 Memorandum of Understanding with the Texas Workforce Commission**

Begin Date: 5/13/2014 ONGOING Agency Wide **H**

Summary The current memorandum of understanding (“MOU”) between TDHCA and Texas Workforce Commission (“TWC”) was reviewed and revised to add the opportunity for improved training collaboration and complaint direction. MOU requirements for mandated reporting in the event of uncorrected fair housing violations were strengthened and the expectation for information on reported violations and settlements was clarified. TDHCA and TWC continue to work together closely, sharing information and referrals as outlined in the MOU.

Action Step ID **58 Qualified Allocation Plan ("QAP") Criteria to Serve and Support Texans Most in Need**

Begin Date: 11/15/2001 ONGOING Multifamily

Summary Criteria included in the QAP to ensure that Texans most in need are supported and served by the Housing Tax Credit ("HTC") program include point elections to incentivize development of additional units to serve 30% area median income ("AMI") (extremely low income) tenants and development of supportive housing developments proposed by a qualified nonprofit. The criteria awards additional points in the event that 20% of units will be made available to tenants at 30% AMI for supportive housing or at least 10% of all units in urban or 7.5% of all units in rural will be made available to tenants at 30% AMI (captured under 11.9(C)(2) in the 2017 QAP and in Texas Gov't Code §2306.6710(b)(1)(E)). This is on-going in the 2018 QAP.

H Includes HUD Funded Programs

Action Step ID **77** **Homebuyer Program Website Provision of Credit Rating information**

Begin Date: 6/1/2005 ONGOING Single Family

Summary TDHCA's Homebuyer programs maintain a separate website interface that includes consumer information such as information on where to request a free credit report and referrals to agencies in a searchable area through the Help for Texans page that provide consumer credit counseling. This action step helps address impediments related to improving consumer knowledge of mortgage loan options.

Action Step ID **96** **Housing Trust Fund ("HTF") Bootstrap Rule Provision Allows for Alternative Means of Providing Self Help Labor**

Begin Date: 9/1/2001 ONGOING Single Family

Summary In 2001, the Texas Gov't Code Section 2306.753(4)(D) and TDHCA's HTF Bootstrap Rule provisions in Section 24.10 were amended to provide persons with disabilities an alternative means of providing self help labor to qualify under owner-builder requirements. This flexible provision extends this self-help lending program to persons with disabilities.

Action Step ID **134** **Development of “Becoming a Homeowner” Online Homebuyer Education Tool**

Begin Date: 9/1/2014 ONGOING Single Family

Summary The Texas Homeownership Program developed a free online homebuyer education module, “Becoming a Homeowner.” The two-hour course is available in both English and Spanish. This provides buyers with a greater understanding of what to expect when purchasing a home, including information on the Mortgage Credit Certificate ("MCC") program, down payment assistance, and lending rates. The convenient, self-paced course offers a pre- and post-purchase tutorial on the ins and outs of buying a home. The online course is available at all times. In 2017, 9,200 homebuyers completed the course.

Action Step ID **155** **Implementation of National Housing Trust Fund, Development of Units to Serve Extremely Low-Income Households**

Begin Date: 11/2/2015 ONGOING Multifamily **H**

Summary The National Housing Trust Fund ("NHTF") is an affordable housing production program that compliments existing Federal, state and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low- and very low-income households, including homeless families. NHTF funds may be used for the production or preservation of affordable housing through the acquisition or new construction of non-luxury housing with suitable amenities. Funds will be initially allocated through the Regional Allocation Formula and subject to affirmative marketing requirements. All NHTF-assisted units will be required to have a minimum affordability period of 30 years. Texas received an allocation of $4,789,477 for program year 2016, executing the 2016 Grant Agreement in October 2017. In February 2018, staff executed the Grant Agreement of $8,858,738 for program year 2017.

H Includes HUD Funded Programs

Action Step ID **180** **Participation in the Money Follows the Person Program to Increase Housing Options for Persons Exiting Institutions**

Begin Date: 1/1/2012 ONGOING Single Family **H**

Summary

Since 2012, the Department has partnered with the state's Medicaid Agency, the Texas Health and Human Services Commission ("HHSC") to use Money Follows the Person ("MFP") funds to increase housing options for individuals who choose to exit institutions. TDHCA has used the MFP program to support the administration of Section 8 Housing Choice Vouchers targeted to individuals leaving institutions (Project Access), to develop and implement a Section 811 Project Rental Assistance (PRA) Program, and to support the administration of tenant based rental assistance through the HOME Investment Partnership Program through creating a HOME bridge program for individuals leaving institutions which can subsidize rent for up to five years for individuals awaiting Housing Choice Vouchers or other rental assistance. Staff also assists Medicaid and Service Coordinator providers on how to make referrals to housing programs and work with relocation contractors to improve programs (see also step #38 and #93). The Centers for Medicaid and Medicare Services completed a site visit to Texas to learn more about the state's MFP program. The evaluators stated that "Overall Texas has made tremendous strides at enhancing the lives of individuals participating in the MFP program."

Action Step ID **189** **Track Conciliation and Cause Notifications from Texas Workforce Commission, Civil Rights Division**

Begin Date: 6/1/2016 ONGOING Multifamily **H**

Summary

Staff tracks conciliation agreements and cause notifications from Texas Workforce Commission, Civil Rights Division regarding fair housing complaints at TDHCA-funded properties. Texas Workforce Commission notifies TDHCA per a memorandum of understanding. Agreements are attached to property records in the Compliance Monitoring and Tracking System ("CMTS") for TDHCA staff to reference. This will assist the agency in monitoring and working with properties to mitigate fair housing barriers and take corrective actions.

Action Step ID **202** **Agency Wide Biennial Fair Housing Training**

Begin Date: 11/1/2016 ONGOING Agency Wide **H**

Summary

Effective April 2017, all TDHCA staff will complete a fair housing training module biennially. New hires will complete the training within the first 90 days of employment. TDHCA's human resources manual was updated to include this training requirement; this will be monitored by the human resources division. The HUD-approved training is provided online, at no cost through the Texas Workforce Commission, Civil Rights Division. In 2017 agency staff took the fair housing training offered through the Texas Workforce Commission, and had the opportunity to attend two fair housing webinars. Two fair housing webinars were available for staff to attend in April 2018.

H Includes HUD Funded Programs

Action Step ID 208 Participation in the State of Texas Reentry Task Force

Begin Date: 6/19/2009 ONGOING — Agency Wide — **H**

Summary

A member of the fair housing team participates in the State of Texas Reentry Task Force and quarterly meetings. Texas's statewide Reentry Task Force promotes increased collaboration and coordination among localized re-entry initiatives and state-level entities, specifically in efforts to help stakeholders minimize barriers that impact individuals' successful reintegration into Texas communities. The Texas Reentry Task Force was establish through House Bill 1711 and became effective June 19, 2009 through Texas Gov't Code §501.098. Having a criminal record is not a protected characteristic under the Fair Housing Act, however, criminal history-based restrictions on housing opportunities may violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another.

Action Step ID 237 Compliance Division Comprehensive Portfolio Review of Policies and Procedures

Begin Date: 10/27/2017 ONGOING — Multifamily — **H**

Summary

Effective October 24, 2017, the Compliance Division began offering properties in the Department's portfolio a new approach to review Written Policy and Procedure requirements under 10 TAC §10.610. These policies and procedures include tenant selection criteria, reasonable accommodations policy, wait list policy, denied applicant policy, non-renewal and/or termination policy, and unit transfer policy. Owners may elect to have these policies reviewed for their entire portfolio at once rather than having them reviewed individually as part of the onsite monitoring review process. The Department hopes that the new procedure will better serve owners and management companies by streamlining the process in which they are reviewed, and ensuring equitable applicability of requirements, while ensuring compliance with Department rules. Once approved, the policies will not be reviewed again until either they are revised, or 10 TAC §10.610 is amended. If neither of the events occurs, the Written Policy and Procedures will be reviewed every three years. Application fees will continue to be reviewed as part of the onsite monitoring process.

Action Step ID 243 Texas Statewide Homebuyer Education Program ("TSHEP")

Begin Date: 9/1/1997 ONGOING — Single Family

Summary

In 1997, the 75th Texas Legislature passed HB 2577, which charged the Texas Department of Housing and Community Affairs ("TDHCA") with the development and implementation of a statewide homebuyer education program, designed to provide information and counseling to prospective homebuyers about the home buying process. The Texas Statewide Homebuyer Education Program ("TSHEP") was created to fulfill this mandate. To ensure uniform quality of the homebuyer education provided throughout the state, TDHCA partnered with NeighborWorks America, a nationally recognized organization, to administer TSHEP as a train-the-trainer program and to teach local nonprofit organizations the principles and applications of comprehensive pre- and post purchase homebuyer education, and to certify participants as providers of homebuyer training. To date approximately 731 individuals have been certified as homebuyer education providers by the Texas Statewide Homebuyer Education Program.

H Includes HUD Funded Programs

Action Step ID 246 Streamlined Communications with Partner Public Housing Authorities for Section 8 Voucher Porting

Begin Date: 6/1/2013 ONGOING — Single Family — **H**

Summary

Section 8 program staff have streamlined communications with numerous large Public Housing Authorities ("PHA") to which Department voucher households frequently request a port (transfer). Staff have developed relationships with our largest port recipient PHA's to understand and discuss policies and rules for porting households, because households that wish to port must re-qualify for the program and may encounter issues with the background check or other criteria, staff now communicates these possible barriers and options to households prior to porting.

Action Step ID 247 Housing Choice Voucher Section 8 Program Staff Develop Relationships & Referral Network

Begin Date: 11/1/2016 ONGOING — Single Family — **H**

Summary

Section 8 Program Staff have developed relationships with staff at state hospitals and other key referral agencies for the Project Access waitlist list. Examples include A Resource Center for Independent Living ("ARCIL") in Austin and the Center on Independent Living ("COIL") in San Antonio. Staff are currently discussing program eligibility, required forms for submittal, and helpful tips on dealing with other Public Housing Authorities and waiting lists to ensure Project Access clients have as much guidance as possible in exiting institutions.

Action Step ID 254 811 Program Marketing Materials, Help Consumers Make Informed Housing Choices

Begin Date: 2/19/2013 ONGOING — Single Family — **H**

Summary

The Department's Section 811 Project Rental Assistance ("PRA") Program webpage is designed to be friendly to prospective tenants and contains information that allows prospective 811 clients to make informed housing choices. The webpage contains each property's tenant selection criteria, webpage, maps, and information about unit accessibility. The webpage is available at: https://www.tdhca.state.tx.us/section-811-pra/participating-properties.htm. In addition, the Department, in coordination with our Medicaid state agency partners, developed marketing materials and a marketing plan to better reach potential program applicants. Marketing materials include a one page document that describes property amenities such as fitness center, accessible units, number of bedrooms, and proximity to public transit and medical facilities.

H Includes HUD Funded Programs

Action Step ID **256 Fair Housing Marketing Plan for the Section 811 Project Rental Assistance ("PRA") Program**

Begin Date: 2/19/2013 ONGOING Single Family **H**

Summary The Section 811 Project Rental Assistance ("PRA") Program, as required by HUD, developed a fair housing marketing plan that identifies the least likely to apply populations. The least likely to apply populations are persons with limited English proficiency and persons whose disability is a developmental or intellectual disability. The plan is designed to reach these individuals so that they have the opportunity to apply for the program. All tenant-facing materials are available in English and Spanish, with other languages are available upon request by local referral agents and applicants.

Action Step ID **265 Review Requested Preferences or Targets by HOME Program Administrators**

Begin Date: 4/13/2018 ONGOING Single Family **H**

Summary Administrators of the HOME program may request the ability to have a preference or target for assisting households. HOME Program funds operate under the State of Texas Consolidated Plan, One-Year Action Plan ("OYAP"). The 2017 OYAP identifies the following HOME special needs populations: persons with disabilities, persons with substance use disorders, persons living with HIV/AIDS, persons with Violence Against Woman Act protections, colonia residents, farmworkers, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and public housing residents. Administrators may also request to have preferences designed to assist single parents, persons transitioning out of incarceration, and persons transitioning out of foster homes and nursing facilities. FHDMR reviews data for the service and market area for the requested preference/targeted population alongside data on protected classes. FHDMR then drafts a recommendation, to allow or not allow the preference, based on balancing concerns to equally assist protected classes and the Department's established public policy priorities.

H Includes HUD Funded Programs

Completed or In Progress Action Steps

Action Step ID **156 Multifamily Direct Loan Program, Set-Aside for Supportive Housing or Units for Very Low-Income Households**

Begin Date: 3/22/2016 IN PROGRESS Multifamily **H**

Summary The Multifamily Direct Loan Program provides funding to nonprofit and for-profit entities for the new construction or rehabilitation of affordable multifamily rental developments (10 TAC §13). The 2017-1 Notice of Funding Availability ("NOFA") includes a $8,310,529 set-aside for soft repayable and/or deferred forgivable loans. Developments may qualify by meeting the Department's Supportive Housing definition or by creating units for households at 30% area median income ("AMI") that would not be available otherwise. Funds under this set-aside are intended to increase the number of 30% rent-restricted units and occupy them with households with an annual income of 30% AMI or less who are not currently receiving any type of rental assistance. The 2017-1 Multifamily Direct Loan notice of funding availability closed on October 31, 2017. $2,981,671 in Tax Credit Assistance Program Repayment Funds ("TCAP RF") and all $4,310,529 in Program Year 2016 National Housing Trust Fund ("NHTF") funds were awarded to seven applications proposing new construction. The 2018-1 NOFA currently includes $3,300,000 in TCAP RF and $19,024,041 in Program Year 2017 and Program Year 2018 NHTF for developments that meet the Department's Supportive Housing definition or create units for households a 30% AMI that would not be available otherwise.

Action Step ID **183 Data Update for the Multifamily Affirmative Fair Housing Marketing Tool**

Begin Date: 4/1/2016 IN PROGRESS Multifamily **H**

Summary Fair Housing, Data Management, and Reporting ("FHDMR") staff is currently researching a possible data update to the Multifamily Affirmative Fair Housing Marketing Tool. The update would address the change in demographic data reported by properties to align with available Census data. In January 2017 the Contract Monitoring and Tracking System ("CMTS") data entry screens were updated to include demographic data in up to five race categories. This change was implemented as a result of the Housing and Economic Recovery Act ("HERA") of 2008 which required the Department to annually report certain information to HUD, including the race of each household member. The tool currently uses 2010 Census data; an update has been discussed with Compliance, Legal, and Information Systems to use American Community Survey ("ACS") data to reflect a more recent time period (see also step #1).

H Includes HUD Funded Programs

Action Step ID **215 Conduct Focus Groups and Survey Housing Tax Credit Residents**

Begin Date: 2/24/2017 COMPLETED - 3/22/2018 Multifamily

Summary The Department contracted with the Ray Marshall Center of the University of Texas at Austin to conduct a series of focus groups and a resident survey among residents living in properties funded by Housing Tax Credits. The goal was to gather feedback on the most important housing and community characteristics to residents so that the Department can best meet low- to moderate-income residents' needs. The three focus groups gave residents an opportunity to share their experiences. The moderators of these focus groups sought to attract diverse crowds that reflect the variety of residents that the Department serves—rural, elderly, families. The survey was available in both online and paper formats, with paper surveys being heavily weighted towards elderly and rural Developments. Like the focus groups, the survey sought residents' varied perspectives on the type of unit, Development, and neighborhood features that best meet their needs.

With this knowledge tabulated in datasets, staff is now able to ask specific research questions about the needs of residents based on geographic, socio-economic, and demographic criteria. Such a tool might allow for the Department to create rules tailored to the specific needs of the populations served. Findings from this data set may also play a part in the Multifamily Finance Division's monthly roundtables for discussing the 2019 Qualified Allocation Plan and Uniform Multifamily Rules with stakeholders. Staff anticipate releasing a report on the resident survey in March 2018.

Action Step ID **236 Department Participation in the Joint Solutions Housing Work Group**

Begin Date: 8/17/2017 IN PROGRESS Agency Wide **H**

Summary The Department participates in the Joint Solutions Housing Work Group ("JSHWG") consisting of local, state, and federal organizations (including the Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development) that help perform the critical role of assessing housing needs and long term recovery needs in the wake of a disaster. The JSHWG utilizes all appropriate housing resources available from state and federal agencies, the local government, non-profit community and private sector; communicates and coordinates feasible housing solutions, as families transition to more permanent housing; and maintains a holistic community approach in addressing disaster survivors unmet housing needs. While persons affected by a disaster are not necessarily specific members of a protected class the needs of persons impacted by the disaster may differ based on membership in a protected class, such as persons with disabilities. The Department currently chairs the work group.

H Includes HUD Funded Programs

Action Step ID **238 Request to Create Fund to Mitigate Damages Caused by Tenants in the Section 811 Program**

Begin Date: 3/1/2018 IN PROGRESS Single Family **H**

Summary The Department through Money Follows the Person Demonstration funds provided by Texas Health and Human Services ("HHS") requested and was awarded funding to cover the cost of unreimbursed damages caused by Section 811 PRA Program tenants as a result of their occupancy. The funds, $75,000 will be used on an as-needed basis if a tenant participating in the Section 811 PRA Program incurs eligible expenses. Damage claims are limited, and will only be used to cover itemized, unreimbursed costs for damages resulting directly from the tenant's occupancy.

Action Step ID **242 Fair Housing Webinar Series to Celebrate Fair Housing Month 2018: Webinar One - Fair Housing Overview**

Begin Date: 11/1/2017 COMPLETED - 4/10/2018 Agency Wide **H**

Summary The Department, in conjunction with the Texas Workforce Commission's Civil Rights Division, hosted a webinar during April 2018's 50th Anniversary of the Fair Housing Act on 4/10/18. Topics covered included protected classes, discriminatory practices, exemptions, and fair housing testing. Participants had a chance to apply their knowledge in a review of case scenarios. This webinar had over 400 participants.

Action Step ID **250 Fair Housing Webinar Series to Celebrate Fair Housing Month 2018: Webinar Two - Reasonable Accomodations and Accessibility**

Begin Date: 4/1/2018 COMPLETED - 4/17/2018 Agency Wide **H**

Summary The Department, in conjunction with the Texas Workforce Commission's Civil Rights Division, hosted webinars during April 2018's 50th Anniversary of the Fair Housing Act on 4/17/18. Topics covered included reasonable accommodations, service and assistance animals. This webinar had over 300 participants.

Action Step ID **251 The 811 Program Design Promotes Choice and Integration for Persons with Disabilities**

Begin Date: 2/19/2013 IN PROGRESS Single Family **H**

Summary The Section 811 Project Rental Assistance ("PRA") Program exclusively serves people with disabilities who are also part of the Section 811 target population, and have extremely low-incomes. The target population includes people transitioning out of institutions, persons with severe mental illness and young adults aging out of foster care. The Section 811 PRA program creates the opportunity for persons with disabilities to live as independently as possible through the coordination of voluntary services and providing a choice of subsidized, integrated rental housing options. The program requires that Section 811 units be dispersed within developments.

H Includes HUD Funded Programs

Action Step ID **252 The 811 Program Design Maximizing Tenant Choice**

Begin Date: 2/19/2013 IN PROGRESS Single Family **H**

Summary The Section 811 Project Rental Assistance ("PRA") Program is designed to maximize tenant choice by garnering commitments from properties through the Department's Multifamily Program Applications. The Department has secured funding from HUD for approximately 750 units, but is creating a potential unit universe that far exceeds 750 within the eight metropolitan areas. This universe of eligible units allows members of the target population to select which units and properties themselves by indicating which properties they are interested in when applying for the program. TDHCA's Medicaid state agency partners and local referral agents are responsible for generating referrals to the program. These disability service professionals have received fair housing training and materials and have been instructed on how to comply with program requirements related to fair housing.

Action Step ID **259 Conduct Compliance Training: Fair Housing Considerations for Written Policies & Procedures and Complaints**

Begin Date: 5/11/2018 COMPLETED - 7/23/2018 Multifamily **H**

Summary The Fair Housing Manager and Federal Compliance Counsel held an internal training for compliance staff. The two hour training provided an overview of applicable civil rights laws, the Fair Housing Act, and reasonable accommodation requests. Staff reviewed examples of written policies and procedures regarding reasonable accommodations and familial status issues and discussed potential areas of concern.

Action Step ID **260 TDHCA Attendance at the 2018 Fair Housing Summit**

Begin Date: 4/2/2018 COMPLETED - 4/5/2018 Agency Wide **H**

Summary Department staff from the Compliance, Section 811 Project Rental Assistance Program, and Fair Housing divisions attended the 2018 Fair Housing Summit hosted by the City of Austin and Texas Workforce Commission. The summit included keynote presentations and educational workshops with fair housing experts. Sessions included information on fair housing case investigations, disability law, legal updates, affordable housing, and hate crimes. The summit examined barriers to fair housing that still remain and shared best practices to affirmatively further fair housing.

Action Step ID **261 Internal Fair Housing Training for Housing Choice Voucher Section 8 Program Staff**

Begin Date: 2/28/2018 COMPLETED - 5/9/2018 Single Family **H**

Summary Fair housing staff, in collaboration with the legal division, conducted a two-hour training for the Housing Choice Voucher Section 8 Program staff. The training covered protected classes, reasonable accommodations, accessibility rules in multifamily properties, HUD guidance on the use of criminal records in housing transactions, and reviewed the Section 8 program administrative plan. Program area staff discussed specific concerns related to occupancy standards, housing choice, and familial status.

H Includes HUD Funded Programs

Action Step ID **262 Homeownership Month for June 2018, Distribution of Fair Housing Materials**

Begin Date: 4/27/2018 COMPLETED - 7/1/2018 Single Family

Summary The Department celebrated homeownership month for June 2018 with the creation and inclusion of fair housing materials. Staff used flyers, infographics, and other print materials to provide fair housing information on protected classes, reasonable accommodations, and discrimination in the sale, rental and financing of dwellings.

Action Step ID **263 Readoption of the Service Enriched Housing Rule**

Begin Date: 4/17/2018 IN PROGRESS Agency Wide **H**

Summary Texas Government Code §2306.1091(b) requires the Department, with the advice and assistance of the Housing and Health Services Coordination Council ("Council"), to define Service-Enriched Housing. Staff consulted with the Council at the meeting on May 4, 2018, and the Council supported the readoption of the rule without changes. Service-Enriched Housing is defined in 10 TAC §1.11 as integrated, affordable, and accessible housing that provides residents with the opportunity to receive on-site or off-site health-related and other services and supports that foster independence in living and decision-making for individuals with disabilities and persons who are elderly. Staff anticipates presenting the rule for consideration by TDHCA's board on September 6, 2018.

Action Step ID **264 Revised Integrated Housing Rule to Provide Integrated Affordable Housing**

Begin Date: 4/13/2018 IN PROGRESS Multifamily **H**

Summary Texas Government Code §2306.111(g) directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing. In spring 2018, staff discussed proposed rule changes to the Integrated Housing Rule with the Department's Disability Advisory Workgroup twice, and with the Housing and Health Services Coordination Council and the Qualified Allocation Plan Roundtable. Additionally, an Online Survey and Online Forum were conducted April 26, 2018, through May 7, 2018. Stakeholders believed there was a continuing need for the Department's Integrated Housing Rule under 10 TAC §1.15 to provide assurance that the properties and programs funded by the Department produce integrated housing opportunities. Under an order to adopt the repeal and an order to adopt the new Integrated Housing Rule, the maximum set aside of units for households with disabilities would be 25% in developments with 50 or more units and 36% in developments with fewer than 50 units. This rule was originally established in 2003 in collaboration with disability advocates and program participants. The rule ensures that housing developments that are subject to the rule do not restrict occupancy solely to households with disabilities, with a maximum integration limit dependent on the size of the housing development. Staff anticipates presenting the rule for adoption to TDHCA's Governing board at its meeting on September 6, 2018.

H Includes HUD Funded Programs

4a

BOARD REPORT ITEM

INTERNAL AUDIT DIVISION

September 6, 2018

Report on the Meeting of the Audit Committee

REPORT ITEM

Verbal report.

4b

BOARD ACTION REQUEST

INTERNAL AUDIT AND FINANCE COMMITTEE

September 6, 2018

Presentation, Discussion and Possible Action on approval of the Fiscal Year 2019 Internal Audit Work Plan.

RECOMMENDED ACTION

WHEREAS, the Tex. Gov't Code §2306.073 (b), the Internal Auditing Act and audit standards require the Department's Governing Board to approve an annual audit work plan that outlines the internal audit projects planned for the fiscal year; and

WHEREAS, the Audit and Finance Committee of the Board recommends approval of the work plan;

NOW, therefore, it is hereby

RESOLVED, the internal audit work plan for Fiscal Year 2019 is approved as presented.

BACKGROUND

The annual internal audit work plan is required by the Tex. Gov't Code §2306.073 (b), the Texas Internal Auditing Act (Tex. Gov't Code Chapter 2102) and by the International Standards for the Professional Practice of Internal Auditing (Standards). The plan is prepared by the internal auditor based on an agency-wide risk assessment as well as input from the Department's Governing Board and executive management. The plan identifies the individual audits to be conducted during Fiscal Year 2019. The plan also outlines other planned activities that will be performed by the Internal Audit Division.

4c

BOARD REPORT ITEM

INTERNAL AUDIT DIVISION

September 06, 2018

Report on the Internal Audit "Review of the Neighborhood Stabilization Program Close Out Processes"

5

BOARD ACTION REQUEST

BOND FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action regarding Resolution No. 19-004 approving amendments to program documents for Taxable Mortgage Program; authorizing the execution of documents and instruments relating to the foregoing; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached Resolution.

BACKGROUND

The Texas Department of Housing and Community Affairs (the "Department") implemented its Single Family Taxable Mortgage Program (the "Program") in late 2012, when market conditions were not conducive to the issuance of tax-exempt single family mortgage revenue bonds ("SFMRBs"). The Program has become the primary financing mechanism for the Department's single family homeownership programs.

The Program is an adaption of a private sector mortgage model generally referred to as a To Be Announced ("TBA") program, by which a third party (the "TBA Provider") agrees to purchase mortgage-backed securities ("MBS") backed by Ginnie Mae, Fannie Mae, or Freddie Mac, at an agreed upon price and within a certain timeframe in the future. The TBA Provider issues daily price quotes for the future delivery of the MBS, depending on the underlying mortgage rates, and the Departments sets the rates for its single family program accordingly. The mortgage loans are then originated, secured into MBS, and delivered to the TBA Provider at the agreed upon price. The Department's TBA Provider has been Hilltop Securities since inception. The Department has integrated the Program, in part, with its single family indentures. A portion of the second mortgage loan is funded by one of the single family indentures, allowing the Department to offer the lowest possible mortgage rates to low and moderate income homebuyers. In return, the indenture receives ongoing excess servicing fees against the related first mortgage, and the principal amount of the second mortgage loan when repaid. Both the homebuyers and the indenture benefit from this approach.

Currently, all loans originated through the Program are tax-exempt eligible. Borrowers must be first-time homebuyers (cannot have had an ownership interest in a primary residence within the last three years or must qualify for a veteran or targeted area exception), and both borrower income and the purchase price of the home must be within IRS designated limits. IRS income limits are 100% of Area Median Family Income ("AMFI") for households of 1-2 persons and 115% of AMFI for households of 3 or more. The IRS purchase price limit is 90% of the average area purchase price. Higher income and purchase price limits apply with respect to homes purchased in targeted areas,

which are areas of severe economic distress. Income is calculated using methodology established by the IRS, and recapture tax applies for loans that are used in a tax-exempt bond issue or for loans that receive a Mortgage Credit Certificate ("MCC").

Staff is recommending the addition of a Program loan option that meets all of the requirements for tax-exempt eligibility, but eliminates the first-time homebuyer requirement. The income and purchase price limits described above would apply to this option. However, there would be no recapture tax, as the loans would not be used in a tax-exempt bond issue nor would they receive an MCC, and lenders could use standard methodology (1003 income) to calculate homebuyer income.

This recommendation is a matter of policy, not a legal limitation. The rule by which the Department established the Program (Title 10 Texas Administrative Code, Chapter 28) has no first-time homebuyer requirement. The addition of this option would allow the Department to serve low, very low, and moderate income homebuyers that currently do not qualify for the program, without negatively impacting the Department's current loan options. In fact, additional volume will increase economies of scale and may allow the Department to improve the rates and financing options offered.

RESOLUTION NO. 19-004

RESOLUTION APPROVING AMENDMENTS TO PROGRAM DOCUMENTS FOR TAXABLE MORTGAGE PROGRAM; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

WHEREAS, the Act authorizes the Department (a) to purchase notes and other obligations evidencing loans or interests in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, pursuant to Resolution No. 13-003 adopted September 6, 2012, the Board approved a taxable mortgage program designated Program 79 (the "Program") to fund all or a portion of the Department's single family loan production, and Program Guidelines setting forth the general terms of the Program (the "Original Program Guidelines"); and

WHEREAS, pursuant to Resolution No. 13-038 adopted on June 13, 2013, the Governing Board approved amendments to the Original Program Guidelines to conform to the requirements of HUD Mortgagee Letter 2013-14 relating to requirements for secondary financing provided by a state government; and

WHEREAS, pursuant to Resolution No. 14-008 adopted on December 12, 2013, the Governing Board authorized modification of the Original Program Guidelines to the extent necessary to comply with rules of the Consumer Financial Protection Bureau and the Department of Housing and Urban Development and proposed federal regulations under the Dodd-Frank Act with respect to qualified mortgages and the limit on points and fees that can be charged for such mortgages; and

WHEREAS, pursuant to Resolution No. 15-002 adopted on October 9, 2014, the Governing Board approved amendment of the Original Program Guidelines to modify the origination fee and servicing release premium paid in connection with mortgage loans and make other changes under the Program to address current market conditions; and

WHEREAS, pursuant to Resolution No. 15-016, adopted on April 16, 2015, the Governing Board authorized programmatic changes to the Program to include refinancing of loans originally financed under the Program to allow homebuyers to realize the benefit of reduced FHA costs for borrowers refinancing existing FHA loans, and implemented its "FHA Streamline Refinance Program"; and

WHEREAS, pursuant to Resolution No. 17-003, adopted on September 8, 2016, the Board approved amendments to the Program Guidelines (the "Program Guidelines") setting forth general terms for the mortgage loans to be originated under the Program (the "Mortgage Loans") and authorized execution and delivery of (i) a Mortgage Acquisition, Pooling and Servicing Agreement (the "Servicing Agreement") setting forth the terms under which Idaho Housing and Finance Association (the "Servicer"), will review, acquire, package and service the Mortgage Loans, and (ii) a Master Mortgage Origination Agreement (the "Master

Mortgage Origination Agreement" and collectively with the Amended Program Guidelines and the Servicing Agreement, the "Program Documents") in connection with the acceptance of new lenders in the Program; and

WHEREAS, under the Program Documents, the Department has previously limited availability of Mortgage Loans under the Program to borrowers who have not had an ownership interest in a primary residence within the past three years, or homebuyers that qualify for a veteran or targeted area exemption (the "first-time homebuyer requirement"); and

WHEREAS, in order to increase affordability of homeownership by low, very low and moderate income homebuyers throughout Texas, the Governing Board desires to amend the Program Documents for loans that will not be eligible for tax-exempt bond financing or issuance of a mortgage credit certificate in order to (1) delete the first-time homebuyer requirement, (2) allow lenders to calculate income eligibility based on standard 1003 income methodology, and (3) remove recapture disclosures;

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of Amended Program Documents. The Governing Board hereby authorizes amendment of the Program Documents for loans that will not be eligible for tax-exempt bond financing or issuance of a mortgage credit certificate in order to (1) delete the first-time homebuyer requirement, (2) allow lenders to calculate income eligibility based on standard 1003 income methodology, and (3) remove recapture disclosures.

Section 1.2 Execution and Delivery of Documents. The Authorized Representatives each are hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, including, without limitation, any amendment or supplement to any existing agreements and guidelines related to the Program.

Section 1.3 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Deputy Executive Directors of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership Program of the Department and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.4 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Program are hereby ratified and confirmed.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings

Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

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

(EXECUTION PAGE FOLLOWS)

PASSED AND APPROVED this 6th day of September, 2018.

____
Chair, Governing Board

ATTEST:

____
Secretary to the Governing Board

(SEAL)

6

6
PRESENTATION

7a

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions, and directing publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, 10 TAC Chapter 10, the Uniform Multifamily Rules contain eligibility, threshold, and procedural requirements relating to applications requesting multifamily funding or tax credits;

WHEREAS, in order to better meet the statutory requirements at Tex. Gov't Code §2306.6722, regarding the Qualified Allocation Plan, the subchapters of Chapter 10 named herein have been moved to 10 TAC Chapter 11, the Qualified Allocation Plan;

WHEREAS, repeal of 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions is necessary to affect the proposed change to 10 TAC Chapter 11, the Qualified Allocation Plan; and

WHEREAS, 10 TAC Chapter 12, the Multifamily Housing Revenue Bond Rules, and 10 TAC Chapter 13, the Multifamily Direct Loan Rule, rely on the subchapters named herein for threshold and eligibility requirements, and are proposed at this meeting with changes to assure they continue to reflect the appropriate requirements;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 10 Subchapter A General Information and Definitions, Subchapter B Site and Development Requirements and Restrictions, Subchapter C Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy and Subchapter G Fee Schedule, Appeals and Other Provisions together with the preambles presented to this meeting, are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that because the subchapters named herein are essential to

the continued operation of the Department's Multifamily programs; if 10 TAC Chapter 11, the Qualified Allocation Plan, is not accepted and ultimately adopted in a form that incorporates all of the described subchapters, this proposed repeal of subchapters in 10 TAC Chapter 10 will not be presented for adoption and 10 TAC Chapter 10 will continue in its current format with no repeal

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed Uniform Multifamily Rules together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUD

Statute requires that the Qualified Allocation Plan ("QAP") provide "information regarding the administration of and eligibility for the low income housing tax credit program" Tex. Gov't Code §2306.67022. In order to better meet this requirement, staff is proposing to move 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions to Chapter 11, the Qualified Allocation Plan, in order that all information regarding eligibility for Low Income Housing Tax Credits is contained within one rule. Under separate action on 10 TAC Chapter 11, the QAP is being proposed to include these sections.

Two other rules, 10 TAC Chapter 12, the Multifamily Housing Revenue Bond Rules, and 10 TAC Chapter 13, the Multifamily Direct Loan Rule, have relied on these same subchapters for threshold and eligibility requirements, in order to assure consistency of processing and evaluation for all multifamily applications, prevent conflicts that could prevent layering of fund sources if they have different threshold requirements, and present requirements that impact all Developments in a consistent manner. In order to continue to accomplish those goals, the draft 2019 10 TAC Chapters 12 and 13 presented at this meeting include citation changes that will direct Applicants for those fund sources to 10 TAC Chapter 11 for threshold and eligibility requirements.

If the final 2019 QAP is not adopted with all of the subchapters included, this proposed repeal will not move forward, as the Department would be left without the basic framework through which it operates the multifamily programs. In that case, both Chapters 12 and 13 require further amendment.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal 10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions. The purpose of the proposed repeal is to eliminate subchapters of 10 TAC Chapter 10 that will be moved to 10 TAC Chapter 11, the Qualified Allocation Plan

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

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

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption in another chapter related to the administration of the Low Income Housing Tax Credit program

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

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

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

5. The proposed repeal is not creating a new regulation.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous adoption of the subchapters in 10 TAC Chapter 11, the Qualified Allocation Plan, in order to better meet the requirements of Tex Gov't Code §2306.67022.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be to better meet the requirements of Tex Gov't Code §2306.67022. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018 to October 12, 2018 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment @tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 10, Subchapter A, concerning General Information and Definitions, Subchapter B, concerning Site and Development Requirements and Restrictions, Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications, Subchapter D, concerning Underwriting and Loan Policy, and Subchapter G, concerning Fee Schedule, Appeals and Other Provisions

7b

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan (which will incorporate into Chapter 11 substance from the Uniform Multifamily Rules being repealed from 10 TAC Chapter 10, Subchapters A, B, C, D, and G), and directing its publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") is authorized by Tex. Gov't Code Ch. 2306, Subchapter DD, to make Housing Tax Credit allocations for the State of Texas;

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

WHEREAS, the Department, as required by §42(m)(1) of the Internal Revenue Code and Tex. Gov't Code §2306.67022, developed this proposed Qualified Allocation Plan to establish the procedures and requirements relating to an allocation of Housing Tax Credits; and

WHEREAS, pursuant to Tex. Gov't Code §2306.6724, the Board shall adopt a proposed Qualified Allocation Plan no later than September 30 and, on or before November 15, submit it to the Governor, to approve, reject, or modify and approve not later than December 1;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 11, and a proposed new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of proposed the Department, to cause the proposed Qualified Allocation Plan, together with the changes, if any, made at this meeting and the preambles, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections, including any required revisions to the preambles, as they may deem necessary to effectuate the foregoing.

BACKGROUD

General Information: Attached to this Board Action Request is the Qualified Allocation Plan ("QAP"),

which reflects staff's recommendations for the Board's consideration. The attached QAP identifies the differences between the 2018 QAP and other 2018 rules that are being addressed in this proposed QAP and the proposed 2019 QAP in blackline format. The QAP submitted to the *Texas Register* will be a "clean" version of the 2019 QAP and will not identify the changes between 2018 and 2019. However, the Department's Public Comment page will reflect a blackline version of the proposed 2019 QAP as approved by the Board.

Beginning in December of 2017, staff began meeting with stakeholders to discuss the 2019 QAP. Staff and stakeholders met a total of six times and discussed items such as financial feasibility and construction costs, the 2017 Resident Survey, building and Unit features, common amenities, resident services, tie-breaker factors, Section 811 Program Based Rental Assistance, previous participation rules, changes to the Executive Award and Review Advisory Committee, and the new 8609 Income Averaging election. Staff also posted several topics to the Department's Online Forum, where stakeholders were invited to comment on aspects of the QAP and new proposals from staff. Staff made a concerted effort in the month of August to solicit stakeholder input on the staff draft of the 2019 QAP. Staff published a staff draft on August 9, 2018, and stakeholders were invited to submit their input by letter, email, or phone. The window for receiving stakeholder input closed on August 17, 2018, at 5:00 p.m. Austin local time. Staff received input from many stakeholders, including the development community and local government officials. Some input spoke of the general policy goals of certain scoring items or threshold criteria, and some input offered targeted feedback on the mechanics of the rules, pointing out grammatical/clerical errors, omissions, and inconsistencies. Staff has considered the input received in the 2019 proposed QAP provided in this action item.

After consideration of the input and feedback provided and after evaluating the 2018 Application round, staff believes that the proposed 2019 QAP will serve the State of Texas' interests well, furthering the policies of both statute and the Board. In keeping with those policies, staff has proposed changes to specific sections of the QAP.

Rule-Making Timeline: Upon Board approval, the proposed 2019 QAP will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 21, 2018, and October 12, 2018. Staff will then consider and prepare reasoned responses to public comment as part of the final action on the QAP that will be brought before the Board on November 8, 2018, for approval. Subsequently, the QAP will be submitted to the Office of the Governor not later than November 15, 2018, for him to approve, approve with changes, or reject the QAP. Upon the Governor's approval, approval with modifications, or rejection, which must occur no later than December 1, 2018, the adopted 2019 QAP will be published in the *Texas Register* and posted to the Department's website.

Statutory Changes: There were no statutorily mandated changes to the QAP for 2019.

Summary of Proposed Changes: While purely administrative in nature, a significant change to the QAP for 2019 involves returning the QAP to one comprehensive document addressing all facets of the allocation of Housing Tax Credits. This required combining the following Uniform Multifamily Rules into the traditional QAP chapter found at 10 TAC Chapter 11: General Information and Definitions (previously 10 TAC Chapter 10, Subchapter A); Site and Development Requirements and Restrictions (previously 10 TAC Chapter 10, Subchapter B); Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of rules or Pre-Clearance for Applications (previously 10 TAC Chapter 10, Subchapter C); Underwriting and Loan Policy (previously 10 TAC Chapter 10, Subchapter D); and Fee Schedule, Appeals and Other Provisions (previously 10 TAC Chapter 10, Subchapter G). This consolidation more accurately adheres to the requirements of Tex. Gov't Code

Chapter 2306, places all of the rules pertaining to the awarding of Housing Tax Credits under one Chapter, and makes the Department's rules more clear and accessible to stakeholders, especially those looking to enter the multifamily affordable housing market in Texas. In order to combine the above noted rules into one chapter, various components or sections of those rules, may have been reorganized or repositioned to reflect the organizational logic of the 2019 QAP. For reviewing purposes, those sections were first pasted and consolidated and only then were changes tracked.

While not inclusive of all changes proposed, a description of some of the significant recommendations considered changes of policy are described below. Citation and page references are indicated for ease of reference.

10 TAC Chapter 11, Subchapter A

§11.1(d) – Definitions (Page 2 of 146). In combining the previous 10 TAC Chapter 10, Subchapter A (Uniform Multifamily Rules) into the QAP staff incorporated the numbered list of definitions under this subsection. Staff has added definitions for Common Area and Preservation; removed definitions for Housing Quality Standards, Qualified Purchaser, and Related Party; and made revisions to several other definitions.

§11.2 – Program Calendar (Page 19 of 146). This section is modified to reflect dates for the 2019 Application round.

11.3(g) – Proximity of Development Sites (Page 24 of 146). In the 2018 QAP, staff had added language that precluded the awarding of HTCs to two or more Developments that were on "contiguous" Development Sites. Given the inadequacy of that language, staff proposed clarifying language that provides a minimum distance of 1,000 feet based on stakeholder input. Additional language also provides parameters for this issue. If two or more Applications were within 1,000 feet of each other, the lower-scoring Application(s) will be considered a non-priority Application(s), unless the higher-scoring Application withdraws.

§11.4(a) – Credit Amount (Page 24 of 146). Applicants that may have Applications pending in excess of the $3 million cap are now given until July 15, as opposed to the previous deadline of June 29, to provide the Department with their notification of which application they will not pursue.

§11.4(c) – Increase in Eligible Basis (30 percent Boost) (Page 25 of 146). The Bipartisan Budget Act of 2018 (H.R. 1892) created a tax vehicle for encouraging investment in areas in need of targeted revitalization efforts by private and nonprofit investors. These areas are referred to as "Qualified Opportunity Zones." Staff has added Developments located in these areas to the factors that allow an Application to automatically qualify for the 30% boost in eligible basis.

§11.6(1) – Regional Allocation Formula (Page 29 of 146). Tex. Gov't Code §2306.1115 directs the Department to reserve $500,000 or more for the allocation of tax credits in rural areas in each uniform state service region. The Department has used that figure of $500,000 since 2001. The Department has increased that reservation amount to $600,000 at the request of the Texas Association of Affordable Housing Developers, and in concurrence with rural developers, who have found it increasingly difficult to develop within that cap. In evaluating the formula within this scenario, staff realized that if implemented, one subregion (Urban 2) would be the sole subregion with an allocation amount below $600,000. To maintain an equal footing for all areas, a $600,000 floor is being suggested for all subregions. Also in this section, in an effort to improve transparency on this issue, staff has added that it will release information on the Elderly Development maximum percentages and credit limits in

December 2018, and periodically thereafter; and will also release similar but more expanded information one week prior to the meeting in July at which final awards of credits will be made.

§11.7 – Tie-Breaker Factors (Page 33 of 146). Staff has removed three previous tie-breaker factors, added a new tie-breaker, and revised one remaining tie-breaker. In crafting the tie-breaker factors for 2019, staff has avoided factors that duplicate scoring and instead proposes two factors that further the Department's and Board's policy directives. The first tie-breaker factor is determined by whether or not, of two or more tied Applications, the poverty rate for the census tract of an Application is lower than the median poverty rate for all the census tracts in which pre-applications proposed to construct Developments, as of January 9, 2019. So, in effect, staff will take a snapshot of all census tracts in which, on the day of final pre-application submission, Developments are proposed, and take the median of all those values. The full Application whose census tract's poverty rate is below that median value can move to the next component of this tie breaker factor, which is based on rent burden. Staff will rank all census tracts in the state, based on which tract has the highest percentage of statewide rent-burdened households that earn up to 80% Area Median Family Income ("AMFI"). Thus, if two tied Applications each have poverty rates below that median value, then the Applicant in the census tract with the most rent burden will win this tie-breaker factor.

Staff would like to emphasize that the January 9 snapshot of census tracts that will be used to determine this median value is irrevocable and, once determined, static; Applications that may be withdrawn by Applicants or terminated by the Board after the close of the Pre-Application Final Delivery Date will not affect this median value. In the staff draft of the QAP, staff had originally suggested that the date of determination be the End of the Application Acceptance Period, or March 1, but stakeholders preferred that the date be sooner so that they can make informed decisions on which pre-applications to take to full Application.

Staff believes that this tie-breaker factor furthers two goals of the Department: first, it encourages the dispersion of affordable housing; and second, unlike previous years' tie breaker factors, it leaves undetermined the census tracts most likely to score highest on geographic measures, thereby limiting Applicants bidding on the same land in the same census tract. Indeed, this tie-breaker factor may even allow multiple census tracts to "score highest" in each subregion, which staff hopes decreases the competitive bidding on land and further aids the Department's goal of dispersion.

The final tie-breaker factor continues to be distance. In light of stakeholder input received, staff has amended this factor for 2019 by indicating that the tie will be granted for the Application proposed to be located farthest from an existing Housing Tax Credit (excluding those Developments under the Control of the same Owner as the Application being considered in the tie) assisted Development that serves the same Target Population and that was not awarded less than 15 years ago wins the tie-breaker. Staff believes this tie-breaker factor is an effective means of dispersion and ensures that all ties can be resolved. The exclusion for Developments under the Control of the same Owner as the Application being considered in the tie is intended to not penalize the economies of scale that can often be achieved by a developer in locating properties near to one another.

§11.8 – Pre-Application Requirements (Competitive HTC Only) (Page 34 of 146). Staff has clarified that only one pre-application can be submitted for each Site Control document. Staff has also added language that prevents a pre-application from being withdrawn after the Full Application Delivery Date. Staff also added clarifying language relating to acceptable means for searching for Neighborhood Organizations, for purposes of notification, and clarified the terms "on record with the county" and "on record with the State."

§11.9 – Competitive HTC Selection Criteria (Begins Page 37 of 146). Staff has made several changes to

this section. They are addressed separately.

- (b)(1) Size and Quality of the Units (Page 37 of 146). While this section remains worth 15 points, staff has shifted the points of the two components that together compose this subsection. Points for Unit sizes have decreased from eight to six points; points for Unit and Development features have increased from seven to nine points. In raising the number of points available for Unit and Development features, staff has ensured that there are many additional options that Developers can select from in meeting this point requirement.

- (b)(2) Sponsor Characteristics (Page 38 of 146). In response to input received, revisions were made to better facilitate the preservation of HUD 202 Rehabilitation projects, and removed a restriction against a Principal of a HUB or Nonprofit Organization from being a Related Party.

- (c)(1) Income Levels of Tenants (Page 38 of 146). To accommodate changes made to IRC §42(g)(1) by Congress's passing of the 2018 Omnibus Spending Bill, staff has added scoring criteria to the QAP that reflects an Applicants' ability to make the Income Averaging election on their 8609s. In determining the income averages that are incentivized now in rule, staff looked to historical precedent in order to identify percentages that most closely align with the existing election options.

- (c)(4) Opportunity Index (Page 40 of 146). Staff has made minor changes to some of the menu items. For example, a physician's general practice with walk-in services now counts in rural areas as a "health related facility." In light of stakeholder input, staff has also made changes to urban Developments seeking opportunity index points. Two points will be awarded to those sites within 1/2 mile of high-frequency transit, and urban hike-and-bike trails will now count as a park.

- (c)(5) Underserved Area (Page 44 of 146). In light of stakeholder input, staff has created two new Underserved Area scoring items. There are now seven mutually-exclusive options for scoring up to five Underserved Area points. The first new item awards two points to those census tracts where the poverty rate is greater than 20% and the median gross rent is greater than the county HUD Fair Market Rent estimate. . These factors, taken together, may signal areas undergoing gentrification or potential gentrification. Staff foresees this item being a complement to Concerted Revitalization Plan Applications, which have previously had difficulty scoring points for Underserved Area. The second new scoring item awards three points to Applications for At-risk or USDA Developments that were placed in service 30 or more years ago, that are still occupied, and that have not yet received federal funding or LIHTC equity for the purposes of Rehabilitation for the Development.

  Staff also modified subparagraph (E), regarding the five point item for a census tract for which both it and all its contiguous census tracts have not received an award in the previous 15 years. In 2018, this scoring item was only available in cities with populations of 150,000 or more; for 2019, it is available in cities with populations of 100,000 or more.

- (c)(6) Tenant Populations with Special Housing Needs (Page 45 of 146). Clarifications have been made to the scoring item regarding voluntary participation in the Section 811 Project Rental Assistance Program. Staff has better explained the process by which Applicants demonstrate their inability to have an existing development participate in the Section 811 PRA Program if they pursue points under this paragraph.

- (c)(7) Proximity to Urban Core (Page 46 of 146). Staff has readjusted the distance requirements from the urban core for cities, depending on their population sizes. For cities with populations above 750,000, the urban core radius remains four miles; for cities with populations that range

from 500,000 to 749,999, the urban core radius is now two miles; and for cities with populations that range from 200,000 to 499,999, the urban core radius is now one mile. The purpose of these changes is to better reflect what constitutes an "urban core," based on a city's population.

- (c)(8) Readiness-to-Proceed (Page 46 of 146). Staff has made two changes to the Readiness-to-proceed item for disaster impacted counties, which was added to the 2018 QAP by Governor Greg Abbott in 2017. First, the deadline for closing all financing and fully executing the construction contract is now the last day of November, instead of October. Second, in order to faithfully demonstrate that readiness to proceed is attainable to an Applicant, staff is requiring the submission of acknowledgement from all lenders and the syndicator of the final closing date. Staff also added language to address the fact that some Readiness to Proceed applications may be determined by staff to be in a non-priority status. In such cases, those non-priority applications, if ultimately awarded, will be able to receive an extension of the November deadline equivalent to the period of time they were in non-priority status.
- (d)(5) Community Support from State Representative (Page 50 of 146). Staff is reemphasizing a change made to this paragraph from the 2018 QAP with further clarification for the 2019 QAP. The intent of the added language is to be specific in the options State Representatives have in formulating and officially rendering their opinions and support, or lack thereof, of proposed affordable housing LIHTC Developments in their districts.
- (d)(7) Concerted Revitalization Plan (Page 52 of 146). Staff has added language that clarifies what constitutes a substantial plan of revitalization for an area that warrants a LIHTC capital investment. The Rule also now allows for a concerted revitalization plan that may not extend for another three years but that has already made substantial improvements to the neighborhood and that will accomplish all of its specified objectives within a three year period from the date of Application, if confirmed by a public official who oversees the plan.
- (e)(2) Cost of Development per Square Foot (Page 55 of 146). In response to significant public input over several years, the 2019 QAP reflects an increase across the board to all categories of maximum costs per square foot in this scoring section. The new amounts reflect a 5% increase from the prior figures; this is meant to address the overall comments from all types of applicants. Staff is committed to continuing to work with the development community, and consider internal data sources, to further fine tune and tailor this section for the 2020 QAP. Staff also increased the common area square footage per Unit permitted for Supportive Housing Developments from 50 to 75.
- (e)(4) Leveraging of Private, State, and Federal Resources (Page 57 of 146). Staff has increased each of the targeted leveraging percentages by one percent. A LIHTC request that is nine percent of the Total Housing Development Cost is worth three points; a LIHTC request that is 10 percent of the Total Development Cost is worth two points; and a LIHTC request that is 11 percent of the Total Development Cost is worth one point.
- (f) Factors Affecting Scoring and Eligibility in Current and Future Application Rounds (Page 58 of 144). Staff has sought to clarify the intent of this subsection, which grants the Governing Board the authority to affect an Applicant's and/or Affiliate's participation, or score, in the subsequent Application Round. The clarified rule language identifies four possible situations that may warrant point deductions for the Applications of any Applicant and/or Affiliate who may have previously violated the specified rules. The Governing Board may also find that an Applicant and/or Affiliate are ineligible to compete.

§11.10 – Third Party Request for Administrative Deficiency for Competitive HTC

Applications (Page 59 of 146). Staff has added language to clarify the Request for Administrative Deficiency ("RFAD") process, and has added a sentence that reiterates to Applicants and stakeholders that information received after the Request for Administrative Deficiency deadline will not be considered by staff or presented to the Board.

10 TAC Chapter 11, Subchapter B

§11.101 – Site and Development Requirements and Restrictions (Begins on Page 60 of 146). Staff has made several changes to this section. They are addressed separately.

- (a)(2) Undesirable Site Features (Page 60 of 146). Staff has added an additional means by which a Development Site located within 500 feet of an active railroad track may mitigate this particular undesirable site feature.
- (a)(3) Neighborhood Risk Factors (Page 62 of 146). Previously, these types of considerations were referred to as "Undesirable Neighborhood Characteristics." However, they have been renamed to "Neighborhood Risk Factors." The same four factors remain—high poverty rate, high crime rate, the presence of blight, and poor school performance. In the case of crime, clarification was made to how the tract and proximity is determined.

  Staff has also provided changes to how an Applicant may achieve mitigation of a particular Neighborhood Risk Factor, adding greater specificity and reorganizing the section relating to mitigation for crime. In the case of mitigation for schools not having Met Standards, new options were provided by which mitigation can be achieved.
- (b)(2) Development Size Limitations (Page 68 of 146). In response to input, staff is recommending that the maximum unit size in Rural Areas be increased from 80 to 120 for Tax Exempt Bond Developments.
- (b)(3) Rehabilitation Costs (Page 68 of 146). Input was received indicating that the minimum amount of Building Costs for rehabilitation should be reconsidered (lowered). In lieu of making that change, but in an effort to still find an alternate option for Applicants, without jeopardizing the long-term viability of rehabilitated properties, staff has proposed an alternate option. An Applicant can design their Application to achieve a series of rehabilitation standards; if all of those are achieved and reflected in the Application, the Application does not have to achieve the cost minimums.
- (b)(4) Mandatory Development Amenities (Page 69 of 146). In addition to stating the Board authority's to waive certain mandatory development amenities when the Development must request such in order to comply with the rules of the Texas Historical Commission, staff has removed one item relating to plumbing and added several other items, one requiring Energy-Star rated windows and the other requiring adequate accessible parking spaces. Staff has also stated that, if local parking requirements allow for decreased parking ratios in exchange for the provision of a car-sharing program, then the LURA will require the Owner to provide that car-sharing service at no cost to the tenants throughout its term.
- (b)(5) Common Amenities (Page 70 of 146). Staff has categorized the options available to Developments under this paragraph, simply to better organize the rule and better facilitate Developers' and Owners' consideration of their options. Developments are not required to select items from each category. Staff has also added several new common amenity options and has sought to calibrate items' point amounts to reflect the true cost of delivering each respective amenity.
- (b)(6)(B) Unit and Development Construction Features (Page 74 of 146). First, staff has increased the

number of required points from seven to nine. Second, staff categorized options under this subparagraph as either "Unit Features" or "Development Construction Features," simply to better organize the rule and better facilitate Developers' and Owners' consideration of their options. Developments are not required to select items from each category. Under Unit Features, staff has added eight additional options, for a total of 22 options to attain the required number of points. Under Development Construction Features, staff has relocated "Green Building Features" to this subparagraph from another area of the rule. Staff has also readjusted the point value of some of the options in order to better reflect their true costs. Items that cost more to the Developer and Owner are, hence, worth more points than items that, comparatively speaking, cost less.

- (b)(7) Resident Supportive Services (Page 76 of 146). As with Common Amenities and Unit and Development Construction Features, staff has categorized the options available under this paragraph for resident services in order to better organize the rule and better facilitate Developers' and Owners' consideration of their options. Staff has sought to calibrate items' point amounts to reflect the true cost of delivering each respective service. Staff has also created new services that Developments can select, partly by combining previously similar services into more expansive service packages that are worth a significant amount of points. In crafting these substantial service items, staff has sought to specify clear parameters around what actually constitutes substantial while allowing enough flexibility for Developments to respond to the immediate needs of their residents. For example, for Children Supportive Services, staff does not necessarily specify what the after-school and summer classes should consist of, but staff does specify how many hours should be devoted to that service each week. For those Developments that do not wish to offer these more substantive services, staff has ensured that enough 1- and 2-point options remain to reach the required number of points.
- (b)(8) Development Accessibility Requirements (Pages 78 of 146). Staff has clarified a policy that has been set by precedent over the past year. In regards to meeting the visitability requirements of 10 TAC §11.101(b)(8)(B) for a Rehabilitation Development with townhome Units that do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the bathroom-related requirements of the visitability rule. In regards to Unit distribution, staff has added several clauses to explain that for applications that do not include Multifamily Loan funds the appropriate distribution of accessible Units is based simply on the number of bedrooms and full bathrooms. Staff will also allow for alternative methods of calculating accessible Unit distribution, if that method is approved by the Department prior to award or allocation.

<u>10 TAC Chapter 11, Subchapter C</u>

§11.201 – Procedural Requirements for Application Submission (Page 80 of 146). Staff has made minor changes to the paragraph pertaining to the Deficiency Process (10 TAC 11.201(7)). Because staff has clarified "Administrative Deficiency" and defined "Material Deficiency," staff has revised this paragraph to better explain how the Department will handle deficiencies.

§11.202 – Ineligible Applicants and Applications (Page 86 of 146). Staff has made changes to the paragraph pertaining to Applicant eligibility (10 TAC 11.202(1)(M) and (N)). If an Applicant fails to disclose in the Application any voluntary agreement with any governmental agency regarding noncompliance of any affordable housing Development requirements, that person may be found ineligible.

§11.203 – Public Notifications (Pages 89 of 146). Consistent with the changes made to the Pre-

Application section, noted above, staff added clarifying language relating to acceptable means for searching for Neighborhood Organizations, for purposes of notification, and clarified the terms "on record with the county" and "on record with the State."

§11.204 – Required Documentation for Application Submission (Page 91 of 146). Staff has rearranged and expanded on the requirements of the site plan (10 TAC 11.204(9)(A)). Staff has made minor changes to the paragraph pertaining to Site Control (10 TAC 11.204(10)), regarding identify of interest transactions and demonstrating control over points of ingress and egress. Staff has also clarified in 10 TAC 11.204(14), concerning Nonprofit Ownership, that the majority of the board of directors of the nonprofit must indicate clear approval of the organization's participation in each specific Application. A revision was made to allow a survey to be acceptable for up to 24 months, an increase from the previous 12 month requirement. Language was also added that prohibits a member of a nonprofit's board of directors, other than a chief staff member currently serving as a board member, from receiving material compensation for service on the board. Language addressing Income Averaging as an election was also added as it relates to what is needed for a real estate analysis evaluation.

Staff would also like to highlight that, for all applicable Third Party reports, the following language, either verbatim or in similar fashion has been added to the rules: "The report must also include the following statement, 'all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law.'"

10 TAC Chapter 11, Subchapter D

Staff has not made any substantive changes to the Department's Underwriting and Loan Policy rules. The only changes that stakeholders should bear in mind regard those where the underwriting rules had previously referenced the AMFI bands available to Applicants; those bands have been updated to reflect the availability of 20%, 70%, and 80% AMFI income and rent restrictions for Developments that make the new Average Income election, in addition to the 30%, 40%, 50%, and 60% AMFI income and rent restrictions already previously available for those Developments that made the 20/50 or 40/60 elections.

10 TAC Chapter 11, Subchapter E

The only substantive change to this subchapter is that staff has removed the fee required to be submitted for Third Party Deficiency Requests. Applicants will now be able to submit RFADs at no cost.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 11, Qualified Allocation Plan ("QAP"). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits ("LIHTC").

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, concerning the allocation of LIHTC.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

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

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a takings by the Department; therefore, no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule for administering the allocation of LIHTC. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018 to October 12, 2018 to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 11, Qualified Allocation Plan

Attachment 2 Preamble, including required analysis, for proposed new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 11, Qualified Allocation Plan ("QAP"). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: combine all rules affecting the Competitive and non-Competitive Housing Tax Credits ("HTCs") into one chapter of rules reflecting the Qualified Allocation Plan; update and revise definitions; update the program calendar; revise the distance requirement regarding proximity to proposed Development Sites in the same Application cycle; revise eligibility for the boost in Eligible Basis; increase the rural reservation for a region; clarify the search methods for identifying neighborhood organizations; revise tie-breaker factors for Competitive HTCs; revise Competitive HTC selection criteria; revise Site and Development Requirements and Restrictions, including, but not limited to, undesirable site features, neighborhood risk factors, mandatory Development amenities, common amenities, Unit and Development construction features, resident supportive services, and Development accessibility requirements; increase the mitigation options for neighborhood risk factors; increase the rural unit size limitation for tax-exempt bond developments; revise and clarify the deficiency process; expand on ineligibility criteria for Applicants; make minor revisions to Required Documentation for Application Submission; make minor changes to underwriting criteria that recognizes the availability of the Average Income election to HTC Developments; and, lastly, remove the Third Party Deficiency Request Fee, so that, in the 2019 QAP, the submission of a Request for an Administrative Deficiency ("RFAD") will be free.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action for two reasons: 1) the state's adoption of the QAP is necessary to comply with IRC §42; and 2) the state's adoption of the QAP is necessary to comply with Tx. Gov't Code §2306.67022. The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

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

Mr. Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits ("LIHTC").

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

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, but will result in a decrease in fees paid to the Department regarding Competitive HTCs, since the Department has removed the $500 fee associated with the submission of a Third Party Deficiency Request. Program participants will now be able to submit a Third Party Deficiency Request free-of-charge.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule has added new scoring options and has sought to clarify Application requirements. Notably, the proposed 2019 QAP has added definitions (10 TAC §11.1(d)), adjusted the distance requirement for the proximity of Development Sites proposed in

the same Application cycle (10 TAC §11.3(g)), increased the rural reserve amount per region, increased the maximum number of units that can be developed in rural areas for tax-exempt bond developments, added a new tie breaker factor (10 TAC 11.7), added a scoring item that allows for the Average Income election (10 TAC 11.9(c)(1)(C)-(D)), increased the allowable building costs per unit to qualify for points, added new "underserved area" scoring items (10 TAC §11.9(c)(5)), provided for various options to mitigate certain undesirable site features or neighborhood risk factors (10 TAC §11.101(a)(1) and §11.101(a)(2), respectively), increased in mandatory Development amenities (10 TAC §11.101(b)(4)), increased available options for common amenities (10 TAC §11.101(b)(5)), increased available options for Unit and Development construction features (10 TAC §11.101(b)(6)(B)), increased available options for resident supportive services (10 TAC 11.101(b)(7)), added criteria that renders an Applicant ineligible (10 TAC 11.202(1)), expanded site plan requirements under the architecture drawings (10 TAC §11.204(9)), expanded Site Control requirements (10 TAC §11.204(10)), added a requirement of Nonprofit boards submitting Applications to the Department (10 TAC §11.204(14)), and provided other minor changes to the rules in order to better clarify their purpose and intent.

Some "expansions" are offset by corresponding "contractions" in the rules, compared to the 2018 QAP. Notably, the propose 2019 QAP has removed some definitions (10 TAC §11.1(d)), removed several tie breaker factors (10 TAC §11.7), removed some language for concerted revitalization plan requirements (10 TAC §11.9(d)(7)), removed Development Site eligibility rules if three or more neighborhood risk factors are present (10 TAC §11.101(a)(3)(B)), removed one option for resident supportive services (10 TAC 11.101(b)(7)), provided an exemption of certain townhome Development Units from having to meet visitability requirements (10 TAC 11.101(b)(8)(B)), and removed the Third Party Deficiency Request Fee (previously 10 TAC 11.901(6)).

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tx. Gov't Code §2306.67022.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at §11.9(c)(1)(C)-(D) will now allow Competitive HTC Developments to make the Average Income election, which will allow for Units to be set aside for households whose income ranges between 20% and 80% of Area Median Family Income ("AMFI"). Previously, the only elections available to HTC Developments targeted 30%-60% AMFI households. Non-Competitive HTC Developments will also be able to make the Average Income election. By serving both extremely low income (20% AMFI) and modestly low-income (70%-80%) households, the proposed rule will be able to serve more families in Texas. Lower household expenses, made possible by living in a HTC Development, may boost discretionary income and savings among households making 20%-80% AMFI. Additionally, the revised resident supportive services available to Development Owners in 10 TAC §11.101(b)(7) allow Owners to offer services that may help to equip households in HTC Developments with the skills they need to pursue opportunities for upward mobility.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.67022. Some stakeholders have reported that their average cost of filing an application is between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. The proposed rules will result in a slightly lower cost of participating in a Competitive HTC Application cycle, as the Department has removed the fee associated

with submitting a Third Party Deficiency Request. Additionally, because of revisions to how Applicants may mitigate neighborhood risk factors, recipients of HTC awards may be able to decrease the cost of having to comply with this rule.

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

2. There are approximately 100 to 150 small or micro-businesses subject to the proposed rule for which the economic impact of the rule may range from $480 to many thousands of dollars, just to submit an Application for Competitive or non-Competitive HTCs. The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for LIHTC. The fee for submitting an Application for LIHTC is $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. While, in theory, there is no limit to the number of Units that could be proposed in a single Application, practically speaking, the Department sees few proposed Developments larger than 350 Units, which, by way of example, would carry a fee schedule of $10,500. These Application Fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing. Nor does this estimate include fees from the Department for Applications that successfully attain an award.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. The proposed rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private actors. If anything, a rural community securing a LIHTC Development will experience an economic benefit, not least among which is the potential increased property tax revenue from a large multifamily Development. Additionally, the new rule provides an increase to the amount reserved in each region for rural development, helping to ensure investment increases in rural areas, and provides an increase to the number of units that may be constructed in rural areas for tax-exempt bond developments, which may provided greater incentive for bond investment in rural areas.

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a takings by the Department. Therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).
The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may provide a possible positive economic effect on local employment in association with this rule since LIHTC Developments often involve a total input of, typically at a minimum, $5 million in capital, but often an input of $10 million - $30 million. Such a capital investment has concrete direct, indirect, and induced effects on the local and regional economies. However, because the exact location of where program funds and development are

directed is not determined in rule, there is no way to determine during rulemaking where the positive effects may occur. Furthermore, while the Department knows that any and all impacts are positive, that impact is not able to be quantified for any given community until a proposed Development is actually awarded LIHTC, given the unique characteristics of each proposed multifamily Development and region in which it is being developed.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the allocation of LIHTC. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing an application remains between $50,000 and $60,000, which may vary depending on the specific type of application, location of the development site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules. The proposed rules will result in a slightly lower cost of participating in a Competitive HTC Application cycle, as the Department has removed the fee associated with submitting a Third Party Deficiency Request. Additionally, because of revisions to how Applicants may mitigate neighborhood risk factors, recipients of HTC awards may be able to decrease the cost of having to comply with this rule.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed. If anything, Departmental revenues may increase due to a comparatively higher volume of Applications, which slightly increases the amount of fees TDHCA receives.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018 to October 12, 2018 to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patrick Russell, QAP Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Patrick Russell, QAP Public Comments, or by email to htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

Subchapter A – Pre-application, Definitions, Threshold Requirements and Competitive Scoring

§11.1.General.

(a) Authority. This chapter applies to the awarding and allocation by the Texas Department of Housing and Community Affairs (the "Department") of Competitive and non-Competitive Housing Tax Credits. The federal laws providing for the awarding and allocation of Housing Tax Credits require states to adopt a qualified allocation plan. Pursuant to Tex. Gov't Code, Chapter 2306, Subchapter DD, the Department is assigned responsibility for this activity. As required by Internal Revenue Code (the "Code"), §42(m)(1), the Department has developed this Qualified Allocation Plan ("QAP") and it has been duly approved to establish the procedures and requirements relating to an award and allocation of Housing Tax Credits. All requirements herein and all those applicable to a Housing Tax Credit Development or an Application under Chapter 10 of this title (relating to Asset Management and Compliance rules) ~~(relating to Uniform Multifamily Rules), or otherwise incorporated by reference herein~~ collectively constitute the QAP required by Tex. Gov't Code §2306.67022. Unless otherwise specified, certain provisions in sections §11.1 through §11.4 also apply to non-Competitive Housing Tax Credits. Subchapters B through E of this chapter also apply to non-Competitive Housing Tax Credits and Multifamily Direct Loans. Applicants ~~pursuing such assistance from the Department~~ are required to certify, among other things, that they have familiarized themselves with the rules that govern that specific program including, but not limited to, Chapter 1 of this title (relating to Administration), Chapter 8 of this title (relating to 811 Project Rental Assistance Program Rule), Chapter ~~11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter~~ 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 (relating to Multifamily Direct Loan Rule), and other Department rules. This ~~chapter~~subchapter does not apply to ~~any project-based rental assistance or~~ operating assistance programs or funds unless incorporated by reference in whole or in part in a Notice of Funding Availability ("NOFA") or rules for such a program except to the extent that Developments receiving such assistance and otherwise subject to this chapter remain subject to this chapter.

(b) Due Diligence and Applicant Responsibility. Department staff may, from time to time, make available for use by Applicants information and informal guidance in the form of reports~~, frequently asked questions,~~ and responses to specific questions. The Department encourages communication with staff in order to clarify any issues that may not be fully addressed in the QAP or may be unclear when applied to specific facts. However, while these resources are offered to help Applicants prepare and submit accurate information, Applicants should also appreciate that this type of guidance is limited by its nature and that staff will apply the rules of the QAP to each specific situation as it is presented in the submitted Application. The Multifamily Programs Procedures Manual ~~and Frequently Asked Questions website posting are~~is not ~~rules~~a rule and ~~are~~is provided as good faith guidance and assistance, but in all respects the statutes and rules governing the Low Income Housing Tax Credit program supersede these guidelines and are controlling. Moreover, after the time that an issue is initially presented and guidance is provided, additional information may be identified and/or the issue itself may continue to develop based upon additional research and guidance. Thus, until confirmed through final action of the Board, staff guidance must be considered merely as an aid and an Applicant continues to assume full responsibility for any actions Applicant takes regarding an Application. In addition, although the Department may compile data

DRAFT

from outside sources in order to assist Applicants in the Application process, it remains the sole responsibility of the Applicant to perform independently the necessary due diligence to research, confirm, and verify any data, opinions, interpretations, or other information upon which an Applicant bases an Application or includes in any submittal in connection with an Application. As provided by Tex. Gov't Code §2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that ~~applicant's~~Applicant's score or the seventh day from the date of transmittal of a scoring notice; provided, however, that an ~~applicant~~Applicant may not appeal any scoring matter after the award of credits unless they are within the above-described time limitations and have appeared at the meeting when the Department's Governing Board makes competitive tax credit awards and stated on the record that they have an actual or possible appeal that has not been heard. Appeal rights may be triggered by the publication on the Department's website of the results of the evaluation process.

(c) Competitive Nature of Program. Applying for ~~c~~Competitive ~~h~~Housing ~~t~~Tax ~~c~~Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to 10 TAC §1.1. As a result of the highly competitive nature of applying for Housing ~~t~~Tax ~~c~~Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm with respect to both date and time and cannot be waived except where authorized and for truly extraordinary circumstances, such as the occurrence of a significant natural disaster that could not have been anticipated and makes timely adherence impossible. If an Applicant chooses, where permitted, to submit by delivering an item physically to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. Applicants should further ensure that all required documents are included, legible, properly organized, and tabbed, and that materials in required formats involving digital media are complete and fully readable. Applicants are strongly encouraged to submit the required items well in advance of established deadlines. ~~Staff, when accepting Applications, may conduct limited reviews at the time of intake as a courtesy only. If staff misses an issue in such a limited review, the fact that the Application was accepted by staff or that the issue was not identified does not operate to waive the requirement or validate the completeness, readability, or any other aspect of the Application.~~

(d) Definitions. The capitalized terms or phrases used herein are defined below. ~~in §10.3 of this title (relating to Definitions), unless the context clearly indicates otherwise. Any capitalized terms that are defined in Tex. Gov't Code Chapter 2306, §42 of the Code, or other Department rules have, when capitalized, the meanings ascribed to them therein. Defined terms when not capitalized, are to be read in context and construed according to common usage. Terms defined in this chapter apply to the Housing Tax Credit Program, Multifamily Housing Revenue Bond Program, Direct Loan Program and any other programs for the development of affordable rental property administered by the Department and as may be defined in this title~~. Any capitalized terms not specifically mentioned in this section or any section referenced in this document shall have the meaning as defined in Tex. Gov't Code Chapter 2306, Internal Revenue Code (the "Code") §42, the HOME Final Rule, and other federal or Department rules, as applicable. Defined terms, when not capitalized, are to be read in context and construed according to common usage.

(1) Adaptive Reuse--The change-in-use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes (e.g., school, warehouse, office, hospital, hotel, etc.), into a building which will be used, in whole or in part, for residential purposes. Adaptive reuse requires that ~~the exterior walls of the existing building remain in place. All units must be contained within the original exterior walls of the existing building. Porches and patios may protrude beyond the exterior walls.~~a substantial portion of the original building remains at

DRAFT

completion of the proposed Development. Ancillary non-residential buildings, such as a clubhouse, leasing office and/or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered as New Construction.

(2) Administrative Deficiencies--Information requested by Department staff that staff requires to clarify or explain one or more inconsistencies; to provide non-material missing information in the original Application; or to assist staff in evaluating the Application that, in the Department staff's reasonable judgment, may be cured by supplemental information or explanation which will not necessitate a substantial reassessment or re-evaluation of the Application. Administrative Deficiencies may be issued at any time while the Application or Contract is under consideration by the Department, including at any time while reviewing performance under a Contract, processing documentation for a Commitment of Funds, closing of a loan, processing of a disbursement request, close-out of a Contract, or resolution of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency.~~ Any missing item(s) relating to a scoring item will be deemed by staff to have constituted a Material Deficiency that supports the non-award of the points.~~ By way of example, if an Applicant checks a box for three points for a particular scoring item but provides supporting documentation that would support two points, staff would treat this as an inconsistency and issue an Administrative Deficiency which might ultimately lead to a correction of the checked boxes to align with the provided supporting documentation and support an award of two points. However, if the supporting documentation was missing altogether, this could not be remedied and the point item would be assigned no points.

(3) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other Person. All entities that share a Principal are Affiliates.

(4) Affordability Period--The Affordability Period commences as specified in the Land Use Restriction Agreement ~~(~~("LURA~~)~~") or federal regulation, or commences on the first day of the Compliance Period as defined by the Code §42(i)(1), and continues through the appropriate program's affordability requirements or termination of the LURA, whichever is earlier. The term of the Affordability Period shall be imposed by the LURA or other deed restriction and may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for Direct Loan Developments that fail to meet program requirements. During the Affordability Period, the Department shall monitor to ensure compliance with programmatic rules as applicable, regulations, and Application representations.

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development, as defined more fully in ~~the~~ Code, §42(b).

(A) for purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70 percent present value credits, pursuant to ~~the~~ Code, §42(b); or

(ii) fifteen basis points over the current applicable percentage for 30 percent present value credits, unless fixed by Congress, pursuant to Code, §42(b) ~~of the Code~~ for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

DRAFT

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any individual or a group of individuals and any Affiliates who file an Application for funding or tax credits subject to the requirements of this chapter or 10 TAC Chapters ~~11,~~ 12~~,~~ or 13 and who have undertaken or may contemplate the later formation of one or more business entities, such as a limited partnership, that is to be engaged in the ownership of a Development. In administering the application process the Department staff will assume that the ~~applicant~~ Applicant will be able to form any such entities and that all necessary rights, powers, and privileges including, but not limited to, ~~site~~ Site ~~control~~ Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this Chapter and 10 TAC Chapters ~~11,~~ 12 and 13, as applicable.

(7) Application Acceptance Period--That period of time during which Applications may be submitted to the Department. ~~–~~For Tax-Exempt Bond Developments it is the date the Application is submitted to the Department.

(8) Award Letter and Loan Term Sheet--A document that may be issued to an awardee of a Direct Loan before the issuance of a Commitment and/or Contract which preliminarily sets forth the terms and conditions under which the Direct Loan will be made available. An Award Letter and Loan Term Sheet will typically be contingent on the awardee satisfying certain requirements prior to executing a Commitment and/or Contract.

(9) Bank Trustee--A federally insured bank with the ability to exercise trust powers in the State of Texas.

(10) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; is self contained with a door (or the Unit contains a second level sleeping area of 100 square feet or more); has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(11) Breakeven Occupancy--The occupancy level at which rental income plus secondary income is equal to all operating expenses, including replacement reserves and taxes, and mandatory debt service requirements for a Development.

(12) Building Costs--Cost of the materials and labor for the vertical construction or rehabilitation of buildings and amenity structures.

(13) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and U.S. Treasury Regulations, §1.42-6.

(14) Carryover Allocation Agreement--A document issued by the Department, and executed by the Development Owner, pursuant to §10.402(f) of this Title~~chapter~~ (relating to Housing Tax Credit and Tax Exempt Bond Developments).

(15) Cash Flow--The funds available from operations after all expenses and debt service required to be paid have been considered.

(16) Certificate of Reservation or Traditional Carryforward Designation--The notice given by the Texas Bond Review Board ("TBRB") to an issuer reserving a specific amount of the private activity bond state ceiling for a specific ~~issue of bonds~~Development.

DRAFT

(17) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of the Treasury or the Internal Revenue Service ("IRS").

(18) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(19) Commitment (also referred to as Contract)--A legally binding written contract, setting forth the terms and conditions under which housing tax credits, loans, grants, or other sources of funds or financial assistance from the Department will be made available.

(20) Commitment of Funds--Occurs after the Development is approved by the Board and once a Commitment or Award Letter and Loan Term Sheet is executed between the Department and Development Owner. For Direct Loan Programs, this process is distinct from "Committing to a specific local project" as defined in 24 CFR Part 92, which may occur when the activity is set up in the disbursement and information system established by HUD~~;~~, known as the Integrated Disbursement and Information System ~~(~~("IDIS~~).~~"). The Department's commitment of funds may not align with commitments made by other financing parties.

(21) Committee--See Executive Award and Review Advisory Committee.

(22) Common Area--Enclosed space outside of Net Rentable Area, whether conditioned or unconditioned, to include such area contained in: property management offices, resident service offices, 24-hour front desk office, clubrooms, lounges, community kitchens, community restrooms, exercise rooms, laundry rooms, mailbox areas, food pantry, meeting rooms, libraries, computer labs, classrooms, break rooms, flex space programmed for resident use, interior corridors, common porches and patios, and interior courtyards. Common area does not include individualized garages, maintenance areas, equipment rooms, or storage.

(~~22~~23) Comparable Unit--A Unit, when compared to the subject Unit, is similar in net rentable square footage, number of bedrooms, number of bathrooms, overall condition, location (with respect to the subject Property based on proximity to employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common amenities.

(~~23~~24) Competitive Housing Tax Credits ("HTC")--Tax credits available from the State Housing Credit Ceiling.

(~~24~~25) Compliance Period--With respect to a building financed ~~by~~, in part with proceeds of Housing Tax Credits, the period of fifteen (15) taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1~~) of the Code.~~).

(~~25~~26) Continuously Occupied--The same household has resided in the Unit for at least twelve (12) months.

(~~26~~27) Contract--See Commitment.

(~~27~~28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(~~28~~29) Contractor--See General Contractor.

(~~29~~30) Control (including the terms "Controlling," "Controlled by," and/or "under common Control with")--The power, ability, or authority, acting alone or in concert with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. As used herein "acting in concert" involves more than merely serving as a single member of a multi-

DRAFT

member body. For example a single director on a five person board is not automatically deemed to be acting in concert with the other members of the board because they retain independence of judgment. —However, by way of illustration, if that director is one of three directors on a five person board who all represent a single shareholder, they clearly represent a single interest and are presumptively acting in concert. —Similarly, a single shareholder owning only a five percent interest might not exercise control under ordinary circumstances, but if they were in a voting trust under which a majority block of shares were voted as a group, they would be acting in concert with others and in a control position. However, even if a member of a multi-member body is not acting in concert and therefore does not exercise control in that role, they may have other roles, such as executive officer positions, which involve actual or apparent authority to exercise control. Controlling entities of a partnership include the general partners, may include special limited partners when applicable, but not investor limited partners or special limited partners who do not possess other factors or attributes that give them Control. Controlling entities of a limited liability company include but are not limited to the managers, managing members, any members with 10 percent or more ownership of the limited liability company, and any members with authority similar to that of a general partner in a limited partnership, but not investor members who do not possess other factors or attributes that give them Control. Controlling individuals or entities of a corporation, including non-profit corporations where such powers have been specifically delegated to one or more members, include voting members of the corporation's board, whether or not any one member did not participate in a particular decision due to recusal or absence. Multiple Persons may be deemed to have Control simultaneously.

(~~30~~31) Debt Coverage Ratio ("DCR")--Sometimes referred to as the "Debt Coverage" or "Debt Service Coverage." Calculated as Net Operating Income for any period divided by scheduled debt service required to be paid during the same period.

(~~31~~32) Deferred Developer Fee--The portion of the Developer Fee used as a source of funds to finance the development and construction of the Property.

(~~32~~33) Deobligated Funds--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and a Development Owner or Applicant.

(~~33~~34) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which specifies the Department's preliminary determination as to the amount of tax credits that the Development may be eligible to claim pursuant to the Code, §42(m)(1)(D).

(~~34~~35) Developer--Any Person entering into a contractual relationship with the Owner to provide Developer Services with respect to the Development and receiving the right to earn a fee for such services and any other Person receiving any portion of a Developer Fee, whether by subcontract or otherwise, except if the Person is acting as a consultant with no Control-. The Developer may or may not be a Related Party or Principal of the Owner.

(~~35~~36) Developer Fee--Compensation in amounts defined in §~~10~~11.302(e)(7) of this chapter (relating to Underwriting Rules and Guidelines) paid by the Owner to the Developer for Developer Services inclusive of compensation to a Development Consultant(s), Development Team member or any subcontractor that performs Developer Services or provides guaranties on behalf of the Owner will be characterized as Developer Fee. A person who is entitled to a Developer Fee assumes the risk that it may not be paid if the anticipated sources of repayment prove insufficient.

DRAFT

(~~36~~37) Developer Services--A scope of work relating to the duties, activities and responsibilities for pre-development, development, design coordination, and construction oversight of the Property generally including but not limited to:

(A) site selection and purchase or lease contract negotiation;

(B) identifying and negotiating sources of construction and permanent financing, including financing provided by the Department;

(C) coordination and administration of activities, including the filing of applications to secure such financing;

(D) coordination and administration of governmental permits, and approvals required for construction and operation;

(E) selection and coordination of development consultants including architect(s), engineer(s), third-party report providers, attorneys, and other design or feasibility consultants;

(F) selection and coordination of the General Contractor and construction contract(s);

(G) construction oversight;

(H) other consultative services to and for the Owner;

(I) guaranties, financial or credit support if a Related Party; and

(J) any other customary and similar activities determined by the Department to be Developer Services.

(~~37~~38) Development--A residential rental housing project that consists of one or more buildings under common ownership and financed under a common plan which has applied for Department funds. ~~This includes a project consisting~~This includes a proposed qualified low income housing project, as defined by Code, §42(g), that consists of one or more buildings containing multiple units owned that is financed under a common plan, and that is owned by the same person for federal tax purposes and may consist of multiple buildings that are located on scattered sites and contain only rent restricted units. (§2306.6702~~)~~(a)(6))

(~~38~~39) Development Consultant or Consultant--Any Person who provides professional or consulting services relating to the filing of an Application, or post award documents as required by the program.

(~~39~~40) Development Owner (also referred to as "Owner")--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract or ground lease approved by the Department and is responsible for performing under the allocation and/or Commitment with the Department. (§2306.6702~~)~~(a)(7))

(~~40~~41) Development Site--The area~~,~~ or, if more than one tract (which may be deemed by the Internal Revenue Service and/or the Department to be a scattered site~~,~~), areas on which the Development is proposed and to be encumbered by a LURA.

(~~41~~42) Development Team--All Persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of the subject Development, including any Development Consultant and Guarantor.

(~~42~~43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment Funds ("TCAP ~~Repayment~~RF") or State Housing Trust Fund or other program available through the

DRAFT

Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract or the loan documents. The tax-exempt bond program is specifically excluded.

(~~43~~44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75 percent or less of the statewide median household income and in a municipality or, if not within a municipality, in a county that has been awarded funds under the Economically Distressed Areas Program administered by the Texas Water Development Board within the five (5) years ending at the beginning of the Application Acceptance Period. Notwithstanding all other requirements, for funds awarded to another type of political subdivision (e.g., a water district), the Development Site must be within the jurisdiction of the political subdivision.

(~~44~~45) Effective Gross Income ("EGI")--The sum total of all sources of anticipated or actual income for a rental Development, less vacancy and collection loss, leasing concessions, and rental income from employee-occupied units that is not anticipated to be charged or collected.

(~~45~~46) Efficiency Unit--A Unit without a separately enclosed Bedroom designed principally for use by a single person.

(~~46~~47) Elderly Development--A Development that either meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act or a Development that receives federal funding that has a requirement for a preference or limitation for elderly persons or households, but must accept qualified households with children.

~~Elderly Development--A Development that is subject to an Elderly Limitation or a Development that is subject to an Elderly Preference.~~

~~(A) Elderly Limitation Development--A Development subject to an "elderly limitation" is a Development that meets the requirements of the Housing for Older Persons Act ("HOPA") under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly (unless the funding is from a federal program for which the Secretary of HUD has confirmed that it may operate as a Development that meets the requirements of HOPA); or~~

~~(B) Elderly Preference Development--A property receiving certain types of federal assistance is a Development subject to an "elderly preference." A Development subject to an Elderly Preference must lease to other populations, including in many cases elderly households with children. A property that is deemed to be a Development subject to an Elderly Preference must be developed and operated in a manner which will enable it to serve reasonable foreseeable demand for households with children, including, but not limited to, making provision for such in developing its unit mix and amenities.~~

(~~47~~48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(~~48~~49) Environmental Site Assessment ("ESA")--An environmental report that conforms to the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E 1527) and conducted in accordance with §~~10~~11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(~~49~~50) Executive Award and Review Advisory Committee ("EARAC" also referred to as the "Committee")--The Department committee required by Tex. Gov't Code §2306.1112.

DRAFT

(~~50~~51) Existing Residential Development--Any Development Site which contains existing residential ~~units~~ Units at any time ~~after~~as of the beginning of the Application Acceptance Period.

(~~51~~52) Extended Use Period--With respect to an HTC building, the period beginning on the first day of the Compliance Period and ending the later of:

(A) the date specified in the LURA~~Land Use Restriction Agreement~~; or

(B) the date which is fifteen (15) years after the close of the Compliance Period.

(~~52~~53) First Lien Lender--A lender whose lien has first priority as a matter of law or by operation of a subordination agreement or other intercreditor agreement.

(~~53~~54) General Contractor (including "Contractor")--One who contracts to perform the construction or rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in subparagraphs (A) and (B) of this paragraph:

(A) any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) if more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(~~54~~55) General Partner--Any person or entity identified as a general partner in a certificate of formation for the partnership or is later admitted to an existing partnership as a general partner that is the Development Owner and that Controls the partnership. Where a limited liability corporation is the legal structure employed rather than a limited partnership, the manager or managing member of that limited liability corporation is deemed, for the purposes of these rules, to be the functional equivalent of a general partner.

(~~55~~56) Governing Body--The elected or appointed body of public or tribal officials, responsible for the enactment, implementation, and enforcement of local rules and the implementation and enforcement of applicable laws for its respective jurisdiction.

(~~56~~57) Governmental Entity--Includes federal, state or local agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts, tribal governments and other similar entities.

(~~57~~58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand.

(~~58~~59) Gross Demand--The sum of Potential Demand from the Primary Market Area ("PMA") and demand from other sources.

(~~59~~60) Gross Program Rent--Maximum rent limits based upon the tables promulgated by the Department's division responsible for compliance, which are developed by program and by county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") or national non-metro area.

(~~60~~61) Guarantor--Any Person that provides, or is anticipated to provide, a guaranty for all or a portion of the equity or debt financing for the Development.

DRAFT

(~~61~~62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(~~62~~63) HTC Property--See HTC Development.

(~~63~~64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(~~64~~65) Historically Underutilized Businesses ("HUB")--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(~~65~~66) 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.

(~~66~~67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code. ~~for a specific Application in accordance with the provisions of this chapter and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).~~

(~~67~~68) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, the amount of Housing Tax Credits the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the Affordability Period and which the Board allocates to the Development.

~~(68) Housing Quality Standards ("HQS")--The property condition standards described in 24 CFR §982.401.~~

(69) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the Owner as the minimum period for which Units in the Development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(70) Integrated Disbursement and Information System ("IDIS")--The electronic grants management information system established by HUD to be used for tracking and reporting HOME funding and progress and which may be used for other sources of funds as established by HUD.

(71) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the Development Owner which is a binding covenant upon the Development Owner and successors in interest, that, when recorded, encumbers the Development with respect to the requirements of the programs for which it receives funds. (§2306.6702)

(72) Low-Income Unit--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department utilizing its published income limits.

(73) Managing General Partner--A general partner of a partnership (or, as provided for in paragraph (55) of this subsection, its functional equivalent) that is vested with the authority to take actions that are binding on behalf of the partnership and the other partners. The term Managing General Partner can also refer to a manager or managing member of a limited liability company where so designated to bind the limited liability company and its members under its Agreement or any other person that has such powers in fact, regardless of their organizational title.

DRAFT

(74) Market Analysis--Sometimes referred to as "Market Study." An evaluation of the economic conditions of supply, demand and rental rates conducted in accordance with §~~10~~11.303 of this chapter (relating to Market Analysis Rules and Guidelines) as it relates to a specific Development.

(75) Market Analyst--A real estate appraiser or other professional familiar with the subject property's market area who prepares a Market Analysis.

(76) Market Rent--The achievable rent at the subject Property for a Unit without rent and income restrictions determined by the Market Analyst or Underwriter after adjustments are made to actual rents on Comparable Units to account for differences in net rentable square footage, functionality, overall condition, location (with respect to the subject Property based on proximity to primary employment centers, amenities, services and travel patterns), age, unit amenities, utility structure, and common area amenities. The achievable rent conclusion must also consider the proportion of market units to total units proposed in the subject Property.

(77) Market Study--See Market Analysis.

(78) Material Deficiency--Any deficiency in a Pre-Application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. ~~May include a group of Administrative Deficiencies that, taken together, create the need for a substantial re-assessment or reevaluation of the Application.~~Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

(79) Multifamily Programs Procedures Manual--The manual produced and amended from time to time by the Department which reiterates and implements the rules and provides guidance for the filing of multifamily related documents.

(80) Net Operating Income ("NOI")--The income remaining after all operating expenses, including replacement reserves and taxes ~~that~~ have been paid.

(81) Net Program Rent--Calculated as Gross Program Rent less Utility Allowance.

(82) Net Rentable Area ("NRA")--The unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a unit or to the middle of walls in common with other units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

(83) Non-HTC Development--Sometimes referred to as Non-HTC Property. Any Development not utilizing Housing Tax Credits or Exchange funds.

(84) Notice of Funding Availability ("NOFA")--A notice issued by the Department that announces funding availability, usually on a competitive basis, for multifamily rental programs requiring Application submission from potential Applicants.

(85) Off-Site Construction--Improvements up to the Development Site such as the cost of roads, water, sewer, and other utilities to provide access to and service the Site.

(86) Office of Rural Affairs--An office established within the Texas Department of Agriculture; formerly the Texas Department of Rural Affairs.

DRAFT

(87) One Year Period ("1YP")--The period commencing on the date on which the Department and the Owner agree to the Qualified Contract price in writing and continuing for twelve (12) calendar months.

(88) Owner--See Development Owner.

(89) Person--Without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(90)~~s~~ Person or Persons with Disabilities--With respect to an individual, means that such person has:

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) is regarded as having such an impairment, to include persons with severe mental illness and persons with substance abuse disorders.

(91) Physical Needs Assessment--See Property Condition Assessment.

(92) Place--An area defined as such by the United States Census Bureau, which, in general, includes an incorporated city, town, or village, as well as unincorporated areas known as census designated places. Any part of a census designated place that, at the time of Application, is within the boundaries of an incorporated city, town or village will be considered as part of the incorporated area. The Department may provide a list of Places for reference.

(93) Post Award Activities Manual--The manual produced and amended from time to time by the Department which explains the post award requirements and provides guidance for the filing of such documentation.

(94) Potential Demand--The number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placement in service date.

(95) Preservation--Activities that extend the affordability period for rent-restricted Developments that are at risk of losing low-income use restrictions or subsidies.

(96~~5~~) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §~~10~~11.303 of this chapter from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(97~~6~~) Primary Market Area ("PMA")--See Primary Market.

(98~~7~~) Principal--Persons that will be capable of exercising Control (which ~~includes~~may include voting board members pursuant to §~~10.3(a~~11.1(d)(~~29~~30) of this chapter) over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) partnerships, Principals include all General Partners, and Principals with ownership interest and special limited partners with ownership interest who also possess factors or attributes that give them Control;

(B) corporations, Principals include any officer authorized by the board of directors, regardless of title, given broad or general authority to act on behalf of the corporation, including but not limited to the president, vice president, secretary, treasurer, and all other executive officers, and

DRAFT

each stock holder having a 10 percent or more interest in the corporation, and any individual who has Control with respect to such stock holder; and

(C) limited liability companies, Principals include all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(99~~8~~) Pro Forma Rent--For a restricted Unit, the lesser of the Net Program Rent or the Market Rent. For an unrestricted unit, the Market Rent. Contract Rents, if applicable, will be used as the Pro Forma Rent.

(~~99~~100) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built or rehabilitated thereon in connection with the Application.

(101~~0~~) Property Condition Assessment ("PCA")--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The PCA provides an evaluation of the physical condition of an existing Property to evaluate the immediate cost to rehabilitate and to determine costs of future capital improvements to maintain the Property. The PCA must be prepared in accordance with §~~10~~11.306 of this chapter (relating to Property Condition Assessment Guidelines) as it relates to a specific Development.

(102~~1~~) Qualified Contract ("QC")--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(103~~2~~) Qualified Contract Price ("QC Price")--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F)~~ of the Code~~ and as further delineated in §10.408 of this Title~~chapter~~ (relating to Qualified Contract Requirements).

(104~~3~~) Qualified Contract Request ("Request")--A request containing all information and items required by the Department relating to a Qualified Contract.

(105~~4~~) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A)~~ of the Code~~ and any entity controlled by such a qualified entity.

(106~~5~~) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5)~~ of the Code~~, includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(107~~6~~) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C)~~ of the Code~~ for all purposes, and for an allocation in the nonprofit set-aside or subsequent transfer of the property, when applicable, meets the requirements of Tex. Gov't Code §2306.6706, and §2306.6729, and Code, §42(h)(5)~~ of the Code~~.

~~(107) Qualified Purchaser--Proposed purchaser of the Development who meets all eligibility and qualification standards stated in this chapter of the year the Request is received, including attending, or assigning another individual to attend, the Department's Property Compliance Training.~~

(108) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of ~~an equal number of~~ units ~~or less~~ on the same or another Development Site. At least one Unit must be reconstructed in order to qualify as Reconstruction. The total number of units to be reconstructed will be determined by program

DRAFT

requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(109) Rehabilitation--The improvement or modification of an Existing Residential Development through alteration, incidental addition or enhancement. The term includes the demolition of an Existing Residential Development and the Reconstruction of a Development on the Development Site, but does not include Adaptive Reuse. (§2306.004(26-a)) More specifically, Rehabilitation is the repair, refurbishment and/or replacement of existing mechanical and/or structural components, fixtures and finishes. Rehabilitation will correct deferred maintenance, reduce functional obsolescence to the extent possible and may include the addition of: energy efficient components and appliances, life and safety systems; site and resident amenities; and other quality of life improvements typical of new residential Developments.

~~(110) Related Party--As defined in Tex. Gov't Code, §2306.6702.~~

(110~~1~~) Relevant Supply--The supply of Comparable Units in proposed and Unstabilized Developments targeting the same population including:

(A) the proposed subject Units;

(B) Comparable Units in another proposed development within the PMA with a priority Application over the subject, based on the Department's evaluation process described in §~~10~~11.201(6) of this chapter (relating to Procedural Requirements for Application Submission) that may not yet have been presented to the Board for consideration of approval; and

(C) Comparable Units in previously approved but Unstabilized Developments in the PMA.

(~~112~~111) Report--See Underwriting Report.

(~~113~~112) Request--See Qualified Contract Request.

(~~114~~113) Reserve Account--An individual account:

(A) created to fund any necessary repairs or other needs for a ~~multifamily rental housing~~ Development; and

(B) maintained by a First Lien Lender or Bank Trustee.

(~~115~~114) Right of First Refusal ("ROFR")--An Agreement to provide a ~~right~~series of priority rights to negotiate for the purchase ~~the Propertyto~~of a Property by a Qualified Entity or a Qualified Nonprofit ~~Organization, as applicable, with priority to that of any other buyer at a~~Organization at a negotiated price at or above the minimum purchase price as defined in Code~~,~~ §42(i)(7) or as established in accordance with an applicable LURA.

(~~116~~115) Rural Area--

(A) a Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

DRAFT

(B) for areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §~~10~~11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §~~10~~11.204(5)(B).

(~~117~~116) Single Room Occupancy ("SRO")--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(11~~8~~7) Site Control--Ownership or a current contract or series of contracts, that meets the requirements of §11~~10~~.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

(~~119~~118) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(~~120~~119) State Housing Credit Ceiling--The aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with applicable federal law, including Code, §42(h)(3)(C)~~ of the Code~~, and Treasury Regulation §1.42-14.

(~~121~~120) Sub-Market--An area defined by the Underwriter based on general overall market segmentation promulgated by market data tracking and reporting services from which a proposed or existing Development is most likely to draw the majority of its prospective tenants or homebuyers.

(~~122~~121) Supportive Housing--A residential rental Development: ~~that is:~~

(A) that is intended for occupancy by households in need of specialized and specific non-medical services in order to maintain independent living;

(B) in which the provision of services are provided primarily on-site by the Applicant, an Affiliate of the Applicant or a third party provider and the service provider must be able to -demonstrate a record of providing substantive- services similar to those proposed in the subject Application in residential settings for at least three years prior to the Application Acceptance Period;

(C) in which the services offered must include case management and ~~tenant~~ resident services that either aid tenants in addressing debilitating conditions or assist ~~tenants~~ residents in securing the skills, assets, and connections needed for independent living. Resident populations primarily include the homeless and those at-risk of homelessness; ~~and~~

(D) for which the Applicant, General Partner, or Guarantor must meet the following:

(i) demonstrate that it, alone or in partnership with a third party provider, has at least three years experience in developing and operating housing similar to the proposed housing;

(ii) demonstrate that it has secured sufficient funds necessary to maintain the Development's operations through the Affordability Period;

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to ~~fill~~address any unanticipated operating losses; and

(E) that is not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt).

DRAFT

Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). In addition, permanent foreclosable, cash-flow debt provided by an Affiliate is permissible if originally sourced from charitable contributions or pass-through local government non-federal funds. Any amendment to an Application or LURA resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609.

(~~123~~122) TDHCA Operating Database--Sometimes referred to as "TDHCA Database." A consolidation of recent actual income and operating expense information collected through the Department's Annual Owner Financial Certification process, as required and described in Chapter 10, Subchapter F of this title~~chapter~~ (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(~~124~~123) Target Population--The designation of types of housing populations shall include Elderly Developments, and those that are Supportive Housing. All others will be considered to serve general populations without regard to any subpopulations.

(~~125~~124) Tax-Exempt Bond Development--A Development requesting or having been awarded Housing Tax Credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in Code, §42(h)(4)~~ of the Code~~, such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(~~126~~125) Tax-Exempt Bond Process Manual--The manual produced and amended from time to time by the Department which explains the process and provides guidance for the filing of a Housing Tax Credit Application utilizing Tax-Exempt Bonds.

(~~127~~126) Third Party--A Person who is not:

(A) an Applicant, General Partner, Developer, or General Contractor; or

(B) an Affiliate to the Applicant, General Partner, Developer, or General Contractor; or

(C) anyone receiving any portion of the administration, contractor, or Developer fees from the Development; or

(D) ~~any individual that is an executive officer or member of the governing board or has greater than 10 percent ownership interest in any of the entities are identified in subparagraphs (A) - (C) of this paragraph.~~ in Control with respect to the Development Owner.

(~~128~~127) Total Housing Development Cost--The sum total of the acquisition cost, Hard Costs, soft costs, Developer fee and General Contractor fee incurred or to be incurred through lease-up by the Development Owner in the acquisition, construction, rehabilitation, and financing of the Development.

(~~129~~128) Transitional Housing--A Supportive Housing development that includes living Units with more limited individual kitchen facilities and is:

(A) used exclusively to facilitate the transition of homeless individuals and those at-risk of becoming homeless, to independent living within twenty-four (24) months; and

(B) is owned by a Development Owner that includes a governmental entity or a nonprofit which provides temporary housing and supportive services to assist such individuals in, among other things, locating and retaining permanent housing. The limited kitchen facilities in individual Units must be appropriately augmented by suitable, accessible shared or common kitchen facilities.

DRAFT

(~~130~~129) U.S. Department of Agriculture ("USDA")--Texas Rural Development Office ("TRDO") serving the State of Texas.

(~~131~~130) U.S. Department of Housing and Urban Development ("HUD")-regulated Building--A building for which the rents and utility allowances of the building are reviewed by HUD.

(~~132~~131) Underwriter--The author(s) of the Underwriting Report.

(~~133~~132)Underwriting Report--Sometimes referred to as the "Report." A decision making tool prepared by the Department's Real Estate Analysis Division that is used by the Department and Board containing a synopsis and reconciliation of the Application information submitted by the Applicant~~.~~ and that Division's conclusion that the Development will be financially feasible as required by Code §42(m).

(~~134~~133) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter~~, Chapter 11,~~ or Chapters 12 ~~or~~and 13 of this title that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(~~135~~134) Uniform Physical Condition Standards ("UPCS")--As developed by the Real Estate Assessment Center of HUD.

(~~136~~135) Unit--Any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.

(~~137~~136) Unit Type--Units will be considered different Unit Types if there is any variation in the number of bedrooms, full bathrooms or a square footage difference equal to or more than 120 square feet.~~ For example: A two Bedroom/one full bath Unit is considered a different Unit Type than a two Bedroom/two full bath Unit. A three Bedroom/two full bath Unit with 1,000 square feet is considered a different Unit Type than a three Bedroom/two full bath Unit with 1,200 square feet. A one Bedroom/one full bath Unit with 700 square feet will be considered an equivalent Unit Type to a one Bedroom/one full bath Unit with 800 square feet~~. A powder room is the equivalent of a half-bathroom but does not by itself constitute a change in Unit Type.

(~~138~~137) Unstabilized Development--A development with Comparable Units that has been approved for funding by the Department's Board of Directors or is currently under construction or has not maintained a 90 percent occupancy level for at least ninety (90) days following construction completion. A development may be deemed stabilized by the Underwriter based on factors relating to a development's lease-up velocity, Sub-Market rents, Sub-Market occupancy trends and other information available to the Underwriter. The Market Analyst may not consider such development stabilized in the Market Study.

(~~139~~138) Urban Area--A Place that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than a Place described by paragraph (~~116~~115)(A) of this subsection. For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §~~10~~11.204(5) of this chapter.

(~~140~~139) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this Title~~chapter~~ (relating to Utility Allowances).

(~~141~~140) Work Out Development--A financially distressed Development for which the Owner and/or a primary financing participant is seeking a change in the terms of Department funding or program restrictions.

DRAFT

(e) Data. Where this chapter requires the use of American Community Survey or Housing & Urban Development data, the Department shall use the most current data available as of October 1, ~~2017~~2018, unless specifically otherwise provided in federal or state law or in the rules. All American Community Survey data must be 5-year estimates, unless otherwise specified. The availability of more current data shall be disregarded. Where other data sources are specifically required, such as Neighborhoodscout, the data available after October 1, but before Pre-Application Final Delivery Date, will be permissible. The NeighborhoodScout report submitted in the Application must include the report date.

(f) Deadlines. Where a specific date or deadline is identified in this chapter, the information or documentation subject to the deadline must be ~~submitted~~received by the Department on or before 5:00 p.m. Austin local time on the day of the deadline. If the deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. Unless otherwise noted or provided in statute, deadlines are based on calendar days.

(g) Documentation to Substantiate Items and Representations in an Application. In order to ensure the appropriate level of transparency in this highly competitive program, Applications and all correspondence and other information relating to each Application are posted on the Department's website and updated on a regular basis. Applicants ~~should~~must use the Application form posted online to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, ~~or~~ meeting of threshold requirements, or timely requesting a waiver or determination. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the ~~Administrative~~ Deficiency process~~, unless the missing documentation is determined to be a Material Deficiency.~~. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed Development, financing structure, or other element of the Application. ~~The sole purpose of this mandatory Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff.~~ Although a responsive narrative will be created after Application submission, all facts and materials to substantiate any item in response to such an Administrative Deficiency must have been clearly established at the time of submission of the Application~~,~~.

(h) Board Standards for Review. Some issues may require or benefit from board review. The Board is not constrained to a particular standard, and while its actions on one matter are not binding as to how it will address another matter, the Board does seek to promote consistency with its policies, including the policies set forth in this chapter.

(i) Public Information Requests. Pursuant to Tex. Gov't Code~~,~~ §2306.6717, any pre-application and any full Application, including all supporting documents and exhibits, must be made available to the public, in their entirety, on the Department's website. The filing of a pre-application or Application with the Department shall be deemed as consent to the release of any and all information contained therein, including supporting documents and exhibits. As part of its certifications, the Applicant shall certify that the authors of the reports and other information and documents submitted with the Application have given their consent to the Applicant to submit all reports and other information and documents to the Department, and for the Department to publish anything submitted with the Application on its website and use such information and documents for authorized purposes.

(j) Responsibilities of Municipalities and Counties. In providing resolutions regarding housing de-concentration issues, threshold requirements, or scoring criteria, municipalities and counties should consult their own staff and legal counsel as to whether such resolution(s) will be consistent

DRAFT

with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, any current Assessment of Fair Housing, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.

(k) Request for Staff Determinations. ~~Where the definitions of Development, Development Site, New Construction, Rehabilitation, Reconstruction, Adaptive Reuse, and Target Population~~Where the requirements of this Chapter do not readily align with the activities proposed in an Application, an Applicant may request and Department staff may provide a determination to an Applicant explaining how staff will review an Application in relation to ~~these specific terms and their usage within~~ the applicable rules. ~~Such~~ In no instance will staff provide a determination regarding a scoring item. Any such request must be received by the Department prior to submission of the pre-application (if applicable to the program) or Application (if no pre-application was submitted). Staff may, in its sole discretion, provide the request to the Board for it to make the determination. Staff's determination may take into account ~~thepurpose~~the articulated purpose of or policies addressed by a particular rule or requirement, materiality of elements, substantive elements of the development plan that relate to the term or definition, the common usage of the particular term, or other issues relevant to the rule or requirement. All such determinations will be conveyed in writing. If the determination is finalized after submission of the pre-application or Application, the Department may allow corrections to the pre-application or the Application that are directly related to the issues in the determination. It is an Applicant's sole responsibility to request a determination and an Applicant may not rely on any determination for another Application regardless of similarities in a particular fact pattern. For any Application that does not request and subsequently receive a determination, the definitions and applicable rules will be applied as used and defined herein. ~~Such a determination is intended to provide clarity with regard to Applications proposing activities such as: scattered site development or combinations of construction activities (e.g., Rehabilitation with some New Construction).~~ An Applicant may appeal a determination for their Application if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination ~~or a~~may not be appealed. A staff determination not timely appealed cannot be further appealed or challenged.

§11.2. Program Calendar for ~~Competitive~~ Housing Tax Credits.

(a) Competitive HTC Deadlines. Non-statutory deadlines specifically listed in the Program Calendar may be extended by the Department for a period of not more than five (5) business days provided that the Applicant has, in writing, requested an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to Administrative Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

Deadline	Documentation Required
01/04/~~2018~~2019	Application Acceptance Period Begins. Public Comment period starts.
01/09/~~2018~~2019	Pre-Application Final Delivery Date (including waiver requests).

DRAFT

Deadline	Documentation Required
02/~~16/2018~~15/2019	Deadline for submission of ~~application~~ Application for .ftp access if pre-application not submitted.
03/01/~~2018~~2019	~~Full Application Delivery Date~~ End of Application Acceptance Period. (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Property Condition Assessments (PCAs); Appraisals; Primary Market Area Map; Site Design and Development Feasibility Report; all Resolutions necessary under §11.3 of this chapter related to Housing De-Concentration Factors). Final Input from Elected Officials Delivery Date (including Resolution for Local Government Support pursuant to §11.9(d)(1) of this chapter and State Representative Input pursuant to §11.9(d)(5) of this chapter).
04/02/~~2018~~2019	Market Analysis Delivery Date pursuant to §~~10~~11.205 of this ~~title~~chapter.
05/01/~~2018~~2019	Deadline for Third Party Request for Administrative Deficiency.
Mid-May 2019	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/~~22/2018~~21/2019	Public ~~Comment~~ comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July	Final Awards.
Mid-August	Commitments are Issued.
11/01/~~2018~~2019	Carryover Documentation Delivery Date.
~~10~~11/~~31~~29/2019	Deadline for closing under §11.9(c)(8) (if applicable).
07/01/~~2019~~2020	10 Percent Test Documentation Delivery Date.
12/31/~~2020~~2021	Placement in Service.
Five (5) business days after the date on the	Administrative Deficiency Response Deadline (unless an extension has been granted).

DRAFT

Deadline	Documentation Required
Deficiency Notice (without incurring point loss)	

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. ~~Program Dates.~~ This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. ~~A program calendar for the Competitive Housing Tax Credit Program is provided in Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).~~ Applicants are strongly encouraged to submit the required items well in advance of established deadlines. Non-statutory deadlines specifically listed in this section may be extended by the Department for a period of not more than five (5) business days provided; however, that the Applicant requests an extension prior to the date of the original deadline and has established to the reasonable satisfaction of the Department that there is good cause for the extension. Except as provided for under 10 TAC §1.1 relating to Reasonable Accommodation Requests, extensions relating to ~~Administrative~~ Deficiency deadlines may only be extended if documentation needed to resolve the item is needed from a Third Party or the documentation involves signatures needed on certifications in the Application.

(1) Full Application Delivery Date. The deadline by which the Application must be received by~~submitted to~~ the Department. For Direct Loan Applications, such deadline will generally be defined in the applicable NOFA and for Tax-Exempt Bond Developments, such deadlines are more fully explained in §~~10~~11.201(2) of this chapter (relating to Procedural Requirements for Application Submission).

(2) Notice to Submit Lottery Application Delivery Date. No later than December ~~8, 2017~~7, 2018, Applicants that receive an advance notice regarding a Certificate of Reservation ~~must~~shall submit a notice to the Department, in the form prescribed by the Department.

(3) Applications Associated with Lottery Delivery Date. No later than December ~~15, 2017~~14, 2018, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five (5) business days after the date on the deficiency notice without incurring a penalty fee pursuant to §11~~10~~.901 of this chapter (relating to Fee Schedule).

(~~5~~(4) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Property Condition Assessment (PCA), Appraisal (if applicable), Market Analysis and the Site Design and Development Feasibility Report). For Direct Loan Applications, the Third Party reports meeting specific requirements described in §~~10~~11.205 of this chapter must be submitted with the Application in order for it to be considered a complete Application, unless the Application is made in conjunction with an Application for Housing Tax Credits or Tax-Exempt Bond, in which case the Delivery Date for those programs will apply. For Tax-Exempt Bond Developments, the Third Party Reports must be received by the Department~~submitted~~ no later than seventy-five (75) calendar days prior to the Board meeting at which the tax credits will be considered. The seventy-five (75) calendar day deadlines are available on the Department's website.

(~~6~~5) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department ~~submitted~~ no later than fourteen (14) calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in

DRAFT

conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(~~7~~6) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department ~~N~~no later than forty-five (45) calendar days prior to the Board meeting at which consideration of the award will occur.

§11.3.Housing De-Concentration Factors.

(a) Rules reciting statutory limitations are provided as a convenient reference only, and to the extent there is any deviation from the provisions of statute, the statutory language is controlling.

(b) Two Mile Same Year Rule (Competitive HTC Only). As required by Tex. Gov't Code §2306.6711(f), staff will not recommend for award, and the Board will not make an award to an Application that proposes a Development Site located in a county with a population that exceeds one million if the proposed Development Site is also located less than two linear miles from the proposed Development Site of another Application within said county that is awarded in the same calendar year. If two or more Applications are submitted that would violate this rule, the lower scoring Application will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(c) Twice the State Average Per Capita (Competitive and Tax-Exempt Bond Only). As provided for in Tex. Gov't Code §2306.6703(a)(4), if a proposed Development is located in a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Acceptance Period Begins (or for Tax-Exempt Bond Developments, Applications submitted after the Application Acceptance Period Begins~~.~~), then the Applicant must obtain prior approval of the Development from the Governing Body of the appropriate municipality or county containing the Development. Such approval must include a resolution adopted by the Governing Body of the municipality or county, as applicable, setting forth a written statement of support, specifically citing Tex. Gov't Code §2306.6703(a)(4) in the text of the actual adopted resolution, and authorizing an allocation of Housing Tax Credits for the Development. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Program Calendar for Competitive Housing Tax Credits) or Resolutions Delivery Date in §~~10~~11.~~4~~2~~4~~(b) of this ~~title~~ chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines~~Program Dates~~), as applicable.

(d) One Mile Three Year Rule. (Competitive and Tax-Exempt Bond Only). (§2306.6703(a)(3))

(1) An Application that proposes the New Construction or Adaptive Reuse of a Development that is located one linear mile or less (measured between closest boundaries by a straight line on a map) from another development that meets all of the criteria in subparagraphs (A) - (C) of this paragraph shall be considered ineligible.

(A) The Development serves the same type of household as the proposed Development, regardless of whether the Development serves families, elderly individuals, or another type of household; and

(B) The Development has received an allocation of Housing Tax Credits or private activity bonds for any New Construction at any time during the three-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Certificate of Reservation is issued); and

DRAFT

(C) The Development has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a Development:

(A) that is using federal HOPE VI (or successor program) funds received through HUD;

(B) that is using locally approved funds received from a public improvement district or a tax increment financing district;

(C) that is using funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §§12701 et seq.);

(D) that is using funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. §§5301 et seq.);

(E) that is located in a county with a population of less than one million;

(F) that is located outside of a metropolitan statistical area; or

(G) that the Governing Body of the appropriate municipality or county where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under paragraph (1)(A) of this subsection. An acceptable, but not required, form of resolution may be obtained in the Uniform Multifamily Application Templates. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §~~10~~11.2~~4~~(b) of this chapter~~title~~, as applicable.

(3) Where a specific source of funding is referenced in paragraph (2)(A) - (D) of this subsection, a commitment or resolution documenting a commitment of the funds must be provided in the Application.

(e) Limitations on Developments in Certain Census Tracts. An Application that proposes the New Construction or Adaptive Reuse of a Development proposed to be located in a census tract that has more than 20 percent Housing Tax Credit Units per total households as established by the 5-year American Community Survey shall be considered ineligible unless the Governing Body of the appropriate municipality or county containing the Development has, by vote, specifically allowed the Development and submits to the Department a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing. Rehabilitation Developments are not required to obtain such resolution. The resolution must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §~~10~~11.2~~4~~(b) of this chapter~~title~~, as applicable.

(f) Additional Phase. Applications proposing an additional phase of an existing tax credit Development that is under common ownership serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development that is under common ownership serving the same Target Population, shall be considered ineligible unless the other Developments or phase(s) of the Development have been completed and have maintained occupancy of at least 90 percent for a minimum six (6) month period as reflected in the submitted rent roll. If the Additional Phase is proposed by any Principal of the existing tax credit Development, the Developer Fee included in Eligible Basis for the Additional Phase may not exceed 15 percent, regardless of the number of Units. If the Application proposes the Rehabilitation or replacement of existing federally-assisted affordable housing units or federally-assisted affordable housing units demolished on the same site within two years of the beginning of the Application Acceptance Period, this provision does not apply.

DRAFT

(g) Proximity of Development Sites. If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites or on sites separated by not more than 1,000 feet where the intervening property does not have a clear and apparent economic reason and/or was not created for the apparent purpose of creating separation under this rule, or on sites carved out of either a single parcel or a group of contiguous parcels that were under common ownership or control at any time during the preceding twenty-four month period are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

§11.4.Tax Credit Request and Award Limits.

(a) Credit Amount (Competitive HTC Only). (§2306.6711(b)) The Board may not award or allocate to an Applicant, Developer, Affiliate, or Guarantor (unless the Guarantor is also the General Contractor or provides the guaranty only during the construction period, and is not a Principal of the Applicant, Developer or Affiliate of the Development Owner) Housing Tax Credits in an aggregate amount greater than $3 million in a single Application Round. Prior to July 15 ~~June 29~~, an Applicant that has Applications pending for more than $3 million in credit may notify staff in writing or by email of the Application(s) they will not pursue in order to bring their request within the $3 million cap. Any other Applications they do not wish to pursue will remain on the waiting list if not otherwise terminated. If the Applicant has not made this self-selection by this date, ~~staffmay make the selection. The methodology for making this determination will be to~~staff will assign first priority to an Application that will enable the Department to comply with the state and federal non-profit set-asides and second to the highest scoring Application, including consideration of tie-breakers if there are tied scores. The Application(s) that does not meet Department criteria will not be considered a priority Application and will not be reviewed unless the Applicant withdraws a priority Application. ~~The non-priority Application(s) will be terminated when the Department awards $3 million to other Applications. Any Application terminated for this reason is subject to reinstatement if necessary to meet a required set-aside.~~ All entities that are under common Control are Affiliates. For purposes of determining the $3 million limitation, a Person is not deemed to be an Applicant, Developer, Affiliate, or Guarantor solely because it:

(1) raises or provides equity;

(2) provides "qualified commercial financing;"

(3) is a Qualified Nonprofit Organization or other not-for-profit entity that is providing solely loan funds, grant funds or social services; or

(4) receives fees as a consultant or advisor that do not exceed $200,000.

(b) Maximum Request Limit (Competitive HTC Only). For any given Development, an Applicant may not request more than 150 percent of the credit amount available in the subregion based on estimates released by the Department on December 1, or $1,500,000, whichever is less, or $2,000,000 for Applications under the At-Risk Set-Aside. In addition, for Elderly Developments in a Uniform State Service Region containing a county with a population that exceeds one million, the request may not exceed the final amount published on the Department's website after the release of the Internal Revenue Service notice regarding the ~~2018~~2019 credit ceiling. For all Applications, the Department will consider the amount in the funding request of the pre-application and Application to be the amount of Housing Tax Credits requested and will automatically reduce the Applicant's request to the maximum allowable under this subsection if exceeded. Regardless of the credit

DRAFT

amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30 percent Boost). Applications will be evaluated for an increase of up to but not to exceed 30 percent in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under ~~§42 of the~~ Code, §42. Staff will recommend no increase or a partial increase in Eligible Basis if it is determined it would cause the Development to be over sourced, as evaluated by the Real Estate Analysis division, in which case a credit amount necessary to fill the gap in financing will be recommended. In no instance will the boost exceed more than the amount of credits required to create the HTC rent-restricted units, as determined by the Real Estate Analysis division of TDHCA. The criteria in paragraph (3) of this subsection are not applicable to Tax-Exempt Bond Developments.

(1) The Development is located in a Qualified Census Tract ~~(~~("QCT~~)~~") (as determined by the Secretary of HUD) that has less than 20 percent Housing Tax Credit Units per total households in the tract as established by the U.S. Census Bureau for the 5-year American Community Survey. New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20 percent Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30 percent increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code~~. For Tax-Exempt Bond Developments, as a general rule, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. For New Construction or Adaptive Reuse Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households, the Development is eligible for the boost if~~, unless the Application includes a resolution stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed the construction of the new Development and referencing this rule. Rehabilitation Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households are eligible to qualify for the boost and are not required to obtain such a resolution from the Governing Body. For Tax-Exempt Bond Developments, as a general rule and unless federal guidance states otherwise, a QCT designation would have to coincide with the program year the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Required documentation must be submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter or Resolutions Delivery Date in §~~10~~11.~~4~~ 2(b) of this ~~title~~chapter, as applicable. Applicants must submit a copy of the census map that includes the 11-digit census tract number and clearly shows that the proposed Development is located within a QCT; OR

(2) The Development is located in a Small Area Difficult Development Area ("SADDA") (based on Small Area Fair Market Rents ("FMRs") as determined by the Secretary of HUD) that has high construction, land and utility costs relative to the AMGI. For Tax-Exempt Bond Developments, as a general rule, a SADDA designation would have to coincide with the program year in which the Certificate of Reservation is issued in order for the Department to apply the 30 percent boost in its underwriting evaluation. Applicants must submit a copy of the SADDA map that clearly shows the proposed Development is located within the boundaries of a SADDA; OR

(3) The Development meets one of the criteria described in subparagraphs (A) - (~~E~~F) of this paragraph pursuant to Code, §42(d)(5)(B)(v)~~ of the Code~~:

(A) the Development is located in a Rural Area;

DRAFT

(B) the Development is proposing entirely Supportive Housing and is expected to be debt free or have no foreclosable or non-cash flow debt;

(C) the Development meets the criteria for the Opportunity Index as defined in §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria);

(D) the Applicant elects to restrict an additional 10 percent of the proposed low income Units for households at or below 30 percent of AMGI. These Units must be in addition to Units required under any other provision of this chapter, or required under any other funding source from the Multifamily Direct Loan program; ~~or~~

(E) the Development is in an area covered by a concerted revitalization plan~~.~~, is not an Elderly Development, and is not located in a QCT. A Development will be considered to be in an area covered by a concerted revitalization plan if it is eligible for and elects points under §11.9(d)(7) of this chapter~~.~~; or

(F) the Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892).

§11.5. Competitive HTC Set-Asides. (§2306.111(d)) This section identifies the statutorily-mandated Set-asides which the Department is required to administer. An Applicant may elect to compete in each of the Set-asides for which the proposed Development qualifies. In order to be eligible to compete in the Set-aside, the Application must meet the requirements of the Set-aside as of the Full Application Delivery Date. Election to compete in a Set-aside does not constitute eligibility to compete in the Set-aside, and Applicants who are ultimately deemed not to qualify to compete in the Set-aside will be considered not to be participating in the Set-aside for purposes of qualifying for points under §11.9(e)(3) of this chapter (related to pre-application Participation). Commitments of Competitive HTCs issued by the Board in the current program year will be applied to each Set-aside, Rural regional allocation, Urban regional allocation, and/or USDA Set-aside for the current Application round as appropriate.

(1) Nonprofit Set-Aside. (§2306.6729 and §2306.6706(b)) At least 10 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of Code, §42(h)(5) ~~of the Code~~ and Tex. Gov't Code §2306.6729 and §2306.6706(b). Qualified Nonprofit Organizations must have the controlling interest in the Development Owner applying for this Set-aside (i.e., greater than 50 percent ownership in the General Partner). If the Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If the Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, for Qualified Nonprofit Development in the Nonprofit Set-aside the nonprofit entity or its nonprofit Affiliate or subsidiary must be the Developer or a co-Developer as evidenced in the development agreement. An Applicant that meets the requirements to be in the Qualified Nonprofit Set-aside is deemed to be applying under that Set-aside unless their Application specifically includes an affirmative election to not be treated under that Set-aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being affiliated with a nonprofit. The Department reserves the right to request a change in this election and/or not recommend credits for those unwilling to change elections if insufficient Applications in the Nonprofit Set-Aside are received. Applicants may not use different organizations to satisfy the state and federal requirements of the Set-aside.

(2) USDA Set-Aside. (§2306.111(d-2)) At least 5 percent of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-

DRAFT

Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable subregion unless the Application is receiving USDA Section 514 funding. Applications must also meet all requirements of Tex Gov't Code~~,~~ §2306.111(d-2).

(A) Eligibility of Certain Developments to Participate in the USDA or Rural Set-asides. (§2306.111(d-4)) A proposed or Existing Residential Development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may be attributed to and come from the At-Risk Development Set-aside or the Uniform State Service Region in which the Development is located, regardless of whether the Development is located in a Rural area.

(B) All Applications that can score under the USDA Set-aside will be considered Rural for all scoring items under this chapter. If a Property receiving USDA financing is unable to score under the USDA Set-aside and it is located in an Urban subregion, it will be scored as Urban.

(3) At-Risk Set-Aside. (§2306.6714; §2306.6702)

(A) At least 15 percent of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to five (5) percent of the State Housing Credit Ceiling associated with this Set-aside may be given priority to Rehabilitation Developments under the USDA Set-aside.

(B) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(A) must meet the following requirements :

(i) Pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(i), a Development must have received a subsidy in the form of a qualified below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy pursuant to Tex. Gov't Code §2306.6702(a)(5)(A)(ii)(a), or any HUD-insured or HUD-held mortgage will be considered to be nearing expiration or nearing the end of its term if expiration will occur or the term will end within two (2) years of July 31 of the year the Application is submitted. Developments with HUD-insured or HUD-held mortgages qualifying as At-Risk under §2306.6702(a)(5)(A)(ii)(b) may be eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment or has been prepaid.

(iii) Developments with existing Department LURAs must have completed all applicable Right of First Refusal procedures prior to the pre-application Final Delivery Date.

(C) An At-Risk Development qualifying under Tex. Gov't Code §2306.6702(a)(5)(B) must meet one of the following requirements:

(i) Units to be Rehabilitated or Reconstructed must be owned by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code and received assistance under §9, United States Housing Act of 1937 (42 U.S.C. section 1437g); or

DRAFT

(ii) Units to be Rehabilitated or Reconstructed must have been disposed of or demolished by a public housing authority in the two-year period preceding the Application for housing tax credits; and

(iii) For Developments including Units to be Reconstructed, the Application will be categorized as New Construction; and

(iv) To the extent that an Application is eligible under Tex. Gov't Code §2306.6702(a)(5)(B)(iii), the Development must receive assistance through the Rental Assistance Demonstration ("RAD") program administered by the United States Department of Housing and Urban Development ("HUD"). Applications must include evidence that RAD participation is included in the applicable public housing plan that was most recently approved by HUD, and evidence (in the form of a Commitment to enter into a Housing Assistance Payment ("CHAP")) that HUD has approved the units proposed for Rehabilitation or Reconstruction for participation in the RAD program; and

(v) Notwithstanding any other provision of law, an ~~a~~At-~~r~~Risk Development described by Tex. Gov't Code §~~-~~2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §~~-~~2306.6714 (a-1)(2) are later converted under RAD.

(D) An Application for a Development that includes the demolition of the existing Units which have received the financial benefit described in Tex. Gov't Code §2306.6702(a)(5) will not qualify as an At-Risk Development unless the redevelopment will include at least a portion of the same site. Alternatively, pursuant to Tex. Gov't Code §2306.6702(a~~(~~)(5)(B), an Applicant may propose relocation of the existing units in an otherwise qualifying At-Risk Development if:

(i) the affordability restrictions and any At-Risk eligible subsidies are approved to be transferred with the units proposed for Rehabilitation or Reconstruction prior to the tax credit Carryover deadline;

(ii) the Applicant seeking tax credits must propose the same number of restricted units ~~(e.g.,~~(, the Applicant may, however, add market rate units); and

(iii) the new Development Site must either qualify for points on the Opportunity Index under §11.9(c)(4) of this chapter (relating to Competitive HTC Selection Criteria); OR

(iv) the local Governing Body of the applicable municipality or county (if completely outside of a municipality) in which that Development is located must submit a resolution confirming that the proposed Development is supported by the municipality or county in order to carry out a previously adopted plan that meets the requirements of §11.9(d)(7). Development Sites that cross jurisdictional boundaries must provide ~~a resolution~~such resolutions from both local governing bodies.

(E) If Developments at risk of losing affordability from the financial benefits available to the Development are able to retain, renew, or replace the existing financial benefits and affordability they must do so unless regulatory barriers necessitate elimination of all or a portion of that benefit for the Development.

(i) Evidence of the legal requirements that will unambiguously cause the loss of affordability and that this will occur within the two calendar years after the year in which the Application is made must be included with the application.

DRAFT

(ii)For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25 percent of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1)). If less than 100 percent of the public housing benefits are transferred to the proposed Development, an explanation of the disposition of the remaining public housing benefits must be included in the Application, as well as a copy of the HUD-approved plan for demolition and disposition.

(F) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a Qualified Contract under ~~§42 of the~~ Code, §42. Evidence must be provided in the form of a copy of the recorded LURA, the first year's IRS Forms 8609 for all buildings showing Part II of the form completed and, if applicable, documentation from the original application regarding the Right of First Refusal. The Application must also include evidence that any applicable Right of First Refusal procedures have been completed prior to the pre-application Final Delivery Date.

(G) An amendment to any aspect of the existing tax credit property sought to enable the Development to qualify as an At-Risk Development, that is submitted to the Department after the Application has been filed and is under review will not be accepted.

§11.6. Competitive HTC Allocation Process. This section identifies the general allocation process and the methodology by which awards are made.

(1) Regional Allocation Formula. The Department shall initially make available in each Rural Area and Urban Area of each Uniform State Service Region ("subregion") Housing Tax Credits in an amount not less than $600,000 in each Rural and Urban subregion, consistent with the Regional Allocation Formula developed in compliance with Tex. Gov't Code §2306.1115. As authorized by Tex. Gov't Code §2306.111(d-3), the Department will reserve $600,000 in housing tax credits for Applications in rural areas in each uniform state service region. The process of awarding the funds made available within each subregion shall follow the process described in this section. Where a particular situation that is not contemplated and addressed explicitly by the process described herein, Department staff shall formulate a recommendation for the Board's consideration based on the objectives of the regional ~~allocationtogether~~allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide ~~Applicants~~the public the opportunity to comment on and propose alternatives to such a recommendation. In general, such a recommendation shall not involve broad reductions in the funding request amounts solely to accommodate regional allocation and shall not involve rearranging the priority of Applications within a particular subregion or set-aside except as described herein. If the Department determines that an allocation recommendation would cause a violation of the $3 million credit limit per Applicant, the Department will make its recommendation based on the criteria described in §11.4(a) of this chapter. Where sufficient credit becomes available to award an Application on the waiting list late in the calendar year, staff may allow flexibility in meeting the Carryover Allocation submission deadline and/or changes to the Application as necessary to ensure to the fullest extent feasible that available resources are allocated by December 31. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish on its website on or before December 1, 2018, such initial estimates of Regional Allocation Formula percentages including the Elderly Development maximum percentage and limits of credits available, and the calculations periodically, if those calculations change, until the credits are fully allocated.

(2) Credits Returned and National Pool Allocated After January 1. For any credits returned after January 1 and eligible for reallocation (not including credit returned and reallocated under force

DRAFT

majeure provisions), the Department shall first return the credits to the subregion or set-aside from which the original allocation was made. The credits will be treated in a manner consistent with the allocation process described in this section and may ultimately flow from the subregion and be awarded in the collapse process to an Application in another region, subregion or set-aside. For any credit received from the "national pool" after the initial approval of awards in late July, the credits will be added to any remaining credits and awarded to the next Application on the waiting list for the state collapse, if sufficient credits are available to meet the requirements of the Application as may be amended after underwriting review.

(3) Award Recommendation Methodology. (§2306.6710(a) - (f); §2306.111) The Department will assign, as described herein, Developments for review by the program and underwriting divisions. In general, Applications will be prioritized for assignment, with highest priority given to those identified as most competitive based upon the Applicant self-score and an initial program review. The procedure identified in subparagraphs (A) - (F) of this paragraph will also be used in making recommendations to the Board.

(A) USDA Set-Aside Application Selection (Step 1). The first level of priority review will be those Applications with the highest scores in the USDA Set-Aside until the minimum requirements stated in §11.5(2) of this chapter (relating to Competitive HTC Set-Asides. (§2306.111(d)) are attained. The minimum requirement may be exceeded in order to award the full credit request or underwritten amount of the last Application selected to meet the USDA~~At-Risk~~ Set-Aside requirement;

(B) At-Risk Set-Aside Application Selection (Step 2). The second level of priority review will be those Applications with the highest scores in the At-Risk Set-Aside statewide until the minimum requirements stated in §11.5(3) of this chapter are attained. This may require the minimum requirement to be exceeded to award the full credit request or underwritten amount of the last Application selected to meet the At-Risk Set-Aside requirement. This step may leave less than originally anticipated in the 26 subregions to award under the remaining steps;

(C) Initial Application Selection in Each Subregion (Step 3). The highest scoring Applications within each of the 26 subregions will then be selected provided there are sufficient funds within the subregion to fully award the Application. Applications electing the At-Risk or USDA Set-Asides will not be eligible to receive an award from funds made generally available within each of the subregions. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website.

(i) In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available for Elderly Developments, unless there are no other qualified Applications in the subregion.

(ii) In accordance with Tex Gov't Code, §2306.6711(g), in Uniform State Service Regions containing a county with a population that exceeds 1.7 million, the Board shall allocate competitive tax credits to the highest scoring development, if any, that is part of a concerted revitalization plan that meets the requirements of §11.9(d)(7) (except for §11.9(d)(7)(A)(ii)(III) and §11.9(d)(7)(B)(iii)), is located in an urban subregion, and is within the boundaries of a municipality with a population that exceeds 500,000.

(D) Rural Collapse (Step 4). If there are any tax credits set-aside for Developments in a Rural Area in a specific Uniform State Service Region ("Rural subregion") that remain after award under subparagraph (C) of this paragraph, those tax credits shall be combined into one "pool" and then be made available in any other Rural Area in the state to the Application in the most

DRAFT

underserved Rural subregion as compared to the subregion's allocation. This rural redistribution will continue until all of the tax credits in the "pool" are allocated to Rural Applications and at least 20 percent of the funds available to the State are allocated to Applications in Rural Areas. (§2306.111(d)(3)) In the event that more than one subregion is underserved by the same percentage, the priorities described in clauses (i) - (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(E) Statewide Collapse (Step 5). Any credits remaining after the Rural Collapse, including those in any subregion in the State, will be combined into one "pool." The funds will be used to award the highest scoring Application (not selected or eliminated in a prior step) in the most underserved subregion in the State compared to the amount originally made available in each subregion. In Uniform State Service Regions containing a county with a population that exceeds one million, the Board may not allocate more than the maximum percentage of credits available as calculated through the RAF for Elderly Developments~~, unless there are no other qualified~~ within an urban subregion of that service region~~,~~. ~~t~~Therefore, certain Applications ~~in the subregion.~~ for Elderly Developments may be excluded from the collapse. The Department will, for each such Urban subregion, calculate the maximum percentage in accordance with Tex. Gov't Code §2306.6711(h) and will publish such percentages on its website. This process will continue until the funds remaining are insufficient to award the next highest scoring Application that is not rendered ineligible through application of the elderly cap in the next most underserved subregion. At least seven calendar days prior to the July Board meeting of the Department at which final awards of credits are authorized, the Department will post on its website the most current 2019 State of Texas Competitive Housing Tax Credit Ceiling Accounting Summary which includes the Regional Allocation Formula percentages including the maximum funding request/award limits, the Elderly Development maximum percentages and limits of credits available, and the methodology used for the determination of the award determinations within the State Collapse. In the event that more than one subregion is underserved by the same degree, the priorities described in clauses (i) and (ii) of this subparagraph will be used to select the next most underserved subregion:

(i) the subregion with no recommended At-Risk Applications from the same Application Round; and

(ii) the subregion that was the most underserved during the Application Round during the year immediately preceding the current Application Round.

(F) Contingent Qualified Nonprofit Set-aside Step (Step 6). If an insufficient number of Applications participating in the Nonprofit Set-Aside are selected after implementing the criteria described in subparagraphs (A) - (E) of this paragraph to meet the requirements of the 10 percent Nonprofit Set-Aside, action must be taken to modify the criteria described in subparagraphs (A) - (E) of this paragraph to ensure the Set-aside requirements are met. Therefore, the criteria described in subparagraphs (C) - (E) of this paragraph will be repeated after selection of the highest scoring Application(s) under the Nonprofit Set-aside statewide are selected to meet the minimum requirements of the Nonprofit Set-Aside. This step may cause some lower scoring Applications in a subregion to be selected instead of a higher scoring Application not participating in the Nonprofit Set-aside.

DRAFT

(4) Waiting List. The Applications that do not receive an award by July 31 and remain active and eligible will be recommended for placement on the waiting list. The waiting list is not static. The allocation process will be used in determining the next Application to award. For example, if credits are returned, those credits will first be made available in the set-aside or subregion from which they were originally awarded. This means that the first Application on the waiting list is in part contingent on the nature of the credits that became available for award. The Department shall hold all credit available after the late-July awards until September 30 in order to collect credit that may become available when tax credit Commitments are submitted. Credit confirmed to be available, as of September 30, may be awarded to Applications on the waiting list unless insufficient credits are available to fund the next Application on the waiting list. For credit returned after September 30, awards from the waiting list will be made when the remaining balance is sufficient to award the next Application as may be amended on the waiting list based on the date(s) of returned credit. Notwithstanding the foregoing, if decisions related to any returns or rescissions of tax credits are under appeal or are otherwise contested, the Department may delay awards until resolution of such issues. The Department will evaluate all waiting list awards for compliance with requested Set-asides. This may cause some lower scoring Applications to be selected instead of a higher scoring Application. (§2306.6710(a) - (f); §2306.111)

(5) Credit Returns Resulting from Force Majeure Events. In the event that the Department receives a return of Competitive HTCs during the current program year from an Application that received a Competitive Housing Tax Credit award during any of the preceding three years, such returned credit will, if the Board determines that all of the requirements of this paragraph are met to its satisfaction, be allocated separately from the current year's tax credit allocation, and not be subject to the requirements of paragraph (2) of this section. The Board determination must indicate the year of the Multifamily Rules to be applied to the Development. Requests to allocate returned credit separately where all of the requirements of this paragraph have not been met or requests for waivers of any part of this paragraph will not be considered. For purposes of this paragraph, credits returned after September 30 of the preceding program year may be considered to have been returned on January 1 of the current year in accordance with the treatment described in §(b)(2)(C)(iii) of Treasury Regulation 1.42-14. The Department's Governing Board may approve the execution of a current program year Carryover Agreement regarding the returned credits with the Development Owner that returned such credits only if:

(A) The credits were returned as a result of "Force Majeure" events that occurred ~~after the start of construction and~~ before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress;

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

DRAFT

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§11.7. Tie Breaker Factors.

In the event there are Competitive HTC Applications that receive the same number of points in any given set-aside category, rural regional allocation or urban regional allocation, or rural or statewide collapse, the Department will utilize the factors in this section, in the order they are presented, to determine which Development will receive preference in consideration for an award. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. The tie breaker factors are not intended to specifically address a tie between equally underserved subregions in the rural or statewide collapse.

~~(1) Applications having achieved a score on Proximity to the Urban Core. This item does not apply to the At-Risk Set-Aside..~~

~~(2) Applications scoring higher on the Opportunity Index under §11.9(c)(4) or Concerted Revitalization Plan under §11.9(d)(7) of this chapter (relating to Competitive HTC Selection Criteria) as compared to another Application with the same score.~~

~~(3) Applications proposed to be located in a Place, or if located completely outside a Place, a county, that has the fewest HTC units per capita, as compared to another Application with the same score. The HTCs per capita measure (by Place or county) is located in the 2018 HTC Site Demographic Characteristics Report.~~

~~(4)~~ (1) Applications proposed to be located in a census tract with ~~the lowest~~a poverty rate ~~as compared to another Application with the same score~~below the median poverty rate for all the census tracts in which pre-applications were submitted for the current cycle, as of the Pre-Application Final Delivery Date. If a tie still persists, then the Development in the census tract with the highest percentage of statewide rent burden for renter households at or below 80% Area Median Family Income ("AMFI"), as determined by the U.S. Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy ("CHAS") dataset and as reflected in the Department's current Site Demographic Characteristics Report. A census tract's median poverty will not be counted more than once if multiple Applications propose to construct Developments in the same census tract.

~~(5)~~ (2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development (excluding those Developments under the Control of the same Owner as the Application being considered in the tie) that serves the same Target Population and that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. Developments awarded Housing Tax

DRAFT

Credits but do not yet have a Land Use Restriction Agreement in place will be considered Housing Tax Credit assisted Developments for purposes of this paragraph according to the property inventory included in the HTC Site Demographic Characteristics Report. The linear measurement will be performed from closest boundary to closest boundary.

§11.8. Pre-Application Requirements (Competitive HTC Only).

(a) General Submission Requirements. The pre-application process allows Applicants interested in pursuing an Application to assess potential competition across the thirteen (13) state service regions, subregions and set-asides. Based on an understanding of the potential competition they can make a more informed decision about whether they wish to proceed to prepare and submit an Application. A complete pre-application is a pre-application that meets all of the Department's criteria, as outlined in subsections (a) and (b) of this section,

(1) The pre-application must be submitted using the URL provided by the Department, as outlined in the Multifamily Programs Procedures Manual, along with the required pre-application fee as described in §1011.901 of this title chapter (relating to Fee Schedule), not later than the pre-application Final Delivery Date as identified in §11.2(a) of this chapter (relating to Program Calendar for Competitive Housing Tax Credits). If the pre-application and corresponding fee is not submitted on or before this deadline the Applicant will be deemed to have not made a pre-application.

(2) Only one pre-application may be submitted by an Applicant for each Development Site. and for each Site Control document.

(3) Department review at this stage is limited, and not all issues of eligibility and threshold are reviewed or addressed at pre-application. Acceptance by staff of a pre-application does not ensure that an Applicant satisfies all Application eligibility, threshold or documentation requirements. While the pre-application is more limited in scope than the Application, pre-applications are subject to the same limitations, restrictions, or causes for disqualification or termination as Applications, and pre-applications will thus be subject to the same consequences for violation, including but not limited to loss of points and termination of the pre-application.

(4) The pre-application becomes part of the full Application if the full Application claims pre-application points.

(5) Regardless of whether a Full Application is submitted, a pre-application may not be withdrawn after the Full Application Delivery Date described in 10 TAC §11.2(a) related to Program Calendar for Competitive Housing Tax Credits.

(b) Pre-Application Threshold Criteria. Pursuant to Tex Gov't Code, §2306.6704(c) pre-applications will be terminated unless they meet the threshold criteria described in subsection (a) of this section and paragraphs (1) and (2) of this subsection:

(1) Submission of the competitive Competitive HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §1011.204(10) of this title (relating to Required Documentation for Application Submission). For purposes of meeting this specific requirement related to pre-application threshold criteria, proof of consideration and any documentation required for identity of interest transactions is not required at the time of pre-application submission but will be required at the time of full application submission;

(B) Funding request;

(C) Target Population;

(D) Requested set-asides (At-Risk, USDA, Nonprofit, and/or Rural);

(E) Total Number of Units proposed;

(F) Census tract number in which the Development Site is located, and a map of that census tract with an outline of the proposed Development Site;

(G) Expected score for each of the scoring items identified in the pre-application materials;

(H) Proposed name of ownership entity; and

(I) Disclosure of the following ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors under §~~10~~11.101(a)(3)~~.~~:

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) ~~or within 1,000 feet of any census tract~~ in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that does not have a Met Standard rating by the Texas Education Agency.

(2) Evidence in the form of a certification provided in the pre-application, that all of the notifications required under this paragraph have been made. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period. An Applicant should retain and be prepared to produce evidence of a reasonable search of those records and the search results, including in the scope of the search at least the following terms: name of the neighborhoods/subdivisions, name of the public schools for the Development Site, term 'homeowner,' term 'neighborhood,' names of historically significant nearby areas or features, and colloquially used descriptions of the area (e.g., Fifth Ward, SoCo, EaDo). As referenced, "on record with the county" includes bylaws or articles of incorporation filed with a county and/or a database of neighborhood organizations, but does not include documents filed in the name of the neighborhood that provide no indication of good standing (e.g., a DBA). As referenced, "on record with the state" means an organization in good standing with the Secretary of State.

(B) Notification Recipients. No later than the date the pre-application is submitted, notification must be sent to all of the persons or entities prescribed in clauses (i) – (viii) of this subparagraph. Developments located in an ETJ of a municipality are required to notify both municipal and county officials. The notifications may be sent by e-mail, fax or mail with registered return receipt or similar tracking mechanism in the format ~~required~~included in the Public Notification Template provided in the Uniform ~~2018~~ 2019 Multifamily Application Template or in an alternative format that meets the applicable requirements and achieves the intended purpose. The Applicant is required to retain proof of delivery in the event the Department requests proof of notification. Acceptable evidence of such delivery is demonstrated by signed receipt for mail or courier delivery and confirmation of delivery for fax and e-mail. Officials to be notified are those officials in office at the time the pre-application is submitted. ~~Note that between~~Between the time of pre-application (if made) and full Application, such officials may change and the boundaries of their jurisdictions may

DRAFT

change. ~~By way of example~~ If there is a change between pre-application and ~~not by way of limitation, events such as redistricting may cause changes which will necessitate~~the Full Application Delivery Date, additional notifications must be made at full Application to any person or entity that has not been previously notified by the Applicant. Meetings and discussions do not constitute notification. Only a timely and compliant written notification to the correct person constitutes notification.

(i) Neighborhood Organizations on record with the state or county as of the beginning of the Application Acceptance Period whose boundaries include the entire proposed Development Site;

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

(iii) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(iv) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(v) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(vi) Presiding officer of the Governing Body of the county in which the Development Site is located;

(vii) All elected members of the Governing Body of the county in which the Development Site is located; and

(viii) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;

(C) Contents of Notification.

(i) The notification must include, at a minimum, all of the information described in subclauses (I) – (~~VI~~VI) of this clause.

(I) the Applicant's name, address, an individual contact name and phone number;

(II) the Development name, address, city, and county;

(III) a statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse, or Rehabilitation;

(V) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise, etc.); and

(VI) the approximate total number of Units and approximate total number of Low-Income Units.

~~(ii) The Applicant must disclose that, in accordance with the Department's rules, aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;~~

(~~iii~~ii) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression

DRAFT

that the proposed Development will serve a Target Population exclusively or as a preference unless such targeting or preference is documented in the Application and is in full compliance with all applicable state and federal laws, including state and federal fair housing laws; and

(~~iv~~iii) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

(c) Pre-Application Results. Only pre-applications which have satisfied all of the pre-application requirements, including those in §11.9(e)(3) of this chapter, will be eligible for pre-application points. The order and scores of those Developments released on the pre-application Submission Log do not represent a Commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the pre-application Submission Log. Inclusion of a pre-application on the pre-application Submission Log does not ensure that an Applicant will receive points for a pre-application.

§11.9.Competitive HTC Selection Criteria.

(a) General Information. This section identifies the scoring criteria used in evaluating and ranking Applications. The criteria identified in subsections (b) - (e) of this section include those items required under Tex. Gov't Code, Chapter 2306, Code §42 ~~of the Code~~, and other criteria established in a manner consistent with Chapter 2306 and Code §42 ~~of the Code~~. There is no rounding of numbers in this section for any of the calculations in order to achieve the desired requirement or limitation, unless rounding is explicitly stated as allowed for that particular calculation or criteria. The Application must include one or more maps indicating the location of the Development Site and the related distance to the applicable facility. Distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the facility, unless otherwise noted. For the purposes of this section, all measurements will include ingress/egress requirements and any easements regardless of how they will be held. Due to the highly competitive nature of the program, Applicants that elect points where supporting documentation is required but fail to provide any supporting documentation will not be allowed to cure the issue through an Administrative Deficiency. However, Department staff may provide the Applicant an opportunity to explain how they believe the Application, as submitted, meets the requirements for points or otherwise satisfies the requirements.

(b) Criteria promoting development of high quality housing.

(1) Size and Quality of the Units. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii)) An Application may qualify for up to fifteen (15) points under subparagraphs (A) and (B) of this paragraph.

(A) Unit Sizes (~~8~~6 points). The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction), for Developments receiving funding from USDA, or for Supportive Housing Developments without meeting these square footage minimums only if requested in the Self Scoring Form.

(i) five-hundred fifty (550) square feet for an Efficiency Unit;

(ii) six-hundred fifty (650) square feet for a one Bedroom Unit;

(iii) eight-hundred fifty (850) square feet for a two Bedroom Unit;

(iv) one-thousand fifty (1,050) square feet for a three Bedroom Unit; and

(v) one-thousand two-hundred fifty (1,250) square feet for a four Bedroom Unit.

DRAFT

(B) Unit and Development Features (~~7~~9 points). Applicants that elect in an Application to provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in §~~10~~11.101(b)(6)(B) of this title ~~(relating to Site and Development Requirements and Restrictions)~~ and as certified to in the Application. The amenities will be required to be identified in the LURA. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(2) Sponsor Characteristics. (§42(m)(1)(C)(iv)) An Application may qualify to receive either one (1) or two (2) points if it meets one of the following conditions. Any Application that includes a HUB must include a narrative description of the HUB's experience directly related to the housing industry.

(A) The ownership structure contains either a HUB certified by the Texas Comptroller of Public Accounts by the Full Application Delivery Date or it contains a Qualified Nonprofit Organization, provided the Application is under the Nonprofit Set-Aside. The HUB or Qualified Nonprofit Organization must have some combination of ownership interest in the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50 percent and no less than 5 percent for any category. For example, a HUB or Qualified Nonprofit Organization may have 20 percent ownership interest, 25 percent of the Developer Fee, and 5 percent of Cash Flow from operations. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB, only for Cash Flow and Developer Fee. The HUB or Qualified Nonprofit Organization must also materially participate in the Development and operation of the Development throughout the Compliance Period and must have experience directly related to the housing industry, which may include experience with property management, construction, development, financing, or compliance. Material participation means that the HUB or Qualified Nonprofit is regularly, continuously, and substantially involved in providing services integral to the Development Team; providing services as an independent contractor is not sufficient. A Principal of the HUB or Qualified Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Qualified Nonprofit Organization). (2 points)

(B) The HUB or Nonprofit Organization must be involved with the Development Services or in the provision of on-site tenant services during the Development's Affordability Period. Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. ~~A Principal of the HUB or Nonprofit Organization cannot be a Related Party to any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Nonprofit Organization).~~ (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Tenants. (§§2306.111(g)(3)(B) and (E); 2306.6710(b)(1)(C) and (e); and §42(m)(1)(B)(ii)(I)) An Application may qualify for up to sixteen (16) points for rent and income restricting a Development for the entire Affordability Period at the levels identified in subparagraph (A~~)~~), (B), (C), or (~~B~~D) of this paragraph.

(A) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs~~.~~ that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 40 percent of all Low-Income Units at 50 percent or less of AMGI (16 points);

DRAFT

(ii) At least 30 percent of all Low-Income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 20 percent of all Low-Income Units at 50 percent or less of AMGI (12 points).

(B) For Developments proposed to be located in areas other than those listed in subparagraph (A) of this paragraph~~.~~ and that propose to use either the 20-50 or 40-60 election under §42(g)(1)(A) or §42(g)(1)(B) of the Code, respectively:

(i) At least 20 percent of all Low-Income Units at 50 percent or less of AMGI (16 points);

(ii) At least 15 percent of all Low-Income Units at 50 percent or less of AMGI (14 points); or

(iii) At least 10 percent of all Low-Income Units at 50 percent or less of AMGI (12 points).

(C) For any Development located within a non-Rural Area of the Dallas, Fort Worth, Houston, San Antonio, or Austin MSAs that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income for the proposed Development will be 54% or lower (16 points);

(ii) The Average Income for the proposed Development will be 55% or lower (14 points); or

(iii) The average income for the proposed Development will be 56% or lower (12 points).

(D) For Developments proposed to be located in the areas other than those listed in subparagraph (C) of this paragraph and that propose to use the Average Income election under §42(g)(1)(C) of the Code:

(i) The Average Income for the proposed Development will be 55% or lower (16 points);

(ii) The Average Income for the proposed Development will be 56% or lower (14 points); or

(iii) The Average Income for the proposed Development will be 57% or lower (12 points).

(2) Rent Levels of Tenants. (§2306.6710(b)(1)(E)) An Application may qualify to receive up to thirteen (13) points for rent and income restricting a Development for the entire Affordability Period. These levels are in addition to those committed under paragraph (1) of this subsection.

(A) At least 20 percent of all Low-Income Units at 30 percent or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10 percent of all Low-Income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (11 points); or

(C) At least 5 percent of all Low-Income Units at 30 percent or less of AMGI (7 points).

DRAFT

(3) ~~Tenant~~ Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Supportive Housing Development proposed by a Qualified Nonprofit may qualify to receive up to eleven (11) points and all other Developments may receive up to ten (10) points.

(A) By electing points, the Applicant certifies that the Development will provide a combination of supportive services, which are listed in §~~10~~11.101(b)(7) of this chapter~~title~~, appropriate for the proposed ~~tenants~~ residents and that there is adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application will remain the same. No fees may be charged to the ~~tenants~~ residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. (10 points for Supportive Housing, 9 points for all other Development)

(B) The Applicant certifies that the Development will contact local nonprofit and governmental providers of services that would support the health and well-being of the Department's ~~tenants~~residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants. Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located. (1 point)

(4) Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials. A Development is eligible for a maximum of seven (7) opportunity index points.

(A) A proposed Development is eligible for up to two (2) opportunity index points if it is located entirely within a census tract with a poverty rate of less than the greater of 20% or the median poverty rate for the region and meets the requirements in (i) or (ii) below.

(i) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region and a median household income rate in the two highest quartiles within the uniform service region. (2 points)

(ii) The Development Site is located entirely within a census tract that has a poverty rate of less than the greater of 20% or the median poverty rate for the region, with a median household income in the third quartile within the region, and is contiguous to a census tract in the first or second quartile, without physical barriers such as highways or rivers between, and the Development Site is no more than 2 miles from the boundary between the census tracts. For purposes of this scoring item, a highway is a limited-access road with a speed limit of 50 miles per hour or more; and, (1 point)

(B) An Application that meets the foregoing criteria may qualify for additional points for any one or more of the following factors. Each amenity may be used only once for scoring purposes, unless allowed within the scoring item, regardless of the number of categories it fits. All members of the Applicant or Affiliates cannot have had an ownership position in the amenity or served on the board or staff of a nonprofit that owned or managed that amenity within the year preceding the Pre-Application Final Delivery Date. All amenities must be operational or have started Site Work at the Pre-Application Final Delivery Date. Any age restrictions associated with an amenity must positively correspond to the target population of the proposed Development~~:~~.

DRAFT

(i) For Developments located in an Urban Area (other than Applicants competing in the USDA Set-Aside), an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIV) of this clause.

(I) The Development Site is located on a route, with sidewalks for pedestrians, that is 1/2 mile or less from the entrance to a public park with a playground or from a multiuse hike-bike trail. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. (1 point)

(II) The Development Site is located on a route, with sidewalks for pedestrians, that is ~~1/2 mile or less~~within a specified distance from the entrance of a public transportation stop or station with a route schedule that provides regular service to employment and basic services. The entirety of the sidewalk route must consist of smooth hard surfaces, curb ramps, and marked pedestrian crossings when traversing a street. Only one of the following may be selected.

(-a-) ~~For purposes of this scoring item, regular is defined as~~The Development Site is 1/2 mile or less from the stop or station and the scheduled service is beyond 8 a.m. to 5 p.m., plus weekend service (both Saturday and Sunday). (1 point); or

(-b-) The Development Site is 1/2 mile or less from the stop or station and the scheduled service arrives every 15 minutes, on average, between 6 a.m. and 8 p.m., every day of the week. (2 points)

(III) The Development Site is located within 1 mile of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(IV) The Development Site is located within 1 mile of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(V) The Development Site is located within 3 miles of a health-related facility, such as a full service hospital, community health center, minor emergency center, emergency room or urgent care facility. Physician offices and physician specialty offices are not considered in this category. (1 point)

(VI) The Development Site is within 2 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(VII) The Development Site is located in a census tract with a property crime rate of 26 per 1,000 persons or less as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for

DRAFT

determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VIII) The development Site is located within 1 mile of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 50 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(IX) The Development Site is located within 5 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(X) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher as tabulated by the most recent~~2011-2015~~ American Community Survey 5-year Estimate. (1 point)

(XI) Development Site is within 1 mile of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XII) Development Site is within 1 mile of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(XIII) Development Site is within 1 mile of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIV) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(ii) For Developments located in a Rural Area and any Application qualifying under the USDA set-aside, an Application may qualify to receive points through a combination of requirements in subclauses (I) through (XIII) of this clause.

(I) The Development Site is located within 4 miles of a full-service grocery store. A full service grocery store is a store of sufficient size and volume to provide for the needs of the surrounding neighborhood including the proposed Development; and the space of the store is dedicated primarily to offering a wide variety of fresh, frozen, canned and prepared foods, including but not limited to a variety of fresh meats, poultry, and seafood; a wide selection of fresh produce including a selection of different fruits and vegetables; a selection of baked goods and a wide array of

DRAFT

dairy products including cheeses, and a wide variety of household goods, paper goods and toiletry items. (1 point)

(II) The Development Site is located within 4 miles of a pharmacy. For the purposes of this menu item only, the pharmacy may be claimed if it is within the same building as a grocery store. (1 point)

(III) The Development Site is located within 4 miles of health-related facility, such as a full service hospital, community health center, ~~or~~ minor emergency center, or a doctor with a general practice that takes walk-in patients. Physician ~~offices and physician~~ specialty offices are not considered in this category. (1 point)

(IV) The Development Site is located within 4 miles of a center that is licensed by the Department of Family and Protective Services ("DFPS") specifically to provide a school-age program or to provide a child care program for infants, toddlers, and/or pre-kindergarten. The Application must include evidence from DFPS that the center meets the above requirements. (1 point)

(V) The Development Site is located in a census tract with a property crime rate 26 per 1,000 or less, as defined by neighborhoodscout.com, or local law enforcement data sources. If employing the latter source, the formula for determining the crime rate will include only data relevant to the census tract in which the Development Site is located. (1 point)

(VI) The Development Site is located within 4 miles of a public library that has indoor meeting space, physical books that can be checked out and that are of a general and wide-ranging subject matter, computers and internet access, and that is open 40 hours or more per week. The library must not be age or subject-restricted and must be at least partially funded with government funding. (1 point)

(VII) The Development Site is located within 4 miles of a public park with a playground. (1 point)

(VIII) The Development Site is located within 15 miles of an accredited university or community college, as confirmed by the Texas Higher Education Coordination Board ("THECB"). To be considered a university for these purposes, the provider of higher education must have the authority to confer bachelor's degrees. Two-year colleges are considered community colleges, and to be considered for these purposes must confer at least associate's degrees. The university or community college must have a physical campus, where classes are regularly held for students pursuing their degrees, within the required distance; online-only institutions do not qualify under this item. (1 point)

(IX) Development Site is located in a census tract where the percentage of adults age 25 and older with an Associate's Degree or higher is 27% or higher. (1 point)

(X) Development Site is within 3 miles of an indoor recreation facility available to the public. Examples include a gym, health club, a bowling alley, a theater, or a municipal or county community center. (1 point)

(XI) Development Site is within 3 miles of an outdoor, dedicated, and permanent recreation facility available to the public. Examples include swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

DRAFT

(XII) Development Site is within 3 miles of community, civic or service organizations that provide regular and recurring substantive services, beyond exclusively congregational or member-affiliated activities, available to the entire community (this could include religious organizations or organizations like the Kiwanis or Rotary Club as long as they make services available without regard to affiliation or membership). (1 point)

(XIII) Development Site is in the current service area of Meals on Wheels or similar nonprofit service that provides regular visits and meals to individuals in their homes. (1 point)

(5) Underserved Area. (§§2306.6725(b)(2); 2306.127(3), 42(m)(1)(C)(ii)) An Application may qualify to receive up to five (5) points if the Development Site is located in one of the areas described in subparagraphs (A) - (~~E~~G) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are not cumulative and an Applicant is therefore limited to selecting one subparagraph. If an Application qualifies for points under paragraph §11.9(c)(4) of this subsection, then the Application is not eligible for points under subparagraphs (A), (B), and (~~B~~F) of this paragraph. The Application must include evidence that the Development Site meets the requirements.

(A) The Development Site is located wholly or partially within the boundaries of a colonia as such boundaries are determined by the Office of the Attorney General and within 150 miles of the Rio Grande River border. For purposes of this scoring item, the colonia must lack water, wastewater, or electricity provided to all residents of the colonia at a level commensurate with the quality and quantity expected of a municipality and the proposed Development must make available any such missing water, wastewater, and electricity supply infrastructure physically within the borders of the colonia in a manner that would enable the current dwellings within the colonia to connect to such infrastructure (2 points);

(B) The Development Site is located entirely within the boundaries of an Economically Distressed Area (1 point);

(C) The Development Site is located entirely within a census tract that does not have ~~a~~another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report; (3 points);

(D) For areas not scoring points for (C) above, the Development Site is located entirely within a census tract that does not have ~~a~~another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. (2 points);

(E) The Development Site is located entirely within a census tract whose boundaries are wholly within an incorporated area and the census tract itself and all of its contiguous census tracts do not have ~~a~~another Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report. This item will apply in Places with a population of ~~150~~100,000 or more, and will not apply in the At-Risk Set-Aside (5 points).

(F) The Development Site is located entirely within a census tract that, according to American Community Survey 5-year Estimates, has both a poverty rate greater than 20% and a median gross rent greater than its county's 2016 HUD Fair Market Rent for a two-bedroom unit. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report (2 points).

DRAFT

(G) An At-risk or USDA Development placed in service 30 or more years ago, that is still occupied, and that has not yet received federal funding, or LIHTC equity, for the purposes of Rehabilitation for the Development (3 points).

(6) Tenant Populations with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Tenants with Special Housing Needs. Points will be awarded as described in subparagraphs ~~(A) - (C) of this paragraph. If pursuing these points, Applicants must try to score first with subparagraph (A) and then subparagraph (B), unless the Applicant can establish its lack of legal authority to commit Section 811 PRA Program units in a Development. Subparagraphs (A) and~~ (B) through (D) of this paragraph. Subparagraphs (B) and (C) pertain to the requirements of the Section 811 Project Rental Assistance Program ("Section 811 PRA Program") (10 TAC Chapter 8).~~ Only if an Applicant or Affiliate cannot meet the requirements of subparagraphs (A) or (B) may an Application qualify for subparagraph (C).~~

~~(A~~(A) If selecting points under this scoring item, Applicants must first attempt to meet the requirements in subparagraph (B). If the Applicant is not able to meet the requirements in subparagraph (B), then the Applicant must attempt to meet the requirements in subparagraph (C), unless the Applicant can establish its lack of legal authority to commit Section 811 PRA Program units in a Development. To establish its lack of legal authority where an Applicant Owns or Controls an Existing Development that otherwise meets the criteria established by 10 TAC §11.9(c)(6)(B) of this chapter, the Application must include the information as described in clauses (i) – (iii) of this subparagraph in the Section 811 PRA Program Supplement Packet. The Department may request additional information from the Applicant as needed.

(i) Evidence that a Third Party has a legal right to withhold approval for a property to commit voluntarily to the Section 811 PRA Program. The specific legally enforceable agreement or other instrument that gives the Third Party, such as a lender, the unambiguous legal right to withhold consent must be provided;

(ii) Documentation that the Third Party, such as a lender, that has the legal right to withhold a required consent was asked to give their consent; AND

(iii) Documentation that the Third Party possessing the legal right to withhold a required consent has provided notice of their decision not to provide a required consent.

(B) An Applicant or Affiliate that Owns or Controls an Existing Development that is eligible to participate in the ~~Department's Section 811 Project Rental Assistance Program ("~~Section 811 PRA Program~~")~~, as evidenced by its appearance on the List of Qualified Existing Developments referenced in 10 TAC §8.5, must do so~~ in order to receive two (2) points~~. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 ~~Program~~Project Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Existing Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant or Affiliate will comply with the requirements of 10 TAC Chapter 8. (2 points)

(~~B~~C) An Applicant or Affiliate that does not meet the Existing Development requirements of 10 TAC Chapter 8 but still meets the requirements of 10 TAC ~~Chapter~~ §8.3 is eligible ~~to receive two (2) points~~ by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants

DRAFT

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"),~~Rule, 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one HTC Application. The Applicant will comply with the requirements of 10 TAC Chapter 8. (2 points)

(~~C~~D) Applications that are unable to meet the requirements of subparagraphs (~~A~~B) or (~~B~~C) of this paragraph may qualify ~~for two (2) points~~ by meeting the requirements of this subparagraph, (~~C~~D). In order to qualify for points, Applicants must agree to set-aside at least 5 percent of the total Units for Persons with Special Needs. The units identified for this scoring item may not be the same units identified for the Section 811 ~~Project Rental Assistance Demonstration program~~PRA Program. For purposes of this subparagraph, Persons with Special Needs is defined as households where one individual has alcohol and/or drug addictions, Colonia resident, Persons with Disabilities, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), persons with HIV/AIDS, homeless populations, veterans, wounded warriors (as defined by the Caring for Wounded Warriors Act of 2008), and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifcally~~affirmatively~~ market Units to Persons with Special Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Needs or held vacant, unless the units receive HOME funds from any source. After the initial twelve-month period, the Development Owner will no longer be required to hold Units vacant for Persons with Special Needs, but will be required to continue to specifically market Units to Persons with Special Needs. (2 points)

(7) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over 200,000 may qualify for points under this item. The Development Site must be located within 4 miles of the main municipal government administration building if the population of the Place is ~~500~~750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is 500,000 – 749,999, or within 1 mile of the main municipal government administration building if the population of the city is 200,000 - 499,999. The main municipal government administration building will be determined by the location of regularly scheduled municipal governing body meetings. Distances are measured from the nearest property boundaries, not inclusive of non-contiguous parking areas. This scoring item will not apply to Applications under the At-Risk Set-Aside. (5 points)

(8) Readiness to proceed in disaster impacted counties. An Application for a proposed ~~development~~Development~~,~~ that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within the year preceding ~~proceeding~~ the Full Application Delivery Date, that provides a certification that ~~evidence~~ they will close all financing and fully execute the construction contract on or before the last business day of ~~October.~~November. (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award~~.~~ and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed

DRAFT

construction contract by the ~~October~~November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board. ~~(5 points)~~

(C) Non-priority Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were in non-priority status, if they ultimately receive an award. The period of non-priority status begins on the date the Department publishes a list showing an Application is not in priority status.

(d) Criteria promoting community support and engagement.

(1) Local Government Support. (§2306.6710(b)(1)(B)) An Application may qualify for up to seventeen (17) points for a resolution or resolutions voted on and adopted by the bodies reflected in subparagraphs (A) - (C) of this paragraph, as applicable. The resolution(s) must be dated prior to Final Input from Elected Officials Delivery Date and must be submitted to the Department no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas ("FHAST") form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

DRAFT

(iv) seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) An Application may receive one (1) point for a commitment of Development funding from the city (if located in a city) or county in which the Development Site is located. The commitment of Development funding must be reflected in the Application as a financial benefit to the Development, i.e. reported as a source of funds on the Sources and Uses Form and/or reflected in a lower cost in the Development Cost Schedule, such as notation of a reduction in building permits and related costs. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction over the proposed Development stating they will provide a loan, grant, reduced fees or contribution of other value that equals $500 or more for Applications located in Urban subregions or $250 or more for Applications located in Rural subregions for the benefit of the Development. The letter must describe the value of the contribution, the form of the contribution, e.g. reduced fees or gap funding, and any caveats to delivering the contribution. Once a letter is submitted to the Department it may not be changed or withdrawn.

(3) Declared Disaster Area. (§2306.6710(b)(1)(H)) An Application may receive ten (10) points if at the time of Application submission or at any time within the two-year period preceding the date of submission, the Development Site is located in an area declared to be a disaster area under the Tex Gov't Code~~,~~ §418.014.

(4) Quantifiable Community Participation. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) An Application may qualify for up to nine (9) points for written statements from a Neighborhood Organization. In order for the statement to qualify for review, the Neighborhood Organization must have been in current, valid existence with boundaries that contain the entire Development Site ~~as of~~30 days prior to the ~~Pre-~~beginning of the Application ~~Final Delivery Date~~Acceptance Period. In addition, the Neighborhood Organization must be on record with the Secretary of State or county in which the Development Site is located~~.~~ as of the beginning of the Application Acceptance Period. Once a letter is submitted to the Department it may not be changed or withdrawn. The written statement must meet all of the requirements in subparagraph (A) of this paragraph. Letters received by the Department setting forth that the eligible Neighborhood Organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Written statements from the Neighborhood Organizations included in an Application and not received by the Department from the Neighborhood Organization will not be scored but will be counted as public comment.

(A) Statement Requirements. If an organization cannot make the following affirmative certifications or statements then the organization will not be considered a Neighborhood Organization for purposes of this paragraph.

(i) the Neighborhood Organization's name, a written description and map of the organization's boundaries, signatures and contact information (phone, email and mailing

DRAFT

address) of at least two individual members with authority to sign on behalf of the organization;

(ii) certification that the boundaries of the Neighborhood Organization contain the entire Development Site and that the Neighborhood Organization meets the definition pursuant to Tex. Gov't Code §2306.004(23-a) and includes at least two separate residential households;

(iii) certification that no person required to be listed in accordance with Tex. Gov't Code §2306.6707 with respect to the Development to which the Application requiring their listing relates participated in any way in the deliberations of the Neighborhood Organization, including any votes taken;

(iv) certification that at least 80 percent of the current membership of the Neighborhood Organization consists of homeowners and/or tenants living within the boundaries of the Neighborhood Organization; and

(v) an explicit expression of support, opposition, or neutrality. Any expression of opposition must be accompanied with at least one reason forming the basis of that opposition. A Neighborhood Organization should be prepared to provide additional information with regard to opposition.

(B) Technical Assistance. For purposes of this paragraph, if and only if there is no Neighborhood Organization already in existence or on record, the Applicant, Development Owner, or Developer is allowed to provide technical assistance in the creation of and/or placing on record of a Neighborhood Organization. Technical assistance is limited to:

(i) the use of a facsimile, copy machine/copying, email and accommodations at public meetings;

(ii) assistance in completing the QCP Neighborhood Information Packet, providing boundary maps and assisting in the Administrative Deficiency process; and

(iii) presentation of information and response to questions at duly held meetings where such matter is considered.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood

DRAFT

Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, ~~2018~~2019. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2)) Applications may receive up to eight (8) points or have deducted up to eight (8) points for this scoring item. To qualify under this paragraph letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative and must be submitted no later than the Final Input from Elected Officials Delivery Date as identified in §11.2(a) of this chapter. Letters received by the Department setting forth that the State Representative objects to or opposes the Application or Development will be added to the Application posted on the Department's website. Once a letter is submitted to the Department it may not be changed or withdrawn. Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate consideration of all constituent comment and other relevant input on the proposed Development. State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters, letters of opposition, or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, and/or other applicable representatives of the community. In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views o~~n~~f their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

DRAFT

(6) Input from Community Organizations. (§2306.6725(a)(2)) Where, at the time of Application, the Development Site does not fall within the boundaries of any qualifying Neighborhood Organization, then, in order to ascertain if there is community support, an Application may receive up to four (4) points for letters that qualify for points under subparagraphs (A), (B), and/or (C) of this paragraph. No more than four (4) points will be awarded under this point item under any circumstances. All letters of support must be submitted within the Application. Once a letter is submitted to the Department it may not be changed or withdrawn. Should an Applicant elect this option and the Application receives letters in opposition, then one (1) point will be subtracted from the score under this paragraph for each letter in opposition, provided that the letter is from an organization that would otherwise qualify under this paragraph. However, at no time will the Application receive a score lower than zero (0) for this item. Letters received by the Department setting forth that the community organization objects to or opposes the Application or Development will be added to the Application posted on the Department's website.

(A) An Application may receive two (2) points for each letter of support submitted from a community or civic organization that serves the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. To qualify, the organization must be qualified as tax exempt and have as a primary (not ancillary or secondary) purpose the overall betterment, development, or improvement of the community as a whole or of a major aspect of the community such as improvement of schools, fire protection, law enforcement, city-wide transit, flood mitigation, or the like. The Applicant must provide evidence that the community or civic organization remains in good standing by providing evidence from a federal or state government database confirming that the exempt status continues. An Organization must also provide evidence of its participation in the community in which the Development Site is located including, but not limited to, a listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that cannot provide reasonable evidence that they are active in the area that includes the location of the Development Site will not be awarded points. For purposes of this subparagraph, community and civic organizations do not include neighborhood organizations, governmental entities (excluding Special Management Districts as described in subparagraph C), or taxing entities.

(B) An Application may receive two (2) points for a letter of support from a property owners association created for a master planned community whose boundaries include the Development Site and that does not meet the requirements of a Neighborhood Organization for the purpose of awarding points under paragraph (4) of this subsection.

(C) An Application may receive two (2) points for a letter of support from a Special Management District whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter (relating to Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the

DRAFT

Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for points under this paragraph only if no points are elected under subsection (c)(4) of this section, related to Opportunity Index.

(A) For Developments located in an Urban Area:

(i) An Application may qualify to receive points if the Development Site is located in a distinct area that was once vital and has lapsed into a ~~situation~~condition requiring concerted revitalization, and where a concerted revitalization plan ("plan" or "CRP") has been developed and executed.

(ii) A plan may consist of one or multiple, but complementary, local planning documents that together create a cohesive agenda for the plan's specific area. The plan and supporting documentation must be submitted using the CRP Application Packet. No more than 2 local plans may be submitted for each proposed Development. A Consolidated Plan, One-year Action Plan or any other plan prepared to meet HUD requirements will not meet the requirements under this clause, unless evidence is presented that additional efforts have been undertaken to meet the requirements in clause (iii) of this subparagraph. The concerted revitalization plan may be a Tax Increment Reinvestment Zone ("TIRZ") or Tax Increment Finance ("TIF) or similar plan. A city- or county-wide comprehensive plan, by itself, does not equate to a concerted revitalization plan.

(iii) The area targeted for revitalization must be larger than the assisted housing footprint and should be a neighborhood or small group of contiguous neighborhoods with common attributes and problems. The Application must include a copy of the plan or a link to the online plan and a description of where specific information required below can be found in the plan. The plan must meet the criteria described in subclauses (I) - (~~V~~IV) of this clause:

(I) The concerted revitalization plan, or each of the local planning documents that compose the plan, must have been adopted by the municipality or county in which the Development Site is located. The resolution adopting the plan, or if development of the plan and budget were delegated, the resolution of delegation and other evidence in the form of certifications by authorized persons confirming the adoption of the plan and budget, must be submitted with the application.

(II) The problems in the revitalization area must be identified through a process in which affected local residents had an opportunity to express their views on problems facing the area, and how those problems should be addressed and prioritized. ~~These problems~~Eligible problems that are appropriate for a concerted revitalization plan may include the following:

(-a-) long-term disinvestment, such as significant presence of residential and/or commercial blight, streets infrastructure neglect~~ such as inadequate drainage~~, and/or sidewalks in significant disrepair;

(-b-) declining quality of life for area residents, such as high levels of violent crime, property crime, gang activity, or other significant criminal matters such as the manufacture or distribution of illegal substances or overt illegal activities;

DRAFT

~~(III) Staff will review the target area for presence of the problems identified in the plan and for targeted efforts within the plan to address those problems. In addition, but not in lieu of, such a plan may be augmented with targeted efforts to promote a more vital local economy and a more desirable neighborhood, including but not limited to:~~

~~(a) creation of needed affordable housing by improvement of existing affordable housing that is in need of replacement or major renovation;~~

~~(b) attracting private sector development of housing and/or business;~~

~~(c) developing health care facilities;~~

~~(d) providing public transportation;~~

~~(e) developing significant recreational facilities; and/or~~

~~(f) improving under-performing schools.~~

~~(IV~~(-c-) lack of a robust economy for that neighborhood area, or, if economic revitalization is already underway, lack of new affordable housing options for long-term residents.

(III) The goals of the adopted plan must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timetable. This funding must ~~have been~~be flowing in accordance with the plan, such that the problems identified within the plan ~~will~~are currently being or have been sufficiently ~~mitigated and~~ addressed ~~prior to the Development being placed into service~~.

(~~V~~IV) The plan must either be current at the time of Application and must officially continue for a minimum of three years thereafter OR the work to address the items in need of mitigation or rehabilitation -has begun and, additionally, the Applicant must include confirmation from a public official who oversees the plan that accomplishment of those objectives is on schedule and there are no budgetary or other obstacles to accomplishing the purposes of the plan.

(iv~~i~~) Up to seven (7) points will be awarded based on:

(I) Applications will receive four (4) points for a letter from the appropriate local official providing documentation of measurable improvements within the revitalization area based on the ~~target~~targeted efforts outlined in the plan~~.~~ and in reference to the requirements of 10 TAC §11.9(d)(7)(A)(iii)(I-IV). The letter must also discuss how the improvements will lead to an appropriate area for the placement of housing; and

(II) Applications may receive (2) points in addition to those under subclause (I) of this clause if the Development is explicitly identified in a resolution by the municipality, or county as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). A municipality or county may only identify one Development per CRP area during each Application Round for the additional points under this subclause, unless the concerted revitalization plan includes more than one distinct area within the city or county, in which case a resolution may be provided for each Development in its respective area. The resolution from the Governing Body of the municipality or county that approved the plan is required to be submitted in the Application. If multiple Applications submit resolutions under this subclause from the same Governing Body for the same CRP area, none of the

DRAFT

Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan; and

(III) Applications will receive (1) point in addition to those under subclause (I) and (II) if the development is in a location that would score at least 4 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii~~).~~().

(B) For Developments located in a Rural Area.

(i) Applications will receive 4 points for the rehabilitation or demolition and reconstruction of a development in a rural area that has been leased at 85% or greater for the six months preceding Application by low income households and which was initially constructed 25 or more years prior to Application submission as either public housing or as affordable housing with support from USDA, HUD, the HOME program, or the CDBG program. The occupancy percentage will not include units that cannot be occupied due to needed repairs, as confirmed by the PCA or CNA. Demolition and relocation of units must be determined locally to be necessary to comply with the Affirmatively Furthering Fair Housing Rule, or if necessary to create an acceptable distance form Undesirable Site Features or ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors.

(ii) Applications may receive (2) points in addition to those under clause (i) of this subparagraph if the Development is explicitly identified in a resolution by the municipality (or county if the Development Site is completely outside of a city) as contributing more than any other to the concerted revitalization efforts of the municipality or county (as applicable). Where a Development Site crosses jurisdictional boundaries, resolutions from all applicable governing bodies must be submitted. A municipality or county may only identify one single Development during each Application Round for each specific area to be eligible for the additional points under this subclause. If multiple Applications submit resolutions under this subclause from the same Governing Body for a specific area described in the plan, none of the Applications shall be eligible for the additional points; and

(iii) Applications may receive (1) additional point if the development is in a location that would score at least ~~4~~5 points under Opportunity Index, §11.9(c)(4)(B), except for the criteria found in §11.9(c)(4)(A) and subparagraphs §11.9(c)(4)(A)(i) and §11.9(c)(4)(A)(ii).~~.~~

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) An Application may qualify to receive a maximum of eighteen (18) points for this item. To qualify for points, a 15-year pro forma itemizing all projected income including Unit rental rate assumptions, operating expenses and debt service, and specifying the underlying growth assumptions and reflecting a minimum must-pay debt coverage ratio of 1.15 for each year must be submitted. The pro forma must include the signature and contact information evidencing that it has been reviewed and found to be acceptable by an authorized representative of a proposed Third Party construction or permanent lender. In addition to the signed pro forma, a lender approval letter must be submitted. An acceptable form of lender approval letter may be obtained in the Uniform Multifamily Application Templates. If the letter evidences review of the Development alone it will receive

DRAFT

sixteen (16) points. If the letter evidences review of the Development and the Principals, it will receive eighteen (18) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) An Application may qualify to receive up to twelve (12) points based on either the Eligible Building Cost or the Eligible Hard Costs per square foot of the proposed Development voluntarily included in eligible basis as originally submitted in the Application. For purposes of this scoring item, Eligible Building Costs will be defined as Building Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation. Eligible Building Costs will exclude structured parking or commercial space that is not included in Eligible Basis, and Eligible Hard Costs will include general contractor overhead, profit, and general requirements. Structured parking or commercial space costs must be supported by a cost estimate from a Third Party General Contractor or subcontractor with experience in structured parking or commercial construction, as applicable. The square footage used will be the Net Rentable Area (NRA). The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule. If the proposed Development is a Supportive Housing Development, the NRA will include common area up to 75~~50~~ square feet per Unit.

(A) A high cost development is a Development that meets one of the following conditions:

(i) the Development is elevator served, meaning it is either a Elderly Development with an elevator or a Development with one or more buildings any of which have elevators serving four or more floors;

(ii) the Development is more than 75 percent single family design;

(iii) the Development is Supportive Housing; or

(iv) the Development Site qualifies for a minimum of five (5) points under subsection (c)(4) of this section, related to Opportunity Index, and is located in an Urban Area.

(B) Applications proposing New Construction or Reconstruction will be eligible for twelve (12) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than $76.44~~72.80~~ per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than $81.90~~78~~ per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than $98.28~~93.60~~ per square foot; or

(iv) The voluntary Eligible Hard Cost per square foot is less than $109.20~~104~~ per square foot, and the Development meets the definition of high cost development.

(C) Applications proposing New Construction or Reconstruction will be eligible for eleven (11) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost per square foot is less than $81.90~~78~~ per square foot;

(ii) The voluntary Eligible Building Cost per square foot is less than $87.36~~83.20~~ per square foot, and the Development meets the definition of a high cost development;

(iii) The voluntary Eligible Hard Cost per square foot is less than $103.74~~98.80~~ per square foot; or

DRAFT

(iv) The voluntary Eligible Hard Cost per square foot is less than $114.66~~109.20~~ per square foot, and the Development meets the definition of high cost development.

(D) Applications proposing New Construction or Reconstruction will be eligible for ten (10) points if one of the following conditions is met:

(i) The voluntary Eligible Building Cost is less than $98.28~~93.60~~ per square foot; or

(ii) The voluntary Eligible Hard Cost is less than $120.12~~114.40~~ per square foot.

(E) Applications proposing Adaptive Reuse or Rehabilitation (excluding Reconstruction) will be eligible for points if one of the following conditions is met:

(i) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $109.20~~104~~ per square foot;

(ii) Twelve (12) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $141.96~~135.20~~ per square foot, located in an Urban Area, and that qualify for 5 or 7 points under subsection (c)(4) of this section, related to Opportunity Index; or

(iii) Eleven (11) points for Applications which include voluntary Eligible Hard Costs plus acquisition costs included in Eligible Basis that are less than $141.96~~135.20~~ per square foot.

(3) Pre-application Participation. (§2306.6704) An Application may qualify to receive up to six (6) points provided a pre-application was submitted by the ~~pre-application~~Pre-Application Final Delivery Date. Applications that meet the requirements described in subparagraphs (A) - (~~G~~H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than ten (10) percent from pre-application to Application;

(B) The designation of the proposed Development as Rural or Urban remains the same;

(C) The proposed Development serves the same Target Population;

(D) The pre-application and Application are participating in the same set-asides (At-Risk, USDA, Non-Profit, and/or Rural);

(E) The Application final score (inclusive of only scoring items reflected on the self score form) does not vary by more than four (4) points from what was reflected in the pre-application self score;

(F) The Development Site at Application is at least in part the Development Site at pre-application, and the census tract number listed at pre-application is the same at Application. The site at full Application may not require notification to any person or entity not required to have been notified at pre-application;

(G) The Development Site does not have the following ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors as described in 10 TAC §~~10~~11.101(a)(3) that were not disclosed with the pre-application:

(i) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) ~~or within 1,000 feet of any census tract~~ in an Urban Area and the rate of Part I

DRAFT

violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency.

(H) The pre-application met all applicable requirements.

(4) Leveraging of Private, State, and Federal Resources. (§2306.6725(a)(3))

(A) An Application may qualify to receive up to three (3) points if at least five (5) percent of the total Units are restricted to serve households at or below 30 percent of AMGI (restrictions elected under other point items may count) and the Housing Tax Credit funding request for the proposed Development meet one of the levels described in clauses (i) - (iv) of this subparagraph:

(i) the Development leverages CDBG Disaster Recovery, HOPE VI, RAD, or Choice Neighborhoods funding and the Housing Tax Credit Funding Request is less than 9 percent of the Total Housing Development Cost (3 points). The Application must include a commitment of such funding; or

(ii) If the Housing Tax Credit funding request is less than ~~eight (8~~nine (9) percent of the Total Housing Development Cost (3 points); or

(iii) If the Housing Tax Credit funding request is less than ~~nine (9~~ten (10) percent of the Total Housing Development Cost (2 points); or

(iv) If the Housing Tax Credit funding request is less than ~~ten (10~~eleven (11) percent of the Total Housing Development Cost (1 point).

(B) The calculation of the percentages stated in subparagraph (A) of this paragraph will be based strictly on the figures listed in the Funding Request and Development Cost Schedule. Should staff issue an Administrative Deficiency that requires a change in either form, then the calculation will be performed again and the score adjusted, as necessary. However, points may not increase based on changes to the Application. In order to be eligible for points, no more than 50 percent of the developer fee can be deferred. Where costs or financing change after completion of underwriting or award (whichever occurs later), the points attributed to an Application under this scoring item will not be reassessed unless there is clear evidence that the information in the Application was intentionally misleading or incorrect.

(5) Extended Affordability. (§§2306.6725(a)(5); 2306.111(g)(3)(C); 2306.185(a)(1) and (c); 2306.6710(e)(2); and 42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year Compliance Period and, subject to certain exceptions, an additional 15-year Extended Use Period. Development Owners that agree to extend the Affordability Period for a Development to thirty-five (35) years total may receive two (2) points.

(6) Historic Preservation. (§2306.6725(a)(5)) At least seventy-five percent of the residential units shall reside within the Certified Historic Structure and the Development must reasonably be expected to qualify to receive and document receipt of historic tax credits before or by the issuance of Forms 8609. The Application must include either documentation from the Texas Historical Commission that the property is currently a Certified Historic Structure, or documentation determining preliminary eligibility for Certified Historic Structure status (5 points).

DRAFT

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. An Application may qualify to receive one (1) point if the Application reflects a Funding Request of Housing Tax Credits, as identified in the original Application submission, of no more than 100% of the amount available within the subregion or set-aside as determined by the application of the regional allocation formula on or before December 1, ~~2017~~2018.

(f) Factors Affecting Scoring and Eligibility in ~~the 2019~~current and future Application ~~Round~~Rounds

Staff may recommend to the Board and the Board may find that an Applicant or Affiliate should be ineligible to compete in ~~the~~ following year's competitive ~~2019~~ Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two ~~one (1)~~ points for each submitted Application (Tex. Gov't Code 2306.6710(b)(2)) because it ~~made a deduction of up to five (5) points for~~ meets the conditions for any of the items listed in paragraphs (1) – (4) of this subsection~~, unless the person approving the extension (the~~. For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable~~)~~, makes an affirmative finding setting forth that the ~~facts which gave rise to the~~ need for ~~the~~an extension ~~were~~of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated. Any such matter to be presented for final determination of deduction by the Board must include notice from the Department to the affected party not less than fourteen (14) days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point deductions. ~~(§2306.6710(b)(2))~~ The Executive Director may make a determination that the matter does not warrant point deduction only for paragraph (1). (§2306.6710(b)(2)) Any deductions assessed by the Board for paragraphs (1) through (4) of this subsection based on a Housing Tax Credit Commitment from a preceding Application round will be attributable to the Applicant or Affiliate of an Application submitted in the Application round referenced above.

(1) If the Applicant or Affiliate failed to meet the original Carryover submission or 10 percent Test deadline(s) or has requested an extension of the Carryover submission deadline~~,~~ or the 10 percent Test deadline (relating to either submission or expenditure).

(2) If the Applicant or Affiliate failed to meet the commitment or expenditure requirements or benchmarks of their Contract with the Department for a HOME or National Housing Trust Fund award from the Department.

(3) If the ~~Developer or Principal of the Applicant violates the Adherence to Obligations.~~

~~(4) Any deductions assessed by the Board for paragraph (1) or (2) of this subsection based on a Housing Tax Credit Commitment from the preceding Application Round will be attributable to the~~ Applicant or Affiliate ~~of an Application submitted~~, in the Competitive HTC round immediately preceding the current ~~Application Round.~~

~~(5) If the Applicant or Affiliate fails~~round, failed to meet the deadline to both close financing and provide evidence of an executed construction contract under 10 TAC §11.9(c)(8) related to construction in specific disaster counties.

DRAFT

(4) If the Developer or Principal of the Applicant has violated and/or violates the Adherence to Obligations.

§11.10. Third Party Request for Administrative Deficiency for Competitive HTC Applications.

The purpose of the Third Party Request for Administrative Deficiency ("RFAD") process is to allow an unrelated person or entity to bring new, material information about an Application to staff's attention. Such Person may request ~~the~~ staff to consider whether a matter in an Application in which the Person has no involvement should be the subject of an Administrative Deficiency. Staff will consider the request and proceed as it deems appropriate under the applicable rules including, if the Application in question is determined by staff to not be a priority Application, not reviewing the matter further. ~~Requestors must provide, at the time of filing the challenge~~If the assertion(s) in the RFAD have been addressed through the Application review process, and the RFAD does not contain new information, staff will not review or act on it. The RFAD may not be used to appeal staff decisions regarding competing Applications (§2306.6715(b)). Any RFAD that questions a staff decision regarding staff's scoring of an Application filed by another Applicant will be disregarded. Requestors must provide, at the time of filing the request, all briefings, documentation, and other information that the requestor offers in support of the deficiency. A copy of the request and supporting information must be provided by the requestor directly to the Applicant at the same time it is provided to the Department. Requestors must provide sufficient credible evidence that, if confirmed, would substantiate the deficiency request. Assertions not accompanied by supporting documentation susceptible to confirmation will not be considered. Staff shall provide to the Board a written report summarizing each third party request for administrative deficiency and the manner in which it was addressed. Interested persons may provide testimony on this report before the Board takes any formal action to accept the report. The results of a RFAD may not be appealed by the Requestor. A scoring notice or termination notice that results from a RFAD may be appealed by the Applicant as further described in §11.902 of this chapter.~~.~~ Information received after the RFAD deadline will not be considered by staff or presented to the Board~~.~~ unless the information is of such a matter as to warrant a termination notice. When the Board receives a report on the disposition of RFADs it may, for any staff disposition contained in the report, change the conclusion if it believes the change is necessary to bring the result into compliance with applicable laws and rules as construed by the Board; or if based on public testimony, it believes staff's conclusion should be revisited, it may remand the RFAD to staff for further consideration, which may result in a reaffirmation, reversal, or modification.

DRAFT

Subchapter B – Site and Development Requirements and Restrictions

§11.101.Site and Development Requirements and Restrictions.

(a) Site Requirements and Restrictions. The purpose of this section is to identify specific requirements and restrictions related to a Development Site seeking multifamily funding or assistance from the Department.

(1) Floodplain. New Construction or Reconstruction Developments located within a one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency ~~(~~("FEMA~~)~~") Flood Insurance Rate Maps must develop the site in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements. The Applicant will have to use floodplain maps and comply with regulation as they exist at the time of commencement of construction. Even if not required by such provisions, the Site must be developed so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain. If there are more stringent local requirements they must also be met. If no FEMA Flood Insurance Rate Maps are available for the proposed Development Site, flood zone documentation must be provided from the local government with jurisdiction identifying the one-hundred (100) year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from ~~the U.S. Department of Housing and Urban Development (HUD) or U.S. Department of Agriculture (USDA)~~HUD or USDA are exempt from this requirement. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the one-hundred (100) year floodplain provided the local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application or the existing structures meet the requirements that are applicable for New Construction or Reconstruction Developments, as certified to by a Third Party engineer.

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application. Historic Developments that would otherwise qualify under §11.9(e)(6) of this ~~title~~ chapter ~~(relating to the Qualified Allocation Plan)~~ may be granted an exemption by the Board, and such exemption must be requested at the time of or prior to the filing of an Application. The distances are to be measured from the nearest boundary of the Development Site to the nearest boundary of the property or easement containing the undesirable feature, unless otherwise noted below. Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department

DRAFT

staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. If the Board determines such feature is not acceptable and that, accordingly, the Site is ineligible, the Application shall be terminated and such determination of Site ineligibility and termination of the Application cannot be appealed.

(A) Development Sites located within 300 feet of junkyards. For purposes of this paragraph, a junkyard shall be defined as stated in Texas Transportation Code~~,~~ §396.001;

(B) Development Sites located within 300 feet of a solid waste facility or sanitary landfill facility or illegal dumping sites (as such dumping sites are identified by the local municipality);

(C) Development Sites located within 300 feet of a sexually-oriented business. For purposes of this paragraph, a sexually-oriented business shall be defined in Local Government Code~~,~~ §243.002, or as zoned, licensed and regulated as such by the local municipality;

(D) Development Sites in which ~~the buildingsare~~any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

(E) Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone; or

(ii) the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development; or

(iii) ~~or~~ the railroad in question is commuter or light rail;

(F) Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations);

(G) Development Sites located within 10 miles of a nuclear plant;

(H) Development Sites in which the buildings are located within the accident potential zones or the runway clear zones of any airport;

(I) Development Sites that contain one or more pipelines, situated underground or aboveground, which carry highly volatile liquids~~.~~ or Development Sites located adjacent to a pipeline easement (for a pipeline carrying highly volatile liquids), the Application must include a plan for developing near the pipeline(s) and mitigation, if any, in accordance with a report conforming to the Pipelines and Informed Planning Alliance ("PIPA");

(J) Development Sites located within 2 miles of refineries capable of refining more than 100,000 barrels of oil daily; or

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated. If staff believe that a Site should be deemed unacceptable under this provision it will provide the Applicant with written notice and an opportunity to respond and place the matter before the Board for a determination.

DRAFT

(3) ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors.

(A) If the Development Site has any of the characteristics described in subparagraph (B) of this paragraph, the Applicant must disclose the presence of such characteristics in the Application submitted to the Department. For Competitive HTC Applications, an Applicant must disclose at pre-application as required by 11.8(b) of this ~~title~~ chapter~~(relating to Pre-Application Requirements)~~. For all other Applications, an Applicant may choose to disclose the presence of such characteristics at the time the pre-application (if applicable) is submitted to the Department. Requests for pre-determinations of Site eligibility prior to pre-application or Application submission will not be binding on full Applications submitted at a later date. For Tax-Exempt Bond Developments where the Department is the Issuer, the Applicant may submit the documentation described under subparagraphs (C) and (D) of this paragraph at pre-application or for Tax-Exempt Bond Developments utilizing a local issuer such documentation may be submitted with the request for a pre-determination and staff may perform an assessment of the Development Site to determine Site eligibility. ~~The~~An Applicant ~~understands~~should understand that any determination made by staff or the Board at that point in time regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the ~~undesirable neighborhood characteristics~~ neighborhood risk factors become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board~~.~~ for its determination. Should staff determine that the Development Site has any of the characteristics described in subparagraph (B) of this paragraph and such characteristics were not disclosed, the Application may be subject to termination. An Applicant's own non-disclosure is not appealable as such appeal is in direct conflict with certifications made in the Application and within the control of the Applicant. The presence of any characteristics listed in subparagraph (B) of this paragraph will prompt staff to perform an assessment of the Development Site and neighborhood, which may include a site visit, and include, where applicable, a review as described in subparagraph (C) of this paragraph. The assessment of the Development Site and neighborhood will be presented to the Board with a staff recommendation with respect to the eligibility of the Development Site. Factors to be considered by the Board, despite the existence of the ~~undesirable neighborhood characteristics~~neighborhood risk factors, are identified in subparagraph (E) of this paragraph. Preservation of affordable units alone does not present a compelling reason to support a conclusion of eligibility. Should the Board make a determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is final and not subject to appeal.

(B) The ~~undesirable neighborhood characteristics~~Neighborhood Risk Factors include those noted in clauses (i) – (iv) of this subparagraph and additional information as applicable to the ~~undesirable~~ neighborhood ~~characteristic~~risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. ~~If an Application for a Development Site involves three or more undesirable neighborhood characteristics, in order to be found eligible it will be expected that, in addition to demonstrating satisfactory mitigation for each characteristic disclosed, the Development Site must be located within an area in which there is a concerted plan of revitalization already in place or that private sector economic forces, such as those referred to as gentrification are already underway and indicate a strong likelihood of a reasonably rapid transformation of the area to a more economically vibrant area. In order to be considered as~~ In order to be considered an eligible Site despite the presence of such ~~undesirable~~ neighborhood ~~characteristic~~risk factor, an Applicant must demonstrate actions being taken that would lead ~~a reader~~staff and/or the Board to conclude that there is a high probability and reasonable expectation the ~~undesirable characteristic~~risk factor will be sufficiently mitigated or significantly improved within a reasonable time, typically prior to placement in service, and that the ~~undesirable characteristic~~risk

DRAFT

factor demonstrates a positive trend and continued improvement. Conclusions for such reasonable expectation may need to be affirmed by an industry professional, as appropriate, and may be dependent upon the severity of the ~~undesirable~~ neighborhood ~~characteristic~~ risk factor disclosed.

(i) The Development Site is located within a census tract that has a poverty rate above 40 percent for individuals (or 55 percent for Developments in regions 11 and 13).

(ii) The Development Site is located in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) ~~or within 1,000 feet of any census tract~~ in an Urban Area and the rate of Part I violent crime is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com.

(iii) The Development Site is located within 1,000 feet (measured from nearest boundary of the Site to the nearest boundary of blighted structure) of multiple vacant structures that have fallen into such significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned.

(iv) The Development Site is located within the attendance zones of an elementary school, a middle school or a high school that does not have a Met Standard rating by the Texas Education Agency. Any school in the attendance zone that has not achieved Met Standard for three consecutive years and has failed by at least one point in the most recent year, unless there is a clear trend indicating imminent compliance, shall be unable to mitigate due to the potential for school closure as an administrative remedy pursuant to Chapter 39 of the Texas Education Code. In districts with district-wide enrollment or choice districts an Applicant shall use the rating of the closest elementary, middle and high school, respectively, which may possibly be attended by the tenants in determining whether or not disclosure is required. Schools with an application process for admittance, limited enrollment or other requirements that may prevent a child from attending will not be considered as the closest school or the school which attendance zone contains the site. The applicable school rating will be the ~~2017~~2018 accountability rating assigned by the Texas Education Agency, unless the school is "Not Rated" because it meets the TEA Hurricane Harvey Provision, in which case the 2017 rating will apply. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments ~~Sites subject to an Elderly Limitation is~~ are considered exempt and do~~es~~ not have to disclose the presence of this characteristic.

(C) Should any of the ~~undesirable neighborhood characteristics~~neighborhood risk factors described in subparagraph (B) of this paragraph exist, the Applicant must submit the ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors Report that contains the information described in clauses

DRAFT

(i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph as such information might be considered to pertain to the ~~undesirable~~ neighborhood ~~characteristic~~risk factor(s) disclosed so that staff may conduct a further Development Site and neighborhood review.

(i) A determination regarding neighborhood boundaries, which will be based on the review of a combination of natural and manmade physical features (rivers, highways, etc.), apparent changes in land use, the Primary Market Area as defined in the Market Analysis, census tract or municipal boundaries, and information obtained from any Site visits;

(ii) An assessment of general land use in the neighborhood, including comment on the prevalence of residential uses;

(iii) An assessment concerning any of the features reflected in paragraph (2) of this subsection if they are present in the neighborhood, regardless of whether they are within the specified distances referenced in paragraph (2) of this subsection;

(iv) An assessment of the number of existing affordable rental units (generally includes rental properties subject to TDHCA, HUD, or USDA restrictions) in the Primary Market Area, including comment on concentration based on the size of the Primary Market Area;

(v) An assessment of the percentage of households residing in the census tract that have household incomes equal to or greater than the median household income for the MSA or county where the Development Site is located;

(vi) An assessment of the number of market rate multifamily units in the neighborhood and their current rents and levels of occupancy;

(vii) An assessment of school performance for each of the schools in the attendance zone containing the Development that did not achieve a ~~2017~~2018 Met Standard rating, for the previous two academic years (regardless of whether the school Met Standard in those years), that includes the TEA Accountability Rating Report, a discussion of performance indicators and what progress has been made over the prior year, and progress relating to the goals and objectives identified in the campus improvement plan or turnaround plan pursuant to §39.107 of the Texas Education Code in effect. This is not just the submission of the campus improvement plan, but an update to the plan or if such update is not available, information from a school official that speaks to progress made under the plan as further indicated under subparagraph (D)(iv) of this paragraph; and

(viii) Any additional information necessary to complete an assessment of the Development Site, as requested by staff.

(D) Information regarding mitigation of ~~undesirable neighborhood characteristics~~neighborhood risk factors should be relevant to the ~~undesirable characteristics~~risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application~~ and may include~~, including, but~~ is~~ not limited to, the measures described in clauses (i) - (iv) of this subparagraph. In addition to those measures described herein, documentation from the local municipality may also be submitted stating the Development is consistent with their obligation to affirmatively further fair housing.

(i) Evidence that the poverty rate within the census tract has decreased over the five-year period preceding the date of Application, or that the census tract is contiguous to a census tract with a poverty rate below 20% and there are no physical barriers between them such as highways or rivers which would be reasonably considered as separating or dividing the neighborhood containing the proposed Development from the low poverty area must be submitted. Other mitigation may include, but is not limited to, evidence of sustained job growth and employment opportunities, career training opportunities or job placement services, evidence of gentrification in the area

DRAFT

(including an increase in property values) which may include contiguous census tracts that could conceivably be considered part of the neighborhood containing the proposed Development, and a clear and compelling reason that the Development should be located at the Site.

(ii) Evidence in the form of data and testimony maintained by the most qualified person (as described in subclause (IV) of this clause) that either subclause (I) or (II) can be supported as further described in subclause (III):

(I) the data and evidence establish that there is a reasonable basis to proceed on the belief that the crime data shows, or will show, a favorable trend such that within the next two years Part I violent crime for that location is expected to be less than 18 per 1,000 persons; or ~~crime rates are decreasing~~

(II) the data and evidence reveal that the data reported on neighborhoodscout.com does not accurately reflect the true nature of what is occurring and what is actually occurring does not rise to the level to cause a concern to the Board over the level of Part I violent crime for the location. ~~, based~~

(III) The data and testimony must be in the form of an affidavit from the most qualified person as described in subclause (IV) of this clause. Evidence may be based on violent crime data from the city's police department or county sheriff's department, as applicable based on the location of the Development, for the police beat or patrol area within which the Development Site is located, based on the population of the police beat or patrol area that ~~would~~ yields a crime rate below the threshold indicated in this section or that would yield a crime rate below the threshold indicated in this section by the time the Development is placed into service. The instances of violent crimes within the police beat or patrol area that encompass the census tract, calculated based on the population of the census tract, may also be used. A map plotting all instances of violent crimes within a one-half mile radius of the Development Site may also be submitted, provided that it reflects that the crimes identified are not at a level that would warrant an ongoing concern. The data must include incidents reported during the entire ~~2016~~2017 and ~~2017~~2018 calendar year. Violent crimes reported through the date of Application submission must~~may~~ be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person ~~local police department or local law enforcement agency~~, including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must~~may~~ be provided, and depending on the data provided by the Applicant, such written statement may be required, as determined by staff. It is expected that such written statement would also speak to whether there is a reasonable expectation that based on the efforts underway crime data reflects a favorable downward trend. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(IV) The most qualified person is the Chief of Police or his/her designee, in the case of a municipality or other unit of local government that has a police department; or the Sheriff or his/her designee, in the case of an area not within a municipality or served by a police department.

(iii) Evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan, including an adequately funded budget, whereby it is contemplated such blight and/or infestation will have been remediated within no more than two

DRAFT

years from the date of the award and that a responsible party will use the blighted property in a manner that complies with local ordinances. In instances where blight exists but may only include a few properties, mitigation efforts could include partnerships with local agencies to engage in community-wide clean-up efforts, or other efforts to address the overall condition of the neighborhood.

(iv) Evidence of mitigation for all of the schools in the attendance zone that have not achieved Met Standard will include, but is not limited to, jointly satisfying the requirements of subclauses (I) and (II); meeting the requirements of subclause (III) of this clause if the school that has not achieved Met Standard is an elementary school; or meeting the requirements of subclause (IV) of this clause if the school that has not achieved Met Standard is either a middle school or a high school.

(I) documentation from a person authorized to speak on behalf of the school district ~~a school official~~ with oversight of the school in question that indicates the specific plans in place and current progress towards meeting the goals and performance objectives identified in the Campus Improvement Plan and in restoring the school(s) to an acceptable rating status. The documentation must include actual data from progress already made under such plan(s) to date demonstrating favorable trends and must provide the authorized persons assessment that the plan(s) and the data support a reasonable conclusion that the school(s) will have an acceptable rating within the following two year period. The authorized person must also make a representation that they have been in regular communication with the Texas Education Agency, which has confirmed to the authorized person that it finds their assessment reasonable. ~~For schools that have not achieved Met Standard for two consecutive years, a letter from the superintendent, member of the school board or a member of the transformation team that has direct experience, knowledge and oversight of the specific school must also be submitted.~~ The letter should, ~~at a minimum and~~ to the extent applicable, identify the efforts that have been undertaken to increase student performance, decrease mobility rate, benchmarks for re-evaluation, increased parental involvement, plans for school expansion, plans to implement early childhood education, and long-term trends that would point toward their achieving Met Standard by the time the Development is placed in service. The letter from such education professional should also speak to why they believe the staff tasked with carrying out the plan will be successful at making progress towards acceptable student performance considering that prior Campus Improvement Plans were unable to do so. Such assessment could include whether the team involved has employed similar strategies at prior schools and were successful.

(II) The school district has confirmed that a school age person at the proposed Development Site may, as a matter of right, attend a school in the District that has a Met Standard rating or better, and the Applicant has committed that if the school district will not provide no-cost transportation to such a school, the Applicant will provide such no-cost transportation until such time as the school(s) in whose primary attendance zone(s) the proposed Development Site is located have all achieved a Met Standard rating or better.

(III) The Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved Met Standard, a Head Start provider with capacity in their charter, or a charter school provider to provide suitable and appropriately designed space on-site for the provision of an early childhood pre-K program at no cost to residents of the proposed Development. Suitable and appropriately designed space includes at a minimum a bathroom and large closet in the classroom space, appropriate design considerations made for the safety and security of the students, and satisfaction of the requirements of the applicable building code for school facilities. Such provision must be made available to the school or provider, as applicable, until the later of the elementary school that had not Met Standard achieving an

DRAFT

acceptable rating, or the school or provider electing to end the agreement. If a charter school or Head Start provider is the provider in the named agreement and that provider becomes defunct or no longer elects to participate in the agreement prior to the achievement of a Met Standard rating, the Development Owner must document their attempt to identify an alternate agreement with one of the other acceptable provider choices. However if the contracted provider is the school district or the school who is lacking the Met Standard rating and they elect to end the agreement prior to the achievement of a Met Standard rating, the Development will not be considered to be in violation of its commitment to the Department.

(IV) The Applicant has committed that until such time that the school(s) that had not Met Standard have achieved an acceptable rating it will operate an after school learning center that offers at a minimum 15 hours of weekly, organized, on-site educational services provided middle and high school children by a dedicated service coordinator or Third-Party entity which includes at a minimum: homework assistance, tutoring, test preparation, assessment of skill deficiencies and provision of assistance in remediation of those deficiencies (e.g., if reading below grade level is identified for a student, tutoring in reading skills is provided), research and writing skills, providing a consistent weekly schedule, provides for the ability to tailor assistance to the age and education levels of those in attendance, and other evidence-based approaches and activities that are designed to ~~In addition to the aforementioned letter from the school official, information should also be provided that addresses the types of services and activities offered at the Development or external partnerships that will facilitate and~~ augment classroom performance. Up to twenty percent of the activities offered may also include other enrichment activities such as music, art, or technology.

(E) In order for the Development Site to be found eligible by the Board, despite the existence of neighborhood risk factors, the Board must find, based on testimony and data from the most appropriate professional with knowledge and details regarding the neighborhood risk factor(s) or based, that the use of Department funds at the Development Site must be consistent with achieving the goals in clauses (i) - (iii) of this subparagraph. Pursuant to Tex. Gov't Code Chapter 2306, the Board shall document the reasons for a determination of eligibility that conflicts with the recommendations made by staff.

(i) Preservation of existing occupied affordable housing units to ensure they are safe and suitable or the new construction of high quality affordable housing units that are subject to federal rent or income restrictions; and

(ii) Determination that the ~~undesirable~~ risk ~~characteristic~~factor(s) that has been disclosed are not of such a nature or severity that should render the Development Site ineligible based on the assessment and mitigation provided under subparagraphs (C) and (D) of this paragraph~~.~~; or

(iii) The Applicant has requested a waiver of the presence of ~~undesirable neighborhood characteristics~~neighborhood risk factors on the basis that the Development is necessary to enable the state, a participating jurisdiction, or an entitlement community to comply with its obligation to affirmatively further fair housing, a HUD approved Conciliation Agreement, or a final and non-appealable court order and such documentation is submitted with the disclosure~~.~~

(b) Development Requirements and Restrictions. The purpose of this section is to identify specific restrictions on a proposed Development submitted for multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A) or (B) of this paragraph are deemed to apply.

(A) General Ineligibility Criteria.

DRAFT

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in ~~the~~ Code §42(i)(3)(B)(iii) and (iv)~~ of the Code~~);

(ii) Any Development with any building(s) with four or more stories that does not include an elevator;

(iii) A Housing Tax Credit Development that provides on-site continual or frequent nursing, medical, or psychiatric services. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living;

(iv) A Development that violates §1.15 of this title (relating to Integrated Housing Rule);

(v) A Development seeking Housing Tax Credits that will not meet the general public use requirement under Treasury Regulation, §1.42-9 or a documented exception thereto; or

(vi) A Development utilizing a Direct Loan that is subject to the Housing and Community Development Act, §104(d) requirements and proposing Rehabilitation or Reconstruction, if the Applicant is not proposing at least the one-for-one replacement of the existing unit mix. Adding additional units would not violate this provision.

(B) Ineligibility of Elderly Developments.

(i) Any Elderly Development of two stories or more that does not include elevator service for any Units or common areas above the ground floor;

(ii) Any Elderly Development with any Units having more than two bedrooms with the exception of up to three employee Units reserved for the use of the manager, maintenance, and/or security officer. These employee Units must be specifically designated as such; or

(iii) Any Elderly Development (including Elderly in a Rural Area) proposing more than 70 percent two-bedroom Units.

(2) Development Size Limitations. The minimum Development size is 16 Units. New Construction or Adaptive Reuse Developments in Rural Areas are limited to a maximum of 80 total Units for Competitive Housing Tax Credit Developments and Multifamily Loan Developments, and are limited to a maximum of 120 total Units for Tax Exempt Bond Developments. Other Developments do not have a limitation as to the maximum number of Units.

(3) Rehabilitation Costs. Developments involving Rehabilitation must establish a scope of work that will substantially improve the interiors of all units and exterior deferred maintenance and meet the minimum Rehabilitation amounts identified in subparagraphs (A) – (C) of this paragraph. Such amounts must be maintained through the issuance of IRS Forms 8609. For Developments with multiple buildings that have varying placed in service dates, the earliest date will be used for purposes of establishing the minimum Rehabilitation amounts. Applications must meet the minimum standards identified in subparagraphs (A), (B) or (C) of this paragraph, as applicable, or may alternatively meet the standards described in subparagraph (D) of this paragraph, in which case the minimums identified in (A), (B), or (C), are not applicable.

(A) For Housing Tax Credit Developments under the USDA Set-Aside the minimum Rehabilitation will involve at least $25,000 per Unit in Building Costs and Site Work;

(B) For Tax-Exempt Bond Developments, less than twenty (20) years old, based on the placed in service date, the minimum Rehabilitation will involve at least $20,000 per Unit in Building Costs and Site Work. If such Developments are greater than twenty (20) years old, based on the placed in

DRAFT

service date, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(D) In lieu of meeting the minimum thresholds identified in subparagraphs (A), (B) or (C) of this paragraph an Applicant may elect to design their Rehabilitation such that it satisfied all of the criteria listed in clauses (i) through (xxix)

(i) Address fully all critical need matters identified in the Property Condition Assessment;
(ii) Ensure that all buildings have stable foundations and effective and compliant drainage;
(iii) All buildings have roofing with a functional life remaining, after rehabilitation, of at least 10 years;
(iv) New HVAC units unless the existing HVAC units are less than 8 years old;
(v) Have electrical systems with at least two electrical outlets per room;
(vi) Remove all popcorn texture on ceilings (unless asbestos encapsulation required);
(vii) Ensure that all wall texture is in like new condition, consistent texture throughout with no obvious repairs showing;
(viii) Replace all baseboards and door trim;
(ix) Have new entry and interior paneled doors and door hardware;
(x) New energy-efficient windows (low-e on any windows with afternoon sun exposure) with solar screens;
(xi) All cracked or damaged stair treads replaced;
(xii) New or like-new condition guardrails and exterior railings;
(xiii) Have new kitchen and bathroom cabinets, counters, and fixtures;
(xiv) Have LED lighting;
(xv) Have a new hot water heater for each unit;
(xvi) Have newly resurfaced and striped parking and on property roads that are in compliance with all accessibility requirements;
(xvii) Have new Energy Star or equivalent appliances;
(xviii) Have low flow plumbing including showers and toilets;
(xix) Have internet connectivity in all units;
(xx) Have new security fencing or fencing brought to like new condition;
(xxi) All outdoor playground equipment is fully covered;
(xxii) All units include mini-blinds on all windows;
(xxiii) Building exteriors to be in like new condition with no obvious repairs;
(xxiv) Attic insulation of at least R38 specification and includes a radiant barrier;
(xxv) New building, parking and site signage;
(xxvi) Hardwired smoke and carbon monoxide detectors;
(xxvii) Fire suppression sprinklers (unless structurally not possible);
(xxviii) Exterior lighting that illuminates all parking and walkway areas; and
(xxix) Complies with Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act.

(4) Mandatory Development Amenities. (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (~~M~~N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (~~M~~N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), (I), (L), or (M) of this paragraph; however, access must be provided to a comparable amenity in a common

DRAFT

area. All amenities listed below must be at no charge to the ~~tenants~~residents. ~~Tenants~~ Residents must be provided written notice of the applicable required amenities for the Development. The Board may waive one or more of the requirements of this paragraph for Developments that will include Historic Tax Credits, with evidence that the amenity has not be approved by the Texas Historical Commission.

(A) All bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal and Energy-Star rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star rated ceiling fan per Unit;

(J) Energy-Star rated lighting in all Units which ~~may~~ must include compact fluorescent or LED light bulbs;

~~(K) Plumbing fixtures must meet performance standards of Texas Health and Safety Code, Chapter 372;~~

~~(L~~(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(~~M~~L) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be one and a half (1.5) spaces per Unit for non- Elderly Developments and one (1) space per Unit for Elderly Developments. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout its term;

(M) Energy-Star rated windows;

(N) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, and if covered by the Fair Housing Act, HUD's Fair Housing Act Design Manual.

(5) Common Amenities.

(A) All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph.

(i) Developments with 16 to 40 Units must qualify for four (4) points;

(ii) Developments with 41 to 76 Units must qualify for seven (7) points;

(iii) Developments with 77 to 99 Units must qualify for ten (10) points;

DRAFT

(iv) Developments with 100 to 149 Units must qualify for fourteen (14) points;

(v) Developments with 150 to 199 Units must qualify for eighteen (18) points; or

(vi) Developments with 200 or more Units must qualify for twenty-two (22) points.

(B) These points are not associated with any selection criteria points. The amenities must be for the benefit of all ~~tenants~~ residents and made available throughout normal business hours and maintained throughout the Affordability Period. ~~Tenants~~ Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement that are provided on the Development Site. For example, if a swimming pool exists on the phase one property and it is anticipated that the second phase tenants will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all units via an accessible route.

(C) The common amenities and respective point values are set out in clauses (i) - (~~xxxi~~v) of this subparagraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of amenities from each section. An Applicant can only count an amenity once; therefore combined functions (a library which is part of a community room) will only qualify for points under one category:

(i) Community Space for Resident Supportive Services

~~(I) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);~~

(I) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and/or children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. It must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(II) Service provider office in addition to leasing offices (1 point~~);~~();

(ii) Safety

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (~~2 points~~1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2~~3~~ points);

DRAFT

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/Fitness / Play

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment that includes at least one of the following for every 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control. (2 points and allow for after-hours access. (1 point);

(III(III) Furnished fitness center. Equipped with a variety of fitness equipment that includes at least one of the following for every 20 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

IV) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxiV) of this subparagraph is not selected; or

(IVV) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxIV) of this subparagraph is not selected; (V) Swimming pool (3 points);

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (3 points);

(VIII) Splash pad/water feature play area (1 point);

(VIIIX) Sport Court (Tennis, Basketball or Volleyball) (2 points);

(iv) Design / Landscaping

(I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(V) Porte-cochere (1 point); or

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(VI) Lighted pathways along all accessible routes (1 point);

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

(VII) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of three categories: Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than two (2) points total under this clause.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) LEED. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC 700 National Green Building Standard. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(v) Community Resources

(I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);

(II) Community laundry room with at least one washer and dryer for every 40 Units (32 points);

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);

(IV) Equipped business/computerBusiness center. Must be equipped with 1 computer for every 40 Units (maximum of 5 computers needed) loaded with basic applications/programs to enable email/workstations and seating internet access, word processing, Excel, etc., 1 laser printer per computer lab and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);

(V) Furnished Community room (2 points);

(VI) Library with an accessible sitting area (separate from the community room) (1 point);

(VIII) Regularly staffed service provider office in addition to leasing offices (3 points);

(IX(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

(X) Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);

(XI(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(XIIIX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to tenantsresidents; and theater seating (3 points);

DRAFT

(~~XIII)~~X) High-speed Wi-Fi of 10 Mbps download speed or more ~~(~~with coverage throughout the clubhouse and/or community building~~)~~ (1 point);

(~~XIV~~XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);

(XII) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(6) Unit Requirements.

(A) Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

(i) five hundred (500) square feet for an Efficiency Unit;

(ii) six hundred (600) square feet for a one Bedroom Unit;

(iii) eight hundred (800) square feet for a two Bedroom Unit;

(iv) one thousand (1,000) square feet for a three Bedroom Unit; and

(v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

(B) Unit and Development Construction Features. Housing Tax Credit Applicants may select amenities for the score of an Application under this section, but must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Tax-Exempt Bond Developments must include enough amenities to meet a minimum of ~~seven (7~~nine (9) points. Direct Loan Applications not layered with Housing Tax Credits must include enough amenities to meet a minimum of four (4) points. The amenity shall be for every Unit at no extra charge to the tenant. The points selected at Application and corresponding list of amenities will be required to be identified in the LURA, and the points selected at Application must be maintained throughout the Affordability Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of three (3) points and Supportive Housing Developments will start with a base score of five (5) points.

(i) Unit Features

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all bedrooms (at minimum) (~~0.5~~1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Refrigerator with icemaker (0.5 point);

(VI) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(VII) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

DRAFT

(VIII) Covered patios or covered balconies (0.5 point);

(IX) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(X) Built-in (recessed into the wall) shelving unit (0.5 point);

(XI) Recessed ~~or track~~ LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(XII) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 ~~points~~point);

(XIII) Walk-in closet in ~~master~~at least one bedroom (0.5 ~~points~~point);

(XIV) Ceiling fans in all bedrooms (0.5 point);

(XV) 48" upper kitchen cabinets (1 point);

(XVI) Kitchen island (0.5 points~~);~~();

(XVII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XVIII) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(XIX) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(XX) Natural stone or quartz countertops in kitchen and bath (1 point);

(XXI) Double vanity in at least one bathroom (0.5 point);

(XXII) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) ~~14~~15 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);

(III) Thirty (30) year roof (0.5 point);

(IV) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(V) Electric Vehicle Charging Station (0.5 points); and

(VI) An Impact Isolation Class ("IIC") rating of at least 55 and a Sound Transmission Class ("STC") rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points)

(VII) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of three categories: Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

DRAFT

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) LEED. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC 700 National Green Building Standard. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

~~Tenant~~(7) Resident Supportive Services. The supportive services include those listed in subparagraphs (A) - (~~Z~~E) of this paragraph~~.~~, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. Tax Exempt Bond Developments must select a minimum of eight (8) points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four (4) points. The points selected and complete list of supportive services will be included in the LURA and the timeframe by which services are offered must be in accordance with §10.619 of this title~~chapter~~ (relating to Monitoring for Social Services) and maintained throughout the Affordability Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. ~~Tenants~~Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the ~~tenants~~residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause, courses and services must be offered by an onsite instructor(s).

(A) Transportation Supportive Services~~.~~

~~(i) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);~~(i) shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);

(ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(B) Children Supportive Services

(i) 12 hours of weekly, organized~~ youth programs~~, on-site services provided to K-12 children by a dedicated service coordinator or ~~other~~third-party entity. Services include after-school and summer care and tutoring, recreational activities~~ such as games, movies or crafts offered by ~~, mentee opportunities, test preparation, and similar activities that promote the ~~Development (1 point);~~

DRAFT

~~(ii) scholastic tutoring (shall include daily (Monday – Thursday) homework help or other focus on academics)~~betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

(i) ~~weekday~~ 4 hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as character building ~~program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);~~

~~(ii)~~programs, English as a second language classes ~~(shall include an instructor providing on-site coursework and exam) (1 point);~~

~~(iii) quarterly~~, financial ~~planning~~literacy courses ~~(i.e. homebuyer~~, health education~~, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);~~

~~(iv)~~ courses, certification courses, GED preparation classes ~~(shall include an instructor providing on-site coursework~~, resume and interview preparatory classes, general presentations about community services and ~~exam) (2 points);~~ resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(~~v~~ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(~~vi~~iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(~~vii~~iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (~~2 points~~1 point);

(D) Health Supportive Services

(i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a ~~tenant~~resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this ~~tenant~~ resident service, the ~~tenant~~ resident must not be required to pay for the items they receive at the food bank (~~1 point~~2 points);

(ii) annual health fair provided by a health care professional(1 point);

~~(iii) quarterly health and nutritional courses (1 point);~~

(~~iv~~(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(~~v~~iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

DRAFT

(i) partnership with local law enforcement to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (~~3points~~2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (~~2 points~~1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (~~2~~3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a ~~full~~part-time resident services coordinator with a dedicated office space at the Development ~~(2 points);~~

~~(ix) a resident run community garden~~or a contract with ~~annual soil preparation and mulch provided by the Owner and access~~a third-party to ~~water (1 point); and~~

~~(x) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and~~ provide ~~transportation to and from~~ the ~~facility:~~

~~(I) Facility for treatment~~equivalent of ~~alcohol and/or drug dependency;~~

~~(II) Facility for treatment of PTSD and other significant psychiatric~~15 hours or ~~psychological conditions;~~

~~(III) Facility providing therapeutic and/or rehabilitative~~more of weekly resident supportive services ~~relating to mobility, sight, speech, cognitive, or hearing impairments; or~~at the Development (2 points);

~~(IV) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.~~

(ix) provision, by either the Development Owner~~,~~ or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

(8) Development Accessibility Requirements. All Developments must meet all specifications and accessibility requirements as identified in subparagraphs (A) - (C) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

DRAFT

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator ("affected units") must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. If the townhome Units of a Rehabilitation Development do not have a bathroom on the ground floor, the Applicant will not be required to add a bathroom to meet the requirements of 10 TAC §11.101(b)(8)(B)(iii).

(i) All common use facilities must be in compliance with the Fair Housing Design Act Manual;

(ii) To the extent required by the Fair Housing Design Act Manual, there must be an accessible or exempt route from common use facilities to the affected units;

(iii) Each affected unit must include the features in subclauses (~~a) – (e~~I) – (V) of this clause.

(I) at least one zero-step, accessible entrance;

(II) at least one bathroom or half-bath with toilet and sink on the entry level. The layout of this bathroom or half-bath must comply with one of the specifications set forth in the Fair Housing Act Design Manual;

(III) the bathroom or half-bath must have the appropriate blocking relative to the toilet for the later installation of a grab bar, if ever requested by the tenant of that Unit;

(IV) there must be an accessible route from the entrance to the bathroom or half-bath, and the entrance and bathroom must provide usable width; and

(V) light switches, electrical outlets, and thermostats on the entry level must be at accessible heights.

(C) The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(D) All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with Chapter 1, Subchapter B of this title (relating to Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act~~).(F) Alternat~~).

(E) For all Developments other than Direct Loan Developments, for the purposes of determining the appropriate distribution of accessible Units across Unit Types, only the number of bedrooms and full bathrooms will be used to define the Unit Type, but accessible Units must have an equal or greater square footage than the square footage offered in the smallest non-accessible Unit with the same number of bedrooms and full bathrooms. For Direct Loan Developments, for purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type will be used.

(F) Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.

DRAFT

Subchapter C - Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§11.201._Procedural Requirements for Application Submission. This subchapter establishes the procedural requirements for Application submission. Only one Application may be submitted for a Development Site in an Application Round. While the Application Acceptance Period is open or prior to the Application deadline, an Applicant may withdraw an Application and subsequently file a new Application utilizing the original pre-application fee (as applicable) that was paid as long as no substantive evaluation was performed by the Department and the re-submitted Application relates to the same Development Site, consistent with §11.9(e)(3) regarding pre-application Site changes. Applicants are subject to the schedule of fees as set forth in §~~10~~11.901 of this chapter (relating to Fee Schedule). When providing a pre-application, Application (or notices thereof), or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose that in accordance with the Department's rules aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

(1) General Requirements.

(A) An Applicant requesting funding from the Department must submit an Application in order to be considered for an award. An Application must be complete (including all required exhibits and supporting materials) and submitted by the required program deadline. If an Application, including the corresponding Application fee as described in §~~10~~11.901 of this chapter, is not submitted to the Department on or before the applicable deadline, the Applicant will be deemed not to have made an Application; provided, however, that errors in the calculation of applicable fees may be cured via an Administrative Deficiency. The deficiency period for curing fee errors will be three business days and may not be extended. Failure to cure such an error timely will be grounds for termination.

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

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

DRAFT

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

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

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and whereby advance notice is given regarding a Certificate of Reservation, the Applicant must submit a Notice to Submit Lottery Application form to the Department no later than the Notice to Submit Lottery Application Delivery Date described in §~~10~~11.~~4~~ 2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines~~Program Dates~~). The complete Application, accompanied by the Application Fee described in §~~10~~11.901 of this chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §~~10~~11.~~4~~ 2(b) of this chapter.

(B) Waiting List Applications. Applications designated as Priority 1 or 2 by the TBRB and receiving advance notice of a Certificate of Reservation for private activity bond volume cap must submit Parts 1 - 4 of the Application and the Application Fee described in §~~10~~11.901 of this chapter prior to the issuance of the Certificate of Reservation by the TBRB. The remaining parts of the Application must be submitted at least seventy-five (75) days prior to the Board meeting at which the decision to issue a Determination Notice would be made. An Application designated as Priority 3 will not be accepted until after the issuer has induced the bonds, with such documentation included in the Application, and is subject to the following additional timeframes:

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

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

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

DRAFT

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

(A) The Application must remain unchanged with regard to: Site Control, total number of Units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and Housing Tax Credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, Target Population, scoring criteria (if TDHCA is bond issuer) or TBRB priority status including the effect on the inclusive capture rate. The entities involved in the Applicant entity and Developer cannot change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Should any of the aforementioned items have changed, but in staff's determination and review such change is determined not to be material or determined not to have an effect on the original underwriting or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §~~10~~11.203 of this chapter (relating to Public Notifications (§2306.6705(9)) are not required to be reissued. A revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty (30) calendar days after the date the TBRB issues the new docket number; or

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

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

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

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

(4) Withdrawal of Application. An Applicant may withdraw an Application prior to or after receiving an award of funding by submitting to the Department written notice of the withdrawal. For Tax-Exempt Bond Applications that are under review by staff and there are changes to or a

DRAFT

lapse in the financing structure or there are still aspects of the Application that are in flux, staff may consider the Application withdrawn and will provide the Applicant of notice to that effect. Once it is clear to staff that the various aspects of the Application have been solidified staff may re-instate the Application and allow the updated information, exhibits, etc. to supplement the existing Application, or staff may require an entirely new Application be submitted if it is determined that such changes will necessitate a new review of the Application. This provision does not apply to Direct Loan Applications that may be layered with Tax-Exempt Bonds.

(5) Evaluation Process. Priority Applications, which shall include those Applications believed likely to be competitive, will undergo a program review for compliance with submission requirements and selection criteria, as applicable. In general, Application reviews by the Department shall be prioritized based upon the likelihood that an Application will be competitive for an award based upon the set-aside, self score, received date, or other ranking factors. Thus, non-competitive or lower scoring Applications may never be reviewed. The Director of Multifamily Finance will identify those Applications that will receive a full program review based upon a reasonable assessment of each Application's priority, but no Application with a competitive ranking shall be skipped or otherwise overlooked. This initial assessment may be a high level assessment, not a full assessment. Applications deemed to be priority Applications may change from time to time. The Real Estate Analysis division shall underwrite Applications that received a full program review and remain competitive to determine financial feasibility and an appropriate funding amount. In making this determination, the Department will use §~~10~~11.302 of this chapter (relating to Underwriting Rules and Guidelines) and §13.6 of this title (relating to Multifamily Direct Loan Rule). The Department may have an external party perform all or part of the underwriting evaluation and components thereof to the extent it determines appropriate. The expense of any external underwriting shall be paid by the Applicant prior to the commencement of the aforementioned evaluation pursuant to §~~10~~11.901(5) of this chapter (relating to Fee Schedule, Appeals and other Provisions). Applications will undergo a previous participation review in accordance with Chapter 1 Subchapter C of this title (relating to Previous Participation) and a Development Site may be evaluated by the Department or its agents through a physical site inspection or site visit, (which may include neighboring areas), independent of or concurrent with a site visit that may be performed in conjunction with §~~10~~11.101(a)(3) (relating to ~~Undesirable~~ Neighborhood ~~Characteristics~~Risk Factors). The Department will, from time to time during the review process, publish an application log which shall include the self-score and any scoring adjustments made by staff. The posting of such scores on the application log may trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §~~10~~11.902 of this chapter (relating to Appeals Process). The Department may also provide a courtesy scoring notice reflecting such score to the Applicant.

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

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

(i) For Tax-Exempt Bond Developments, the issuance date of the Certificate of Reservation issued by the TBRB; or in instances where there is a Traditional Carryforward Designation associated with an Application the Department will utilize the date the complete HTC Application that is associated with the Traditional Carryforward Designation is submitted to the Department; and

(ii) For all other Developments, the date the Application is received by the Department; and

DRAFT

(iii) Notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Review priority for Applications under various multifamily programs will be established based on Department staff's consideration of any statutory timeframes associated with a program or Application in relation to the volume of Applications being processed. Those with statutory deadlines or more restrictive deadlines will be prioritized for review and processing ahead of those that are not subject to the same constraints. In general, any non-Competitive Housing Tax Credit Applications received during the competitive tax credit round that include a request to be placed on the May, June or July Board agendas will not be prioritized for review or underwriting due to the statutory constraints on the award and allocation of competitive tax credits. Applicants are advised to keep this in consideration when planning the submission of an Application and issuance of the Certificate of Reservation. Should an Applicant submit an Application regardless of this provision, the Department is not obligated to include the Application on the requested Board meeting agenda and the Applicant should be prepared to be placed on a subsequent Board meeting agenda. Moreover, Applications that have undergone a program review and there are threshold, eligibility or other items that remain unresolved, staff may suspend further review and processing of the Application, including underwriting and previous participation reviews, until such time the item(s) has been resolved or there has been a specific and reasonable timeline provided by which the item(s) will be resolved. By way of illustration, if during staff's review a question has been raised regarding whether the Applicant has demonstrated sufficient site control, such Application will not be prioritized for further review until the matter has been sufficiently resolved to the satisfaction of staff.

(7) ~~Administrative~~ Deficiency Process. The purpose of the ~~Administrative Deficiency~~deficiency process is to allow an Applicant to provide clarification, explanation, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants will receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals, frequently asked questions, or other materials produced by staff, as additional guidance in conjunction with the rules to provide appropriate support for each item substantiating a claim or representation, such as claims for points, qualification for set-asides, or meeting of threshold requirements. Applicants are also encouraged to contact staff directly with questions regarding completing parts of the Application. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the ~~Administrative Deficiency~~deficiency process. Applicants are reminded that this process may not be used to increase a scoring item's points or to change any aspect of the proposed development, financing structure, or other element of the Application. The sole purpose of the Administrative Deficiency will be to substantiate one or more aspects of the Application to enable an efficient and effective review by staff. Any narrative created by response to ~~the~~a ~~Administrative~~ Deficiency cannot contain new information. Staff will request such information via a deficiency notice. Because the review of an Application occurs in several phases, deficiency notices may be issued during any of these phases. Staff will send the deficiency notice via an e-mail to the Applicant and one other contact party if identified by the Applicant in the Application. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative

DRAFT

Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning that they in fact implicated matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an Administrative Deficiency response has been received or that such response is satisfactory. Communications from staff that the response was satisfactory do not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determinations regarding the sufficiency of documentation submitted to cure ~~an Administrative~~a Deficiency as well as the distinction between material and non-material missing information are reserved for the Director of Multifamily Finance, Executive Director, and Board.

(A) It is critical that the use of the ~~Administrative Deficiency~~deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information (that should already been in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. It is the responsibility of a person who receives ~~an Administrative Deficiency~~a deficiency to address the matter ~~fully~~in a timely manner so that staff has the ability to review the response by the close of business on the date by which resolution must be complete and the ~~Administrative Deficiency~~deficiency fully resolved. Merely submitting materials prior to that time places the responsibility on the responding party that if the materials do not fully resolve the matter there may be adverse consequences such as point deductions or termination.

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

(C)~~ Administrative~~ Deficiencies for all other Applications or sources of funds.~~ Administrative~~ Deficiencies must be resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice. Applications with unresolved deficiencies after 5:00 p.m. on the seventh business day following the date of the deficiency notice will be suspended from further processing and the Applicant will be provided with notice to that effect, until such time the item(s) are sufficiently resolved to the satisfaction of the Department. If, during the period of time when the Application is suspended from review private activity bond volume cap or Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to

DRAFT

§13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section.

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

(A) clarification of issues that Department staff would have difficulty identifying due to the omission of information that the Department may have access to only through Applicant disclosure, such as a prior removal from a tax credit transaction or participation in a Development that is not identified in the previous participation portion of the Application; or

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

(9) Challenges to Opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such comment is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date as identified in §~~10~~11.~~4~~2 of this chapter and no later than May 1, ~~2018~~2019 for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven (7) calendar days to provide any information related to the issue of whether their assertions are contrary to the findings or determinations of a local Governmental Entity. All such materials and the analysis of the Department's staff will be provided to a fact finder, chosen by the Department, for review and a determination of the issue presented by this subsection. The fact finder will not make determinations as to the accuracy of the statements presented, but only with regard to whether the statements are contrary to findings or determinations of a local Governmental Entity. The fact finder's determination will be final and may not be waived or appealed.

§11.202. Ineligible Applicants and Applications. The purpose of this section is to identify those situations in which an Application or Applicant may be considered ineligible for Department funding and subsequently terminated. Such matters may be brought to the attention of staff by anyone, including members of the general public. If such ineligibility is raised by non-staff members it must be made in writing to the Executive Director and the Applicant and must cite the specific ineligible criteria under paragraph (1) of this section and provide factual evidence to support the claim. Any unsupported claim or claim determined to be untrue may be subject to all remedies available to the Department or Applicant. Staff will make enquiry as it deems appropriate and may send a notice to the Applicant and provide them the opportunity to explain how they believe they or their Application is eligible. Staff will present the matter to the Board, accompanied by staff's recommendation. The Board may take such action as it deems warranted by the facts presented, including any testimony that may be provided, either declining to take action, in which case the Applicant or Application, as applicable, remains eligible, or finding the Applicant is ineligible, or, for

DRAFT

a matter relating to a specific Application, that that Application is ineligible. A Board finding of ineligibility is final. The items listed in this section include those requirements in Code, §42~~ of the Code~~, Tex. Gov't Code, Chapter 2306, and other criteria considered important by the Department, and does not represent an exhaustive list of ineligibility criteria that may otherwise be identified in applicable rules or a NOFA specific to the programmatic funding. One or more of the matters enumerated in paragraph (1) of this section may also serve as a basis for debarment, or the assessment of administrative penalties, and nothing herein shall limit the Department's ability to pursue any such matter.

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

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

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

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

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

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

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

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

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

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

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

DRAFT

(K) has provided false or misleading documentation or made other intentional or negligent material misrepresentations or omissions in or in connection with an Application (and certifications contained therein), Commitment, or Determination Notice for a Development;

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

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

(i) The amount of resources in a ~~d~~Development and the amount of the benefit received from the ~~d~~Development;

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

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

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

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

(N) fails to disclose in the Application any voluntary compliance agreement or similar agreement with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. Any such agreement impacting the proposed Development or any other affordable housing Development controlled by the Applicant must be disclosed.

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

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

DRAFT

unsuccessful prohibited ex parte communication, such as a letter sent to one or more board members but not opened, may be cured by full disclosure in a public meeting, and the Board may reinstate the Application and establish appropriate consequences for cured actions, such as denial of the matters made the subject to the communication.

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

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

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

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

§11.203. Public Notifications (§2306.6705(9)). A certification, as provided in the Application, that the Applicant met the requirements and deadlines identified in paragraphs (1) - (3) of this section must be submitted with the Application. For Applications utilizing Competitive Housing Tax Credits, notifications must not be older than three (3) months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments notifications and proof thereof must not be older than three (3) months prior to the date Parts 5 and 6 of the Application are submitted, and for all other Applications no older than three (3) months prior to the date the Application is submitted. If notifications were made in order to satisfy requirements of pre-application submission (if applicable to the program) for the same Application, then no additional notification is required at Application. However, re-notification is required by all Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should ~~a~~the person holding any position or role described change~~ in elected official occur~~ between the submission of a pre-application and the submission of an Application, Applicants are required to notify the ~~newly elected (or appointed) official~~new person no later than the Full Application Delivery Date.

(1) Neighborhood Organization Notifications.

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

(B) The Applicant must list, in the certification form provided in the pre-application and Application, all Neighborhood Organizations on record with the county or state as of 30 days prior to the ~~Full~~beginning of the Application ~~Delivery Date~~Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application. An Applicant should retain and be prepared to produce evidence of a reasonable search of those records and the search results, including in the scope of the search at least the following terms: name of the neighborhoods/subdivisions, name of the public schools for the Development Site, term 'homeowner,' term 'neighborhood,' names of historically significant nearby areas or features, and colloquially used descriptions of the area (e.g., Fifth Ward, SoCo, EaDo). As referenced, "on record with the county" includes bylaws or articles of incorporation filed with a county and/or a database of neighborhood

DRAFT

organizations, but does not include documents filed in the name of the neighborhood that provide no indication of good standing (e.g., a DBA). As referenced, "on record with the state" means an organization in good standing with the Secretary of State.

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

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

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

(C) Presiding officer of the board of trustees of the school district in which the Development Site is located;

(D) Mayor of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(E) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(F) Presiding officer of the Governing Body of the county in which the Development Site is located;

(G) All elected members of the Governing Body of the county in which the Development Site is located; and

(H) State Senator and State Representative of the districts whose boundaries include the Development Site.

(3) Contents of Notification.

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

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

DRAFT

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.); ~~and~~

~~.(vii)~~

~~(B) The Applicant must disclose that, in accordance with the Department's rules,~~(vi) the total number of Units proposed and total number of low-income Units proposed; and

(vii) a statement that ~~(B) T~~ aspects of the Development may not yet have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided;

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

(D) Notifications or any other communications may not contain any statement that violates Department rules, statute, code, or federal requirements.

§11.204. Required Documentation for Application Submission. The purpose of this section is to identify the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. If any of the documentation indicated in this section is not resolved, clarified or corrected to the satisfaction of the Department through either original Application submission or the Administrative Deficiency process, the Application will be terminated. Unless stated otherwise, all documentation identified in this section must not be dated more than six (6) months prior to the close of the Application Acceptance Period or the date of Application submission as applicable to the program. The Application may include, or Department staff may request, documentation or verification of compliance with any requirements related to the eligibility of an Applicant, Application, Development Site, or Development.

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

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

(B) This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. All persons who have a property interest in the Application, along with all plans and third-party reports, must acknowledge that the Department may publish them on the Department's website, release them in response to a request for public information, and make other use of the information as authorized by law.

(C) All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development

DRAFT

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

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

(E) The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

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

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

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

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

(2) Applicant Eligibility Certification. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by any individuals required to be listed on the organizational chart and also identified in subparagraphs (A) – (D) below. The certification must identify the various criteria relating to eligibility requirements associated with multifamily funding from the Department, including but not limited to the criteria identified under §~~10~~11.202 of this chapter (relating to Ineligible Applicants and Applications).

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

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

DRAFT

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

(D) for limited liability companies, all managers, managing members, members having a 10 percent or more interest in the limited liability company, any individual Controlling such members, or any officer authorized to act on behalf of the limited liability company.

(3) Architect Certification Form. The certification, addressing all of the accessibility requirements applicable to the Development Site, must be executed by the Development engineer or accredited architect —after careful review of the Department's accessibility requirements. (§2306.6722; §2306.6730) The certification must include a statement describing how the accessibility requirements relating to Unit distribution will be met~~.~~ and certification that they have reviewed and understand the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period. The certification must also include the following statement, "all persons who have a property interest in this plan hereby acknowledge that the Department may publish the full plan on the Department's website, release the plan in response to a request for public information, and make other use of the plan as authorized by law." An acceptable, but not required, form of such statement may be obtained in the Multifamily Programs Procedures Manual.

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

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §~~10~~11.203 of this chapter (relating to Public Notifications (§2306.6705(9)).

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

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

(i) Within a municipality, the Applicant must submit a resolution from the Governing Body of that municipality;

(ii) Within the ETJ of a municipality, the Applicant must submit both:

(I) a resolution from the Governing Body of that municipality; and

(II) a resolution from the Governing Body of the county; or

DRAFT

(iii) Within a county and not within a municipality or the ETJ of a municipality, a resolution from the Governing Body of the county.

(D) For purposes of meeting the requirements of subparagraph (C) of this paragraph, the resolution(s) must be submitted no later than the Resolutions Delivery Date described in §~~10~~11.~~4~~ 2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines~~Program Dates~~). An acceptable, but not required, form of resolution may be obtained in the Multifamily Programs Procedures Manual. Applicants should ensure that the resolutions all have the appropriate references and certifications or the resolution may be determined by staff to be invalid. The resolution(s) must certify that:

(i) Notice has been provided to the Governing Body in accordance with Tex. Gov't Code, §2306.67071(a);

(ii) The Governing Body has had sufficient opportunity to obtain a response from the Applicant regarding any questions or concerns about the proposed Development;

(iii) The Governing Body has held a hearing at which public comment may be made on the proposed Development in accordance with Tex. Gov't Code, §2306.67071(b~~) ;~~); and

(iv) After due consideration of the information provided by the Applicant and public comment, the Governing Body does not object to the proposed Application.

(5) Designation as Rural or Urban.

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

(B) Certain areas located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area can request a Rural designation from the Department for purposes of receiving an allocation Housing Tax Credits (§2306.6740). In order to apply for such a designation, a letter must be submitted from a duly authorized official of the political subdivision or census designated place addressing the factors outlined in clauses (i) – (vi) of this subparagraph. Photographs and other supporting documentation are strongly encouraged. In order for the area to be designated Rural by the Department for the ~~2018~~2019 Application Round, such requests must be made no later than December ~~15, 2017~~14, 2018. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

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

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

DRAFT

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

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

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

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

(6) Experience Requirement. Evidence that meets the criteria as stated in subparagraph (A) of this paragraph must be provided in the Application, unless an experience certificate was issued by the Department in the years ~~2014~~2015 through ~~2017~~2018, which may be submitted as acceptable evidence of this requirement. Experience of multiple parties may not be aggregated to meet this requirement.

(A) A natural Person, with control of the Development who intends and has the ability to remain in control through placement in service, who is also a Principal of the Developer, Development Owner, or General Partner must establish that they have experience that has included the development and placement in service of 150 units or more. Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25(d)(1)of this title. Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

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

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

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) Partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

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

DRAFT

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

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

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

(7) Financing Requirements.

(A) Non-Department Debt Financing. Interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department must be included in the Application. For any Development that is a part of a larger development plan on the same site, the Department may request and evaluate information related to the other components of the development plan in instances in which the financial viability of the Development is in whole or in part dependent upon the other portions of the development plan. Any local, state or federal financing identified in this section which restricts household incomes at any level that is lower than restrictions required ~~pursuant to this chapter~~ or elected in accordance with this Chapter ~~11~~ or Chapter 13 of this title (relating to ~~Housing Tax Credit Program Qualified Allocation Plan~~Multifamily Direct Loan) must be identified in the rent schedule and the local, state or federal income restrictions must include corresponding rent levels in accordance with Code §42(g)~~ of the Code.~~ if the Development will receive housing tax credits. The income and corresponding rent restrictions will be memorialized in a recorded LURA and monitored for compliance. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) and (ii) of this subparagraph.

(i) Financing is in place as evidenced by:

(I) a valid and binding loan agreement; and

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

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

(I) have been signed by the lender;

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

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

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

(V) include all required Guarantors, if known;

(VI) include the principal amount of the loan;

DRAFT

(VII) include an acknowledgement of the amounts and terms of all other anticipated sources of funds~~; and~~ and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet; and

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

(iii) For Developments proposing to refinance an existing USDA Section 514, 515, or 516 loan, a letter from the USDA confirming that it has been provided with the Preliminary Assessment Tool.

(iv) For Direct Loan Applications or Tax-Exempt Bond Development Applications utilizing FHA financing, the Application shall include the applicable pages from the HUD Application for Multifamily Housing Project. If the HUD Application has not been submitted at the time the Application is submitted then a statement to that effect should be included in the Application along with an estimated date for submission. Applicants should be aware that staff's underwriting of an Application will not be finalized and presented to the Board until staff has evaluated the HUD Application relative to the Application.

(B) Gap Financing. Any anticipated federal, state, local or private gap financing, whether soft or hard debt, must be identified and described in the Application. Applicants must provide evidence that an application for such gap financing has been made. Acceptable documentation may include a letter from the funding entity confirming receipt of an application or a term sheet from the lending agency which clearly describes the amount and terms of the financing. Other Department funding requested with Housing Tax Credit Applications must be on a concurrent funding period with the Housing Tax Credit Application, and no term sheet is required for such a request. Permanent loans must include a minimum loan term of fifteen (15) years with at least a thirty (30) year amortization or for non-amortizing loan structures a term of not less than thirty (30) years. A term loan request must also comply with the applicable terms of the NOFA under which an Applicant is applying.

(C) Owner Contributions. If the Development will be financed in part ~~by~~with a capital contribution or debt by the General Partner, Managing General Partner, any other partner or investor that is not a partner providing the syndication equity, a guarantor or a Principal in an amount that exceeds 5 percent of the Total Housing Development Cost, a letter from a Third Party CPA must be submitted that verifies the capacity of the contributor to provide the capital from funds that are not otherwise committed or pledged. Additionally, a letter from the contributor's bank(s) or depository(ies) must be submitted confirming sufficient funds are readily available to the contributor. The contributor must certify that the funds are and will remain readily available at Commitment and until the required investment is completed. Regardless of the amount, all capital contributions other than syndication equity will be deemed to be a part of and therefore will be added to the Deferred Developer Fee for feasibility purposes under §~~10~~11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

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

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

DRAFT

(iv) syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis; and

(v) include an acknowledgement of the amounts and terms of all other anticipated sources of funds and if the Application reflects an intent to elect income averaging there must be an acknowledgement to that effect in the term sheet.

(E) Financing Narrative. (§2306.6705(1)) A narrative must be submitted that describes all aspects of the complete financing plan for the Development, including but not limited to, the sources and uses of funds; construction, permanent and bridge loans, rents, operating subsidies, project-based assistance, and replacement reserves; and the status (dates and deadlines) for applications, approvals and closings, etc. associated with the commitments for all funding sources. For applicants requesting Direct Loan funds, Match ~~in the amount of at least 5 percent of the Direct Loan funds requested~~, as applicable, must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of Direct Loan funds~~, if applicable.~~. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

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

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

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

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

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

DRAFT

(i) Applicants must provide a detailed cost breakdown of projected Site Work costs (excluding site amenities), if any, prepared by a Third Party engineer or cost estimator. If Site Work costs (excluding site amenities) exceed $15,000 per Unit and are included in Eligible Basis, a letter must be provided from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis.

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

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

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. ~~For Applications that do not include Direct Loan funds or 811 PRA, if~~If the Application includes a request for Direct Loan funds, applicants must follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA") and other HUD requirements including Section 104(d) of the Housing and Community Development Act. HUD Handbook 1378 provides guidance and template documents. Failure to follow URA or 104(d) requirements will make the proposed Development ineligible for Direct Loan funds and may lead to penalty under 10 TAC §13.11(b). If the current property owner is unwilling to provide the required documentation then a signed statement from the Applicant attesting to that fact must be submitted. If one or more of the items described in clauses (i) - (vi) of this subparagraph is not applicable based upon the type of occupied structures on the Development Site, the Applicant must provide an explanation of such non-applicability. Applicant must submit:

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

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

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

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

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

DRAFT

(ii) a rent roll not more than six (6) months old as of the first day the Application Acceptance Period that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, and tenant names or vacancy;

(iii) a written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iv) a relocation plan outlining relocation requirements and a budget with an identified funding source; (§2306.6705(6))

(v) any documentation necessary for the Department to facilitate, or advise an Applicant with respect to or to ensure compliance with the Uniform Relocation Act and any other relocation laws or regulations as may be applicable; and

(vi) if applicable, evidence that the relocation plan has been submitted to all appropriate legal or governmental agencies or bodies. (§2306.6705(6))

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

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

(i) states the size of the site on its face;

(ii) includes a ~~u~~Unit and building type table matrix that is consistent with the Rent Schedule and Building/Unit Configuration forms provided in the Application in labeling buildings and Units;

(iii) includes a table matrix specifying the square footage of Common Area space on a building by building basis;

(iv) identifies all residential and common buildings in place on the Development Site and labels them consistently with the Rent Schedule and Building/Unit Type Configuration forms provided in the Application;

(v) shows the locations (by Unit and floor) of mobility and hearing/visual accessible Units (unless included in residential building floor plans);

(vi~~ii~~) clearly delineates the flood plain boundary lines ~~and shows all easements~~or states there is no floodplain;

(~~iv~~vii) ~~if applicable,~~ indicates ~~possible~~ placement of detention/retention pond(s) or states there are no detention ponds;

(viii) describes, if applicable, how flood mitigation or other required mitigation will be accomplished;

(ix) indicates the location and number of ~~the~~ parking spaces, garages, and carports;

(~~vi~~x) indicates the location and number of ~~the~~ accessible parking spaces, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

~~(vii) describes, if applicable, how flood mitigation or any other required mitigation will be accomplished;~~

DRAFT

~~(viii) delineates compliant accessible routes; and~~

~~ix) indicates the distribution of accessible Units~~; and.

(ixii) indicates compliant accessible routes or if a route is not accessible a cite to the provision in the Fair Housing Design Manual providing for its exemption-.; and

(B) Building floor plans must be submitted for each building type. Building floor plans must include the locations of the accessible Units and must also include square footage calculations for balconies, breezeways, corridors and any other areas not included in net rentable area;

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

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

(10) Site Control.

(A) Evidence that the Development Owner has Site Control must be submitted. If the evidence is not in the name of the Development Owner, then an Affiliate of the Development Owner must have Site Control that allows for an ability to assign the Site Control to the Development Owner. All of the sellers of the proposed Property for the thirty-six (36) months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team must be identified at the time of Application. The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated. The Department acknowledges and understands that the Property may have one or more encumbrances at the time of Application submission and the Department will take into account whether any such encumbrance is reasonable within the legal and financial ability of the Development Owner to address without delaying development on the timeline contemplated in the Application. Tax-Exempt Bond Lottery Applications must have Site Control valid through December 1 of the prior program year with the option to extend through March 1 of the current program year.

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

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

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

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

(C) If the acquisition can be characterized as an identity of interest transaction, as described in §11.302 of this chapter, then the documentation as further described therein must be submitted in addition to that of subparagraph (B) of this paragraph.

(D) If ingress and egress to a public right of way are not part of the property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access, along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement.

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

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

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

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

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

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) that it will allow the non-conformance;

(iv) Owner's rights to reconstruct in the event of damage; and

(v) penalties for noncompliance.

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

DRAFT

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

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

(13) Ownership Structure and Previous Participation.

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

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

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph as applicable. A resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating clear approval of the organization's participation in each specific Application, and naming all members of the board and employees who may act on its behalf, must be provided.

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

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

DRAFT

(iii) A Third Party legal opinion stating:

(I) that the nonprofit organization is not affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) that the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5)~~ of the Code~~ and the basis for that opinion;

(III) that one of the exempt purposes of the nonprofit organization is to provide low-income housing;

~~;~~(IV) that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board. If the Application includes a request for CHDO funds, no member of the board may receive compensation, including the chief staff member;

(V) that the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit Affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement;

(VI) that the nonprofit organization has the ability to do business as a nonprofit in Texas;

(iv) a copy of the nonprofit organization's most recent financial statement as prepared by a Certified Public Accountant; and

(v) evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) in this state, if the Development is located in a Rural Area; or

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

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

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

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

DRAFT

ordinances). Careful focus and attention should be made regarding any atypical items materially impacting costs or the successful and timely execution of the Development plan. The report must also include the following statement, "all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(B) Survey ~~or current plat~~ as defined by the Texas Society of Professional Surveyors in their Manual of Practice for Land Surveying in Texas (Category 1A - Land Title Survey or Category 1B - Standard Land Boundary Survey). Surveys may not be older than 24 ~~twelve (12)~~ months from the beginning of the Application Acceptance Period. ~~Plats must include evidence that it has been recorded with the appropriate local entity and that, as of the date of submission, it is the most current plat.~~ Applications proposing noncontiguous single family scattered sites are not required to submit surveys or plats at Application, but this information may be requested during the Real Estate Analysis review.

(C) Preliminary site plan prepared by the civil engineer with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances. The site plan must identify all structures, site amenities, parking spaces ~~(include handicap spaces and ramps)~~ and driveways, topography (using either existing seller topographic survey or U.S. Geological Survey (USGS)/other database topography), site drainage and detention, water and waste water utility tie-ins, general placement of retaining walls, set-back requirements, and any other typical or locally required items. Off-site improvements required for utilities, detention, access or other requirement must be shown on the site plan or ancillary drawings.

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

§11.205. Required Third Party Reports. The Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §~~10~~11.~~4~~ 2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines~~Program Dates~~). For Competitive HTC Applications, the Environmental Site Assessment, Property Condition Assessment, Appraisal (if applicable), and the Primary Market Area map (with definition based on census tracts, and site coordinates in decimal degrees, area of PMA in square miles, and list of census tracts included) must be submitted no later than the Full Application Delivery Date as identified in §11.2(a) of this title (relating to Program Calendar for Competitive Housing Tax Credits) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this ~~title~~chapter. For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application will be terminated. An electronic copy of the report in the format of a single file containing all information and exhibits clearly labeled with the report type, Development name and Development location are required. All Third Party reports must be prepared in accordance with Subchapter D of this chapter (relating to Underwriting and Loan Policy). The Department may request additional information from the report provider or revisions to the report as needed. In instances of non-response by the report provider, the Department may substitute in-house analysis. The Department is not bound by any opinions expressed in the report.

(1) Environmental Site Assessment. This report, required for all Developments and prepared in accordance with the requirements of §~~10~~11.305 of this chapter (relating to Environmental Site

DRAFT

Assessment Rules and Guidelines), must not be dated more than twelve (12) months prior to the date of Application submission for non-Competitive Applications, or the first day of the Application Acceptance Period for Competitive HTC Applications. If this timeframe is exceeded, then a letter or updated report must be submitted, dated not more than ~~three (3~~six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report.

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

(B) If the report includes a recommendation that an additional assessment be performed, then a statement from the Applicant must be submitted with the Application indicating those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating the mitigating recommendations have been carried out must be submitted at cost certification.

(2) Market Analysis. The Market Analysis, required for all Developments and prepared in accordance with the requirements of §~~10~~11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six (6) months prior to the ~~first day~~date of ~~the~~ Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six (6) months, but not more than twelve (12) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the Qualified Market Analyst that prepared the report may provide a statement that reaffirms the findings of the original Market Analysis. The statement may not be dated more than six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original Market Analysis.

(A) The report must be prepared by a disinterested Qualified Market Analyst approved by the Department in accordance with the approval process outlined in §~~10~~11.303 of this chapter;

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80 percent occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §~~10~~11.304 of this chapter (relating to Appraisal Rules and Guidelines), will satisfy the requirement for a Market Analysis; however, the Department may request additional information as needed. (§2306.67055; §42(m)(1)(A)(iii))

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

(3) Property Condition Assessment (PCA). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §~~10~~11.306 of this chapter (relating to Property Condition Assessment Guidelines), must not be dated more than six (6) months prior to the ~~first day~~date of ~~the~~ Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six (6) months, but not more than twelve (12) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications, the report provider may provide a statement that reaffirms the findings of the original

DRAFT

PCA. The statement may not be dated more than six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications and must be accompanied by the original PCA. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted and may be more than six (6) months old, as long as USDA has confirmed in writing that the existing capital needs assessment is still acceptable and it meets the requirements of §~~10~~11.306 of this chapter. All Rehabilitation Developments financed with Direct Loans must also submit a capital needs assessment estimating the useful life of each major system. This assessment must include a comparison between the local building code and the International Existing Building Code of the International Code Council. The report must be accompanied by the Department's Property Condition Assessment Cost Schedule Supplement in the form of an excel workbook as published on the Department's website.

(4) Appraisal. This report, required for all Rehabilitation Developments and prepared in accordance with the requirements of §~~10~~11.304 of this chapter, is required for any Application claiming any portion of the building acquisition in Eligible Basis, and Identity of Interest transactions pursuant to Subchapter D of this chapter, must not be dated more than six (6) months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. For Developments that require an appraisal from USDA, the appraisal may be more than six (6) months old, as long as USDA has confirmed in writing that the existing appraisal is still acceptable.

§11.206. Board Decisions (§§2306.6725(c); 2306.6731; and 42(m)(1)(A)(iv)). The Board's decisions regarding awards shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter ~~11~~13 of this title (relating to ~~Housing Tax Credit Program Qualified Allocation Plan~~Multifamily Direct Loan) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, published binding policy, official finding, or court order. The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized. The Department reserves the right to reduce the amount of funds requested in an Application, condition the award recommendation or terminate the Application based on the Applicant's inability to demonstrate compliance with program requirements.

§11.207.Waiver of Rules.

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

DRAFT

Where appropriate, the Applicant ~~is encouraged to~~must submit with the requested waiver any plans for mitigation or alternative solutions. Any such request for waiver must be specific to the unique facts and circumstances of an actual proposed Development and must be submitted to the Department in the format required in the Multifamily Programs Procedures Manual. Any waiver, if granted, shall apply solely to the Application and shall not constitute a general modification or waiver of the rule involved. All waiver requests must meet the requirements of paragraphs (1) and (2) of this subsection.

(1) The waiver request must establish how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant In applicable circumstances, this may include limitations of local building or zoning codes, limitations of existing building structural elements for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments, required amenities or design elements in buildings designated as historic structures that would conflict with retaining the historic nature of the building(s), or provisions of the design element or amenity that would not benefit the tenants due to limitations of the existing layout or design of the units for Adaptive Reuse or Rehabilitation (excluding Reconstruction) Developments. A recommendation for a waiver may be subject to the Applicant's provision of alternative design elements or amenities of a similar nature or that serve a similar purpose. Waiver requests for items that were elected to meet scoring criteria or where the Applicant was provided a menu of options to meet the requirement will not be considered to satisfy this paragraph as such waiver request would be either or both foreseeable and preventable.

(2) The waiver request must establish how, by granting the waiver, it better serves the policies and purposes articulated in Tex. Gov't Code, §§2306.001, 2306.002, 2306.359, and 2306.6701, (which are general in nature and apply to the role of the Department and its programs, including the Housing Tax Credit program) than not granting the waiver.

(3) The Board may not grant a waiver to provide directly or implicitly any forward commitments or any waiver that is prohibited by statute (i.e., statutory requirements may not be waived). The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the multifamily rules to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

DRAFT

Subchapter D —Underwriting and Loan Policy

§11.301. General Provisions.

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

(b) Appeals. Certain programs contain express appeal options. Where not indicated, §~~10~~11.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution ("ADR") methods, as outlined in §~~10~~11.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore for Housing Credit Allocation, Code §42(m)(2)~~ of the Internal Revenue Code of 1986 (the "Code")~~, requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. Additionally, 24 CFR Parts 92 and 93, as further described in CPD Notice 15-11 require the Department to adopt rules and standards to determine the appropriate Multifamily Direct Loan feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in an Underwriting Report ("Report") used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

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

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

(1) Program Limit Method. For Housing Credit Allocations, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is defined in §~~10.3~~11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is

DRAFT

based upon calculation of the funding limit in current program rules or NOFA at the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of cash flow loans as if fully amortizing over its term) or make adjustments to any Department financing, such that the cumulative Debt Coverage Ratio ("DCR") conforms to the standards described in this section. For Housing Tax Credit Developments at cost certification, timing adjusters may be considered as a reduction to equity proceeds for this purpose. Timing adjusters must be consistent with and documented in the original partnership agreement (at admission of the equity partner) but relating to causes outside of the Developer's or Owner's control. The equity partner must provide a calculation of the amount of the adjuster to be used by the Underwriter.

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

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

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

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

(i) Market Rents. The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §~~10~~11.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst and other market data sources. For a Development that contains less than 15% unrestricted units, the Underwriter will limit the Pro Forma Rents to the lesser of Market Rent or the Gross Program Rent at 60% AMI, or 80% if the Applicant will make the Income Average election. As an alternative, if the Applicant submits market rents that are up to 30% higher than the 60% AMI gross rent, or 80% AMI gross rent if the Applicant will make the Income Average election, and the Applicant

DRAFT

submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income ("EGI") to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 ~~of Subchapter F~~ of this title ~~Chapter~~ relating to Utility Allowances. Utility allowances must be calculated for individually metered tenant paid utilities.

(v) Net Program Rents. Gross Program Rent less Utility Allowance.

(vi) Actual Rents for existing Developments will be reviewed as supported by a current rent roll. For Unstabilized Developments, actual rents will be based on the most recent units leased with occupancy and leasing velocity considered. Actual rents may be adjusted by the Underwriter to reflect lease-up concessions and other market considerations.

(vii) Collected Rent. Represents the monthly rent amount collected for each Unit Type. For rent-assisted units, the Contract Rent is used. In absence of a Contract Rent, the lesser of the Net Program Rent, Market Rent or actual rent is used.

(B) Miscellaneous Income. All ancillary fees and miscellaneous secondary income, including~~,~~ but not limited to, late fees, storage fees, laundry income, interest on deposits, carport and garage rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a $5 to $20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter and must be supported by either the normalized operating history of the Development or other existing comparable properties within the same market area.

(i) The Applicant must show that a tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.

(ii) The Applicant's operating expense schedule should reflect an itemized offsetting line-item associated with miscellaneous income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.

(iii) Collection rates of exceptional fee items will generally be heavily discounted.

(iv) If an additional fee is charged for the optional use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

DRAFT

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the immediate market area's historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) Effective Gross Income ("EGI"). EGI is the total of Collected Rent for all ~~units~~ Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5 percent of the EGI independently calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating the underwritten DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) Expenses. In determining the first year stabilized operating expense pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate based upon the characteristics of each Development, including the location, utility structure, type, the size and number of Units, and the Applicant's management plan–. Historical, stabilized and certified financial statements of an existing Development or Third Party quotes specific to a Development will reflect the strongest data points to predict future performance. The Underwriter may review actual operations on the Applicant's other properties monitored by the Department, if any, or review the proposed management company's comparable properties. The Department's Database of properties located in the same market area or region as the proposed Development also provides data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as PHA Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(A) General and Administrative Expense. ("G&A")--Accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.

(B) Management Fee. Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of EGI as documented in an existing property management agreement or proposal. Typically, 5 percent of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

DRAFT

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense ("WST"). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.

(ii) Other assessed values or property tax estimates may be used based on development specific factors as determined by the Underwriter.

(iii) If the Applicant proposes a property tax exemption or PILOT agreement the Applicant must provide documentation in accordance with §10.402(d) of this title. At the underwriter's discretion, such documentation may be required prior to Commitment if deemed necessary.

(I) Replacement Reserves. Periodic deposits to a reserve account to pay for the future replacement or major repair of building systems and components (generally items considered capitalized costs). The Underwriter will use a minimum reserve of $250 per Unit for New Construction and Reconstruction Developments and $300 per Unit for all other Developments. The Underwriter may require an amount above $300 for the Development based on information provided in the Property Condition Assessment ("PCA") or, for existing USDA developments, an amount approved by USDA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) Other Operating Expenses. The Underwriter will include other reasonable, customary and documented property-level operating expenses such as audit fees, security expense, telecommunication expenses (tenant reimbursements must be reflected in EGI) and TDHCA's compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) ~~Tenant~~ Resident Services. Tenant services are not included as an operating expense or included in the DCR calculation unless:

(i) There is a documented financial obligation on behalf of the Owner with a unit of state or local government to provide tenant supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and

DRAFT

as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, not provision of services, can be included as a supportive services expense without permanent lender documentation.

(L) Total Operating Expenses. The total of expense items described ~~above~~in 10 TAC 11.302(d)(2)(A) – (K). If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) Net Operating Income ("NOI"). The difference between the EGI and total operating expenses. If the Applicant's first year stabilized NOI figure is within 5 percent of the NOI calculated by the Underwriter, the Applicant's NOI is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter's calculation of NOI will be used unless the Applicant's first year stabilized EGI, total operating expenses, and NOI are each within 5 percent of the Underwriter's estimates. For Housing Tax Credit Developments at cost certification, actual NOI will be used as adjusted for stabilization of rents and extraordinary lease-up expenses. Permanent lender and equity partner stabilization requirements documented in the loan and partnership agreements will be considered in determining the appropriate adjustments and the NOI used by the Underwriter.

(4) Debt Coverage Ratio. DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent debt sources of funds. If executed loan documents do not exist, loan terms including principal and/or interest payments are calculated based on the terms indicated in the most current term sheet(s). Otherwise, actual terms indicated in the executed loan documents will be used. Term sheet(s) must indicate the DCR required by the lender for initial underwriting as well as for stabilization purposes. Unusual or non-traditional financing structures may also be considered.

(A) Interest Rate. The rate documented in the term sheet(s) or loan document(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and any component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate assumption, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. At initial underwriting, the Underwriter may adjust the underwritten interest rate assumption based on market data collected on similarly structured transactions or rate index history. Private Mortgage Insurance premiums and similar fees are not included in the interest rate but calculated on outstanding principal balance and added to the total debt service payment.

(B) Amortization Period. For purposes of calculating DCR, the permanent lender's amortization period will be used if not less than thirty (30) years and not more than forty (40) years. Up to fifty (50) years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than thirty (30) years, thirty (30) years will be used. For permanent lender debt with amortization periods greater than forty (40) years, forty (40) years will be used. For non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period as the primary senior debt.

(C) Repayment Period. For purposes of projecting the DCR over a thirty (30) year period for developments with permanent financing structures with balloon payments in less than thirty (30)

DRAFT

years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on a reduction to debt service and the Underwriter will make adjustments to the financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) a reduction to the principal amount of a Direct Loan;

(II) in the case where the amount of the Direct Loan determined in (I) is insufficient to balance the sources and uses;

(-a-) a reduction to the interest rate;

(-b-) an increase in the amortization period;

(III) an assumed reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause subject to a Direct Loan NOFA and program rules:

(I) an increase to the interest rate up to the highest interest rate on any senior debt or if no senior debt a market rate determined by the Underwriter based on current market interest rates;

(II) or a decrease in the amortization period but not less than thirty (30) years;

(III) an assumed increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the Gap Method described in subsection (c)(2) of this section as a result of an increased debt assumption, if any.

(iv) For Developments financed with a Direct Loan subordinate to FHA financing, DCR on the Direct Loan will be calculated using 75% of the Surplus Cash (as defined by the applicable FHA program).

(v) The Underwriter may limit total debt service that is senior to a Direct Loan to produce an acceptable DCR on the Direct Loan.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the following:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

DRAFT

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's ~~d~~Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments will be based in accordance with the estimated cost provided in the PCA for the scope of work as defined by the Applicant and §~~10~~11.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's cost estimate is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) Acquisition Costs. The underwritten acquisition cost is verified with Site Control document(s) for the Property. At Cost Certification, the underwritten acquisition cost will be the amount verified by the settlement statement. For Identify of Interest acquisitions, the cost will be limited to the underwritten acquisition cost at initial Underwriting.

(A) Excess Land Acquisition. In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) Identity of Interest Acquisitions.

(i) An acquisition will be considered an identity of interest transaction when an Affiliate of the seller is an Affiliate of, a Related Party to, any ~~o~~Owner at any level of the Development Team or a Related Party lender; and

(I) is the current owner in whole or in part of the Property; or

(II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.

(ii) In all identity of interest transactions the Applicant is required to provide:

(I) the original acquisition cost in the most recent non-identity of interest transaction evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

(II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:

DRAFT

(-a-) an appraisal that meets the requirements of §~~10~~11.304 of this chapter (relating to Appraisal Rules and Guidelines); and

(-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.

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

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

(D) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §~~10~~11.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

(i) the Applicant's stated eligible building acquisition cost;

(ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;

(iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or

DRAFT

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance, transfer values approved by USDA and/or property tax exemptions. Any value of existing favorable financing will be attributed prorata to the land and buildings.

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

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

(4) Building Costs.

(A) New Construction and Reconstruction. The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard. The Underwriter may consider a sales tax exemption for nonprofit General Contractors.

(B) Rehabilitation and Adaptive Reuse.

(i) The Applicant must provide a scope of work and narrative description of the work to be completed. The narrative should speak to all ~~o~~Off-~~s~~Site Construction, ~~s~~Site ~~w~~Work, building components including finishes and equipment, and development amenities. The narrative should be in sufficient detail so that the reader can understand the work and it should generally be arranged consistent with the line-items on the PCA Cost Schedule Supplement and must also be consistent with the development cost schedule of the Application.

(ii) The Underwriter will use cost data provided on the PCA Cost Schedule Supplement.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and ~~o~~Off-~~s~~Site~~s~~ Construction for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and ~~o~~Off-~~s~~Site~~s~~ Construction for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible ~~o~~Off-~~s~~Site Construction costs in calculating the eligible contingency cost.

(6) General Contractor Fee. General Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. General Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16 percent on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18 percent on Developments with Hard Costs at $2 million or less. Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage

DRAFT

of the contract sum in the construction contract (s) will be treated collectively with the General Contractor Fee limitations. For Housing Tax Credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) Developer Fee.

(A) For Housing Tax Credit Developments, the Developer Fee included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less. For Public Housing Authority Developments for conversion under the HUD Rental Assistance Demonstration ("RAD") program that will be financed using tax-exempt mortgage revenue bonds, the Developer Fee cannot exceed 20 percent of the project's eligible cost less Developer Fee.

(B) Any additional Developer fFee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fFee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer fFee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fFees for Developments proposing forty-nine (49) Units or less; and

(ii) no Developer fFee attributable to an identity of interest acquisition of the Development will be included.

(D) Eligible Developer fFee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.

(8) Financing Costs. All fees required by the construction lender, permanent lender and equity partner must be indicated in the term sheets. Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). For tax-exempt bond transactions up to twenty four (24) months of interest may be included. Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related

DRAFT

Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is found by the Underwriter to be both reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves, tenant services reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing sizing assumptions acceptable to the Underwriter. In no instance at initial underwriting will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (and only for USDA or HUD financed rehabilitation transactions the initial deposits to replacement reserves and transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Pursuant to §10.404(c) of this title and for the underwriting of a Housing Tax Credit Development at cost certification, operating reserves that will be maintained for a minimum period of five years and documented in the Owner's partnership agreement and/or the permanent lender's loan documents will be included as a development cost.

(10) Soft Costs. Eligible soft costs are generally costs that can be capitalized in the basis of the Development for tax purposes. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. Generally the Applicant's costs are used however the Underwriter will use comparative data to determine the reasonableness of all soft costs.

(11) Additional Tenant Amenities. For Housing Tax Credit Developments and after submission of the cost certification package, the Underwriter may consider costs of additional building and site amenities (suitable for the tenant population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities may be included in the LURA.

(12) Special Reserve Account. For Housing Tax Credit Developments at cost certification, the Underwriter may include a deposit of up to $2,500 per Unit into a Special Reserve Account as a Development Cost.

(f) Development Team Capacity and Development Plan.

(1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:

(A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s) in cases when warranted. The Underwriter may evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;

(B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;

(C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process may result in an Application being referred to the Committee by the Director of Real Estate Analysis. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

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

(1) Floodplains. The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment ("LOMA") or Letter of Map Revision ("LOMR-F"); or

(B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the Development must be proposed to be designed to comply with the QAP, Program Rules and NOFA, and applicable Federal or state requirements.

(2) Proximity to Other Developments. The Underwriter will identify in the Report any ~~d~~Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(3) Supportive Housing. The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) Operating Income. The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the ~~u~~Units or equal to any project based rental subsidy rent to be utilized for the Development if higher than the maximum rent limits;

(B) Operating Expenses. A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident supportive services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments affiliated with the Applicant or otherwise available to the Underwriter. Expense estimates must be categorized as outlined in subsection (d)(2) of this section;

(C) DCR and Long Term Feasibility. Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term

DRAFT

feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or

(D) Total Housing Development Costs. For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

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

(i) Feasibility Conclusion. An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

(1) Gross Capture Rate, AMGI Band Capture Rates, and Individual Unit Capture Rate. The method for determining capture rates for a Development is defined in §~~10~~11.303 of this chapter. The Underwriter will independently verify all components and conclusions of the capture rates and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the capture rates based upon an analysis of the Sub-market. The Development:

(A) is characterized as an Elderly Development and the Gross Capture Rate or any AMGI bad capture rate exceeds 10 percent; or

(B) is outside a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 10 percent (or 15 percent for Tax-Exempt Bond Developments located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than 1 million if the average physical occupancy is 92.5% or greater for all stabilized affordable housing developments located within a 20 minute drive time, as supported by the Market Analyst, from the subject Development); or

(C) is in a Rural Area and targets the general population, and the Gross Capture Rate or any AMGI band capture rate exceeds 30 percent; or

(D) is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30 percent; or,

(E) has an Individual Unit Capture Rate for any Unit Type greater than 65 percent.

DRAFT

(F) Developments meeting the requirements of subparagraph (A), (B), (C), (D) or (E) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.

(i) Replacement Housing. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §~~10~~11.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.

(ii) Existing Housing. The proposed Development is comprised of existing affordable housing, whether defined by an existing land use and rent restriction agreement or if the subject rents are at or below 50% AMI rents, which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated ~~d~~Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.

(3) Pro Forma Rent. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI, or above if the Applicant will make the Income Average election, is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.

(4) Initial Feasibility.

(A) Except when underwritten at cost certification, the first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.

(B) The first year DCR is below 1.15 (1.00 for USDA Developments).

(5) Long Term Feasibility. The Long Term Pro forma at any time during years two through fifteen, as defined in subsection (d)(5) of this section, reflects:

(A) a Debt Coverage Ratio below 1.15; or,

(B) negative cash flow (throughout the term of a Direct Loan).

(6) Exceptions. The infeasibility conclusions may be excepted when:

(A) Waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.

(B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply. A Development financed with a Direct Loan will not be re-characterized as feasible with respect to (5)(B).

(i) The Development will receive Project-based Section 8 Rental Assistance or the HUD Rental Assistance Demonstration Program for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.

(ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.

(iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.

DRAFT

(iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.

(v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§11.303 Market Analysis Rules and Guidelines

(a) General Provision. A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section. The Market Analysis must also include a statement that the person or company preparing the Market Analysis is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the Market Analysis, and that the fee is in no way contingent upon the outcome of the Market Analysis. The report must also include the following statement, "all persons who have a property interest in this report hereby must acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

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

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

(1) The approved Qualified Market Analyst list will be updated and published annually on or about November 1st. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) calendar days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) calendar days prior to submission of any other application for funding for which the Market Analyst must be approved.

(A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).

(B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis. A firm with multiple offices or locations must indicate all members expected to be providing Market Analysis.

(C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.

(D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

(E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.

(F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

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

(2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.

(A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.

(B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.

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

(1) Title Page. Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.

(2) Letter of Transmittal. The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Market Analysis Summary. Include the Department's Market Analysis Summary exhibit.

(5) Assumptions and Limiting Conditions. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.

(6) Identification of the Property. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

DRAFT

(7) Statement of Ownership. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.

(8) Primary Market Area. A limited geographic area from which the Development is expected to draw most of its demand. The size and shape of the PMA should be reflective of proximity to employment centers, services and amenities and contain the most significant areas from which to draw demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)

(A) The PMA will be defined by the Market Analyst as:

(i) geographic size based on a base year population no larger than necessary to provide sufficient demand but no more than 100,000 people;

(ii) boundaries based on U.S. census tracts; and

(iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract.

(B) The Market Analyst's definition of the PMA must include:

(i) a detailed narrative specific to the PMA explaining:

(I) how the boundaries of the PMA were determined with respect to census tracts chosen and factors for including or excluding certain census tracts in proximity to the Development;

(II) whether a more logical market area within the PMA exists but is not definable by census tracts and how this subsection of the PMA supports the rationale for the defined PMA;

(III) what are the specific attributes of the Development's location within the PMA that would draw prospective tenants from other areas of the PMA to relocate to the Development;

(IV) what are the specific attributes, if known, of the Development itself that would draw prospective tenants currently residing in other areas of the PMA to relocate to the Development;

(V) if the PMA crosses county lines, discuss the different income and rent limits in each county and how these differing amounts would affect the demand for the Development;

(VI) for rural Developments, discuss the relative draw (services, jobs, medical facilities, recreation, schools, etc.) of the Development's immediate local area (city or populous area if no city) in comparison to its neighboring local areas (cities, or populous areas if no cities), in and around the PMA. A rural PMA should not include significantly larger more populous areas unless the analyst can provide substantiation and rationale that the tenants would migrate to the Development's location from the larger cities;

(VII) discuss and quantify current and planned single-family and non-residential construction (include permit data if available); and

(VIII) other housing issues in general, if pertinent;

(ii) a complete demographic report for the defined PMA;

(iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order with labels as well as the location of the subject Development and all comparable Developments. The map must indicate the total square miles of PMA; and,

DRAFT

(iv) a proximity table indicating distance from the Development to employment centers, medical facilities, schools, entertainment and any other amenities relevant to the potential residents and include drive time estimates.

(C) Comparable Units. Identify developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable and qualitative location adjustments. Provide a data sheet for each comparable development consisting of:

(i) development name;

(ii) address;

(iii) year of construction and year of Rehabilitation, if applicable;

(iv) property condition;

(v) Target Population;

(vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and

(I) monthly rent and Utility Allowance; or

(II) sales price with terms, marketing period and date of sale;

(vii) description of concessions;

(viii) list of unit amenities;

(ix) utility structure;

(x) list of common amenities;

(xi) narrative comparison of its proximity to employment centers and services relative to targeted tenant population of the subject property; and,

(xii) for rental developments only, the occupancy and turnover.

(9) Market Information.

(A) Identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph , if applicable:

(i) total housing;

(ii) all multi-family rental developments, including unrestricted and market-rate developments, whether existing, under construction or proposed;

(iii) Affordable housing;

(iv) Comparable Units;

(v) Unstabilized Comparable Units; and

(vi) proposed Comparable Units.

(B) Occupancy. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §~~10~~11.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

DRAFT

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;

(ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;

(iii) For Elderly Developments–, all demographic reports must provide a detailed breakdown of households by age and by income; and

(iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts on which the report is based.

(E) Demand. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available. A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(i) Demographics. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to the elderly populations (and any other qualifying residents for Elderly Developments) to be served by an Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.

(I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.

(II) Target. If applicable, adjust the household projections for the qualifying demographic characteristics such as the minimum age of the population to be served by the proposed Development.

(III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 2 persons per Bedroom or one person for Efficiency Units.

(IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:

(-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 40 percent for the general population and 50 percent for elderly households; and

DRAFT

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 2 persons per Bedroom (round up) or one person for Efficiency Units.

(V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.

(ii) Gross Demand. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and External Demand.

(iii) Potential Demand. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.

(I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size.

(II) For Developments targeting the general population:

(-a-) minimum eligible income is based on a 40 percent rent to income ratio;

(-b-) appropriate household size is defined as 2 persons per Bedroom (rounded up); and

(-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.

(III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:

(-a-) minimum eligible income is based on a 40 percent rent to income ratio;

(-b-) appropriate household size is defined as 2 persons per Bedroom (rounded up); and

(-c-) Gross Demand includes both renter and owner households.

(IV) Elderly Developments:

(-a-) minimum eligible income is based on a 50 percent rent to income ratio; and

(-b-) Gross Demand includes all household sizes and both renter and owner households within the age range (and any other qualifying characteristics) to be served by the Elderly Development.

(V) Supportive Housing:

(-a-) minimum eligible income is $1; and

(-b-) households meeting the occupancy qualifications of the Development (data to quantify this demand may be based on statistics beyond the defined PMA but not outside the historical service area of the Applicant).

(VI) For Developments with rent assisted units (PBV's, PHU's):

(-a-) minimum eligible income for the assisted units is $1; and

(-b-) maximum eligible income for the assisted units is the minimum eligible income of the corresponding affordable unit.

(iv) External Demand: Assume an additional 10% of Potential Demand from the PMA to represent demand coming from outside the PMA.

(v) Demand from Other Sources:

DRAFT

(I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;

(II) consideration of Demand from Other Sources is at the discretion of the Underwriter;

(III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

(-a-) documentation of the number of vouchers administered by the local Housing Authority; and

(-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) Employment. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area. Analysis must discuss existing or planned employment opportunities with qualifying income ranges.

(10) Conclusions. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) Unit Mix. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.

(B) Rents. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §~~10~~11.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Adjustments for proximity and drive times to employment centers and services narrated in the Comparable Unit description, and the rationale for the amount of the adjustments must be included.

(v) Total adjustments in excess of 15 percent must be supported with additional narrative.

(vi) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) Effective Gross Income. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) Demand:

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and

DRAFT

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(iii) state the Gross Demand generated from each AMGI band. If some household incomes are included in more than one AMGI band, Gross Demand should be adjusted to avoid including households more than once.

(E) Relevant Supply. The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units to be absorbed;

(ii) Comparable Units in an Application with priority over the subject pursuant to §~~10~~11.201(6) of this chapter; and

(iii) Comparable Units in previously approved Developments in the PMA that have not achieved 90% occupancy for a minimum of 90 days.

(F) Gross Capture Rate. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. Refer to §~~10~~11.302(i) of this chapter for feasibility criteria.

(G) Individual Unit Capture Rate. For each Unit Type by number of Bedrooms and rent restriction categories, the individual unit capture rate is defined as the Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand for that Unit. Some households are eligible for multiple Unit Types. In order to calculate individual unit capture rates, each household is included in the capture rate for only one Unit Type.

(H) Capture Rate by AMGI Band. For each AMGI band (30%, 40%, 50%, 60%, and also 20%, 70%, and 80% if the Applicant will make the Income Average election), the capture rate by AMGI band is defined as Relevant Supply of proposed and unstabilized Comparable Units divided by the eligible demand from that AMGI band. Some households are qualified for multiple income bands. In order to calculate AMGI band rates, each household is included in the capture rate for only one AMGI band.

(I) Absorption. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(J) Market Impact. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) Appendices. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(14) Qualifications. Current Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships) and any changes to items listed in §~~10~~11.303(c)(1)(B) and (C) of this chapter.

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

DRAFT

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

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

§11.304. Appraisal Rules and Guidelines.

(a) General Provision. An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section. The appraisal must include a statement that the person or company preparing the appraisal is a disinterested party and will not materially benefit from the Development in any other way than receiving a fee for performing the appraisal and that the fee is in no way contingent upon the outcome of the appraisal.

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

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

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

(1) Title Page. Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report. The title page must also include the following statement, "all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(2) Letter of Transmittal. Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.

(3) Table of Contents. Number the exhibits included with the report for easy reference.

(4) Disclosure of Competency. Include appraiser's qualifications, detailing education and experience.

(5) Statement of Ownership of the Subject Property. Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

(6) Property Rights Appraised. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.

(7) Site/Improvement Description. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

(A) Physical Site Characteristics. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.

(B) Floodplain. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.

(C) Zoning. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.

(D) Description of Improvements. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

DRAFT

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.

(I) Property rights conveyed.

(II) Financing terms.

(III) Conditions of sale.

(IV) Location.

(V) Highest and best use.

(VI) Physical characteristics (e.g., topography, size, shape, etc.).

(VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) Sales Comparison Approach. This section should contain an adequate number of sales to provide ~~the reader~~staff and the Board with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

(i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.

(ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.

(I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.

(II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

DRAFT

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The "as vacant" value assumes that there are no improvements on the property and therefore demolition costs should not be considered. The appraiser should consider the fee simple or leased fee interest as appropriate.

DRAFT

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value". For public housing converting to project-based rental assistance, the appraiser must provide a value based on the future restricted rents. The value used in the analysis may be based on the unrestricted market rents if supported by an appraisal. The Department may require that the appraisal be reviewed by a third-party appraiser acceptable to the Department but selected by the Applicant. Use of the restricted rents by the appraiser will not require an appraisal review. Regardless of the rents used in the valuation, the appraiser must consider any other on-going restrictions that will remain in place even if not affecting rents. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the value must be based on the proposed restricted rents when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) Marketing Time. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) Photographs. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

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

§11.305. Environmental Site Assessment Rules and Guidelines.

(a) General Provisions. The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending

reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The report must also include the following statement, "all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law." The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

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

(1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;

(2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;

(3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;

(4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint and/or asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;

(5) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements. For buildings constructed prior to 1980, a report on the quality of the local water supply does not satisfy this requirement;

(6) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;

(7) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and

(8) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

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

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

DRAFT

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

§11.306. Property Condition Assessment Guidelines.

(a) General Provisions. The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides an evaluation of the current conditions of the Development, identifies a scope of work and cost estimates for both immediate and long-term physical needs, evaluates the sufficiency of the Applicant's scope of work under 10 TAC §~~10~~11.302(e)(4)(B)(i) for the rehabilitation or conversion of the building(s) from a non-residential use to multifamily residential use and provides an independent review of the Applicant's proposed costs based on the scope of work. The report should be in sufficient detail for the Underwriter to fully understand current conditions, scope of work and cost estimates. It is the responsibility of the Applicant to ensure that the scope of work and cost estimates submitted in the Application is provided to the PCA author. The PCA must include a copy of the Applicant's scope of work narrative and Development Cost Schedule. The report must also include the following statement, "all persons who have a property interest in this report hereby acknowledge that the Department may publish the full report on the Department's website, release the report in response to a request for public information and make other use of the report as authorized by law."

(b) The PCA must be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (f) and (g) of this section. Additional information is encouraged if deemed relevant by the PCA author.

(c) The PCA must include the Department's Property Condition Assessment Cost Schedule Supplement ("PCA Supplement"). The purpose of the PCA Supplement is to consolidate and show reconciliation of the scope of work and costs of the immediate physical needs identified by the PCA author with the Applicant's scope of work and costs provided in the Application. The consolidated scope of work and costs shown on the PCA Supplement will be used by the Underwriter in the analysis. The PCA Supplement also details the projected repairs and replacements through at least thirty (30) years.

(d) The PCA must include good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of the structure). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) The PCA must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the PCA must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the ~~d~~Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the PCA must contain a description with photographs of each aspect of the building(s) that qualifies it as historic and must include a narrative explaining how the scope of work relates to maintaining the historic designation of the development. Replacement or relocation of systems and components must be described.

(2) Description of Scope of Work. The PCA must provide a narrative of the consolidated scope of work either as a stand-alone section of the report or included with the description of the current conditions for each major system and components. Any ~~n~~New ~~c~~Construction must be described.

DRAFT

Plans or drawings (that are in addition to any plans or drawings otherwise required by rule) and that relate to any part of the scope of work should be included, if available.

(3) Useful Life Estimates. For each system and component of the property the PCA must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The PCA must review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For Applications requesting Direct Loan funding from the Department, the PCA provider must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The PCA must assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, the Department's Uniform Physical Condition Standards, and any scoring criteria including amenities for which the Applicant may claim points;

(6) Accessibility Requirements. The PCA report must include an analysis of compliance with the Department's accessibility requirements pursuant to Chapter 1, Subchapter B and Section 1~~0~~1.101 (~~B~~b)(8) and include identify the specific items in the scope of work and costs needed to ensure that the Development will meet these requirements upon Rehabilitation (including conversion and Adaptive Reuse).

(7) Reconciliation of Scope of Work and Costs. The PCA report must include the Department's PCA Cost Schedule Supplement with the signature of the PCA provider; the costs presented on the PCA Cost Schedule Supplement are expected to be consistent with both the scope of work and immediate costs identified in the body of the PCA report, and with the Applicant's scope of work and costs as presented on the Applicant's development cost schedule; any significant variation between the costs listed on the PCA Cost Schedule Supplement and the costs listed in the body of the PCA report or on the Applicant's development cost schedule must be reconciled in a narrative analysis from the PCA provider; and

(8) Cost Estimates. The Development Cost Schedule and PCA Supplement must include all costs identified below:

(A) Immediately Necessary Repairs and Replacement. For all Rehabilitation developments, and Adaptive Reuse developments if applicable, immediately necessary repair and replacement should be identified for systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) Proposed Repair, Replacement, or New Construction. If the development plan calls for additional scope of work above and beyond the immediate repair and replacement items described in subparagraph (A) of this paragraph, the additional scope of work must be evaluated and either the nature or source of obsolescence to be cured or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the additional scope of work, citing the basis or the source from which such cost estimate is derived.

DRAFT

(C) Reconciliation of Costs. The combined costs described in subparagraphs (A) and (B) of this paragraph should be consistent with the costs presented on the Applicant's development cost schedule and the PCA Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the lesser of thirty (30) years or the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than thirty (30) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(f) Any costs not identified and discussed in the PCA as part of subsection (a)(6), (8)(A) and (8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

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

(1) Fannie Mae's criteria for Physical Needs Assessments;

(2) Federal Housing Administration's criteria for Project Capital Needs Assessments;

(3) Freddie Mac's guidelines for Engineering and Property Condition Reports;

(4) USDA guidelines for Capital Needs Assessment.

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

(i) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs.

(j) The PCA report must include a statement that the individual and/or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. Because of the Department's heavy reliance on the independent cost information, the provider must not be a Related Party to or an Affiliate of any other Development Team member. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

DRAFT

§11.901. Fee Schedule. Any fees, as stated in this section, not paid will cause an Applicant to be ineligible to apply for Department funding, ineligible to receive additional Department funding associated with a Commitment, Determination Notice or Contract, and ineligible to submit extension requests, ownership transfers, and Application amendments until such time the Department receives payment. Payments of the fees shall be in the form of a check and to the extent there are insufficient funds available, it may cause the Application, Commitment, Determination Notice or Contract to be terminated or Allocation rescinded. Other forms of payment may be considered on a case-by-case basis. The Department may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension no later than ten (10) business days prior to the deadline associated with the particular fee. For those requests that do not have a specified deadline, the written request for a fee waiver and description of extenuating and extraordinary circumstances must be included in the original request cover letter.

(1) Competitive Housing Tax Credit Pre-Application Fee. A pre-application fee, in the amount of $10 per Unit, based on the total number of Units reflected in the pre-application, must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Pre-applications in which a Community Housing Development Corporation (CHDO) or a private Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated pre-application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(2) Refunds of Pre-application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of the pre-application fee for a pre-application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 50 percent of the review, threshold review prior to a deficiency issued will constitute 30 percent of the review, and deficiencies submitted and reviewed constitute 20 percent of the review. In no instance will a refund of the pre-application fee be made after the Full Application Delivery Date.

(3) Application Fee. Each Application must be accompanied by an Application fee.

(A) Housing Tax Credit Applications. For Applicants having submitted a C~~c~~ompetitive ~~housing~~ Housing ~~tax~~ Tax ~~credit~~ Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10 percent off the calculated Application fee provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded

DRAFT

services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10 percent, the site visit will constitute 10 percent, program review will constitute 40 percent, and underwriting review will constitute 40 percent. In no instance will a refund of the Application fee be made after Final Awards are made in July.

(5) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation in whole or in part of a Development by an independent external underwriter if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the Commitment or Determination Notice Fee, as applicable, established in paragraphs (8) and (9) of this section, in the event that a Commitment or Determination Notice is issued by the Department to the Development Owner.

~~6) Third Party Deficiency Request Fee. For Competitive Housing Tax Credits (HTC) Applications, a fee equal to $500 must be submitted with a Third Party Request for Administrative Deficiency that is submitted per Application pursuant to §11.10 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).~~

(~~7~~ (6) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

(~~8~~7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50 percent of the Determination Notice Fee may be issued upon request.

(~~9~~8) Building Inspection Fee. (For Housing Tax Credit and Tax-Exempt Bond Developments only.) No later than the expiration date in the Commitment or Determination Notice, a fee of $750 must be submitted. If the Development Owner has paid the fee and returns the Housing Credit Allocation or for Tax-Exempt Bond Developments, is not able to close on the bonds, then the Building Inspection Fee may be refunded upon request.

(~~10~~9) Tax-Exempt Bond Credit Increase Request Fee. Requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond Developments must be submitted with a request fee equal to 4 percent of the amount of the credit increase for one (1) year.

(~~11~~10) Extension Fees. All extension requests for deadlines relating to the Carryover, 10 Percent Test (submission and expenditure), Construction Status Reports, or Cost Certification requirements

DRAFT

submitted at least thirty (30) calendar days in advance of the applicable original deadline will not be required to submit an extension fee. Any extension request submitted fewer than thirty (30) days in advance or after the original deadline must be accompanied by an extension fee of $2,500. Fees for each subsequent extension request on the same activity will increase by increments of $500, regardless of whether the first request was submitted thirty (30) calendar days in advance of the applicable deadline. An extension fee will not be required for extensions requested on Developments that involve Rehabilitation when the Department or U.S. Department of Agriculture (USDA) is the primary lender if USDA or the Department is the cause for the Applicant not meeting the deadline. For each Construction Status Report received after the applicable deadline, extension fees will be automatically due (regardless of whether an extension request is submitted). Unpaid extension fees related to Construction Status Reports will be accrued and must be paid prior to issuance of IRS Forms 8609. For purposes of Construction Status Reports, each report will be considered a separate activity.

(~~12~~11) Amendment Fees. An amendment request for a non-material change that has not been implemented will not be required to pay an amendment fee. Material amendment requests (whether implemented or not), or non-material amendment requests that have already been implemented will be required to submit an amendment fee of $2,500. Fees for each subsequent amendment request related to the same application will increase by increments of $500. A subsequent request, related to the same application, regardless of whether the first request was non-material and did not require a fee, must include a fee of $3,000. Amendment fees and fee increases are not required for the Direct Loan programs.

(~~13~~12) Right of First Refusal Fee. Requests for approval of the satisfaction of the Right of First Refusal provision of the Land Use Restriction Agreement (LURA) must be accompanied by a non-refundable fee of $2,500.

(~~14~~13) Qualified Contract Pre-Request Fee. A Development Owner must file a preliminary Qualified Contract Request to confirm eligibility to submit a Qualified Contract request. The Pre-Request must be accompanied by a non-refundable processing fee of $250.

(~~15~~14) Qualified Contract Fee. Upon eligibility approval of the Qualified Contract Pre-Request, the Development Owner may file a Qualified Contract Request. Such request must be accompanied by a non-refundable processing fee of $3,000.

(~~16~~15) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(~~17~~16) Unused Credit or Penalty Fee. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of IRS Form 8609. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10 percent of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of IRS Form 8609 if the tax credits are not returned, and 8609's issued, within one hundred eighty (180) days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with ~~Internal Revenue~~ Code, §42. If an Applicant returns a full credit allocation after the Carryover Allocation deadline required for that allocation, the Executive Director may recommend to the Board the imposition of a penalty on the score for any Competitive Housing Tax Credit Applications submitted by that

DRAFT

Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits or if no Application Round is pending, the Application Round immediately following the return of credits. If any such point penalty is recommended to be assessed and presented for final determination by the Board, it must include notice from the Department to the affected party not less than fourteen (14) calendar days prior to the scheduled Board meeting. The Executive Director may, but is not required, to issue a formal notice after disclosure if it is determined that the matter does not warrant point penalties. The penalty will be assessed in an amount that reduces the Applicant's final awarded score by an additional 20 percent.

(~~18~~17) Compliance Monitoring Fee. Upon receipt of the cost certification for HTC Developments or HTC Developments that are layered with Direct Loan funds, or upon the completion of the 24-month development period and the beginning of the repayment period for Direct Loan only Developments, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit Unit and $34 per Direct Loan designated Unit, with two fees due for units that are dually designated. For HTC Developments, the fee will be collected, retroactively if applicable, beginning with the first year of the credit period. For Direct Loan only Developments, the fee will be collected beginning with the first year of the repayment period. The invoice must be paid prior to the issuance of IRS Form 8609 for HTC properties. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the month the first building is placed in service. Compliance fees may be adjusted from time to time by the Department.

(~~19~~18) Public Information Request Fee. Public information requests are processed by the Department in accordance with the provisions of Tex. Gov't Code, Chapter 552. The Department uses the guidelines promulgated by the Office of the Attorney General to determine the cost of copying and other costs of production.

(~~20~~19) Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit and Direct Loan programs may be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

§11.902. Appeals Process~~ (§2306.0321; §2306.6715).~~

~~An~~(a) For Competitive HTC Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to Tex. Gov't Code §2306.0321 and §2306.6715 and the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan only Applications, an Applicant or Development Owner may appeal decisions made by the Department pursuant to §1.7 of this title (relating to Appeals). Matters that can be appealed include:

(1) A determination regarding the Application's satisfaction of applicable requirements, Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications), pre-application threshold criteria, underwriting criteria;

DRAFT

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a change to a Commitment or Determination Notice;

(6) Denial of a change to a loan agreement;

(7) Denial of a change to a LURA;

(8) Any Department decision that results in the termination of an Application; and

(9) Any other matter for which an appeal is permitted under this chapter.

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation or otherwise notifies the Applicant or Development Owner of a decision subject to appeal. The appeal must be signed by the person designated to act on behalf of the Applicant or an attorney that represents the Applicant. For Application related appeals, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application as supplemented in accordance with the limitations and requirements of this chapter.

(d) The Executive Director may respond in writing not later than fourteen (14) calendar days after the date of actual receipt of the appeal by the Department. If the Applicant is not satisfied with the Executive Director's response to the appeal or the Executive Director does not respond, the Applicant may appeal directly in writing to the Board. While additional information can be provided in accordance with any rules related to public comment before the Board, the Department expects that a full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal be disclosed in the appeal documentation filed with the Executive Director. Full disclosure allows the Executive Director to make a fully informed decision based on a complete analysis of the circumstances, and verification of any information that may warrant a granting of the appeal in the Applicant's or Development Owner's favor.

(e) An appeal filed with the Board must be received by Department staff not more than seven (7) days after a response from the Executive Director and at least seven (7) days prior to the applicable Board meeting or if the period for an Executive Director response has elapsed the appeal can be heard by the Board if filed at least three (3) days prior to the applicable meeting.

DRAFT

(f) Board review of an Application related appeal will be based on the original Application. A witness in an appeal may not present or refer to any document, instrument, or writing not already contained within the Application as reflected in the Department's records.

(g) The decision of the Board regarding an appeal is the final decision of the Department.

(h) The Department will post to its website an appeal filed with the Department or Board and any other document relating to the processing of an Application related appeal. (§2306.6717(a)(5))

§11.903. Adherence to Obligations. (§2306.6720) Any Applicant, Development Owner, or other Person that fails to adhere to its obligations with regard to the programs of the Department, whether contractual or otherwise, made false or misleading representations to the Department with regard to an Application, request for funding, or compliance requirements, or otherwise violated a provision of Tex. Gov't Code, Chapter 2306 or a rule adopted under that chapter, may be subject to:

(1) Assessment of administrative penalties in accordance with the Department's rules regarding the assessment of such penalties. Each day the violation continues or occurs is a separate violation for purposes of imposing a penalty; and/or

(2) in the case of the competitive Low Income Housing Tax Credit Program, a point reduction of up to ten (10) points for any Application involving that Applicant over the next two Application Rounds succeeding the date on which the Department first gives written notice of any such failure to adhere to obligations or false or misleading representations. Point reductions under this section may be appealed to the Board.

§11.904. Alternative Dispute Resolution (ADR) Policy. In accordance with Tex. Gov't Code, §2306.082, it is the Department's policy to encourage the use of appropriate ADR procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code, Chapter 2010, to assist in resolving disputes under the Department's jurisdiction. As described in Civil Practices and Remedies Code, Chapter 154, ADR procedures include mediation. Except as prohibited by law and the Department's Ex Parte Communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title. Any Applicant may request an informal conference with staff to attempt to resolve any appealable matter, and the Executive Director may toll the running of periods for appeal to accommodate such meetings. In the event a successful resolution cannot be reached, the statements made in the meeting process may not be used by the Department as admissions~~.~~§.

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BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing publication for public comment in the *Texas Register*

RECOMMENDED ACTION

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

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

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 13, and a proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preambles presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed repeal and replacement of the Multifamily Direct Loan Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including requested revisions to the preambles.

BACKGROUND

General Information: Attached to this Board Action Request is the staff draft of the 2019 Multifamily Direct Loan ("MFDL") Rule, which reflects staff's recommendations for the Board's consideration. The year 2018 marked the second year in which the Department drafted and enacted 10 TAC Chapter 13 – the MFDL Rule. The rule came about as a result of the Department having multiple fund sources available with which to make MFDL awards, and the need therefore to govern these fund sources in a uniform manner in order to maximize efficiency and take advantage of the many similar requirements among these multiple funding sources. This rule establishes how MFDL requests may be structured, how MFDL applications are prioritized, how MFDL applications may score points, the post-award process including loan closing and disbursement requests, and the type of amendments that can be requested under the MFDL program.

Upon Board approval, the proposed 2019 MFDL Rule will be posted to the Department's website and published in the *Texas Register*. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, will be accepted between September 10, 2018, and October 12, 2018. In compliance with the State Administrative Procedures Act, public comment will be accepted upon the rule's adoption in the *Texas Register* on September 28, 2018, through October 12, 2018. The Multifamily Direct Loan Rule will be brought before the Board in December for approval and subsequently be published in the *Texas Register* for adoption.

Changes to the MFDL Rules are generally clarifications that staff has identified as necessary to provide clear information to Applicants. Due to the changes to 10 TAC Chapter 10, the Uniform Multifamily Rules and 10 TAC Chapter 11, the Qualified Allocation Plan, several citations are corrected.

Attachment A: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed repeal is to provide for clarification of the existing rule through new rulemaking action.

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

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

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

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

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

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

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

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

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.
The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).
The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has

determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 28, 2018, to October 12, 2018, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 13, Multifamily Direct Loan Rule

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 13, Multifamily Direct Loan Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules.

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

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

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

Mr. Irvine has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan Program.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not expand, limit, or repeal an existing regulation.

7. The proposed rule will not increase nor decrease the number of individuals subject to the rule's applicability; and

8. The proposed rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111.

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

2. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for doing so and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is $1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax

Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new section because this rule does not have any new requirements that would cause additional costs to applicants.

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

local governments because it does not have any new requirements that would cause additional costs to applicants.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 28, 2018, to October 12, 2018, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Andrew Sinnott, Multifamily Direct Loan Administrator, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email htc.public-comment@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

CHAPTER 13 MULTIFAMILY DIRECT LOAN RULE

§13.1 Purpose

(a) Authority. The rules in this Chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program ("MFDL" or "Direct Loan Program") by the Texas Department of Housing and Community Affairs ("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, ~~and~~ 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 (relating to Administration), Chapter 2 (relating to Enforcement), Chapter 8 (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~~i~~ 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.

(c) Waivers. Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §~~10~~11.207 of this title (relating to Waiver of Rules for Applications) and as limited by the rules in this Chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute.

(d) Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this Title, the Qualified Allocation Plan.

§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, the Qualified Allocation Plan~~- Chapter 10, of this Title (relating to Uniform Multifamily Rules)~~.

(1) Annual Income or Annual Incomes ~~means~~ ---"~~annual~~ 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 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, and NHTF) has been submitted. Choice limiting activities also include closing on loans including loans for interim financing, signing of a contract, and commencing construction.

(3) Construction Completion means---that necessary title transfer requirements and construction work have been performed as reflected by the Development's and the following documents have been issued for the Development: certificate(s) of occupancy (if New Construction) and, Certificate of Substantial Completion (AIA Form G704), and a Final Construction Inspection Letter from Department staff. and the final drawdown of funds has been disbursed. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all modifications requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.

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

(5) "Federal Affordability Period" means --- the 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 means--- 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-RFTCAP Repayment Funds ("TCAP RF") funds and matching contribution on NSP and NHTF Developments must be used on HOME-Match Eligible Units.

(7) Land Use Restriction ("LURA") Term means--- the period commencing on the effective date of the LURA and ending on the date which is the greater of the loan term or 30 years. The LURA may include both Federal Affordability Period and State requirements.

(8) Matching contribution (Match)----Aa contribution to a Development from nonfederal sources that may be in the form of one or more of the following:
(A)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);
(B)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)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)d. Waived or reduced fees from cities or counties not related to the Applicant in connection with the proposed Development;
_(E)e. Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal, from an unrelated party.

(9) Relocation Plan means--- a A residential anti-displacement and relocation assistance plan which (i) 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 (ii) is in form and substance consistent with requirements of the Department.

(10) Section 234 Condominium Housing basic mortgage limits ("234 Condo Limits")~~ means~~--~~the~~ The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. ~~Currently,~~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 confirmation will be included in the applicable NOFA.

(11) State Affordability Period~~ means~~--~~ the~~ The LURA Term as described in the MFDL contract and loan documents and as required by Department in accordance with the State Act which is usually an additional period after the Federal Affordability Period.

(12) Surplus Cash--When the first lien mortgage is a federally insured HUD or FHA mortgage, 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;

(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) Direct Loan funds may be made available through a ~~Notice of Funding Availability (~~"NOFA~~")~~ or other similar governing document that includes the basic Application and funding requirements.

(b) Direct ~~loan~~ Loan funds may not be awarded 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 the MDFL funding for which it has applied because it is over sourced.

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

(d) Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, ~~or~~ rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, all subject to HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist ~~directly~~ distressed developments previously funded by the Department when approved by specific action of the Department's Governing Board ("Board").

(e) While all costs associated with the Development and known by the sponsor must be disclosed as part of the Application, costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, 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 ~~Loan Repayment funds~~F;
(14) Costs that have been allocated to or paid by another fund source;
(15) Deferred Developer fee; and,
(16) Other costs limited by Award or NOFA, or as established by the Board.

§13.4 Set-asides, Regional Allocation, and Priorities

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

(1) Fixed Set-Asides:
(A) Supportive Housing/Soft Repayment Set-Aside. The Supportive Housing/Soft Repayment ("SH/SR") ~~Set~~set-aside will be limited by the unencumbered interest revenue generated by multifamily loan payments and any amount under the NHTF allocation received by the Department and not otherwise programmed. Supportive Housing and 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 and/or extremely low income and rent restrictions. Soft repayment loans may be ~~provided with~~structured as deferred payable, deferred forgivable or cash flow ~~terms~~loans. 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:

(i) the Supportive Housing requirements in 10 TAC §11.2(b)~~10.3(a)~~ ~~in the Uniform Multifamily Rules~~ including the other underwriting consideration for Supportive Housing Developments 10 TAC §~~10~~11.302(g)(3) of the Underwriting and Loan Policy; or

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

(I) All units assisted with MFDL funds 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) ~~households earning 30% AMI or less.~~;

(II) Any Units assisted with MFDL funds may not also 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 may not be restricted to 30% AMI by another Department program or any other fund source.

(B) CHDO Set-~~aside~~Aside. Unless waived 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") meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and §13.2(4). Applicants under the CHDO Set-Aside must be proposing to develop housing in Development Sites located outside Participating Jurisdictions unless the award is made within a Persons with Disabilities ("PWD") set-aside 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.~~4~~ 8 of this Chapter relating to debt structure policy. In instances where an application submitted under the CHDO Set-Aside also qualifies under the SH/SR Set-Aside, CHDO funds may be structured in accordance with the SH/SR Set-Aside requirements. A CHDO operating expenses grant may be awarded in conjunction with an award of MFDL funds under the CHDO set-aside 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. The General set-aside is for all other applications that do not meet the requirements of the SH/SR, ~~-~~CHDO set-asides, or flexible set-asides, if any. A portion of the General set-aside may be repositioned into the CHDO set-aside in order to fully fund a CHDO award that meets or exceeds the set-aside amount.

(2) Flexible Set-Asides:

(A) 4% and Bond Layered. The 4% and Bond Layered set-aside is reserved for Applications meeting all MFDL requirements that are layered with 4% Housing Tax Credits and Private Bond funds that do not meet the definition of CHDO.

(B) Persons with Disabilities ("PWD"). The PWD set-aside is reserved for Developments restricting units for tenants who meet the requirements of Tex. Gov't Code §2306.111(c)(2). MFDL funds will be awarded in a NOFA for the PWD set-aside only to the extent sufficient funds are available to award to at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

(C) 9% Layered. The 9% Layered set-aside is reserved for applications meeting all MFDL requirements that are layered with 9% Housing Tax Credits, and do not meet the definition of CHDO. Awards under this set-aside are dependent on the concurrent award of a 9% HTC allocation.

(D) Additional set-asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or to address Department priorities.

(b) Regional Allocation. All funds in the annual NOFA will be initially allocated to regions and potentially subregions based on a Regional Allocation Formula ("RAF") within the set-asides. The RAF methodology may differ by fund source. HOME funds will be allocated in accordance

with Tex. Gov't Code Chapter 2306. The end date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA is published ~~in the Texas Register~~on the Department's website.

(1) After expiration of the RAF, funds collapse but may still be available within set-asides as 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 ~~first two~~ collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, or funded.

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

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an ~~application~~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 (1) - (3) of this subsection.

(1) Priority 1: Applications not layered with ~~2018~~ current year 9% HTC that are received prior to the ~~2018 9% HTC Application deadline~~Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar for Competitive Housing Tax Credits. Priority 1 ~~applications~~ Applications will be prioritized based on score within their respective set-aside and subregion or region during the RAF 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. ~~If~~ Once the RAF ~~has collapsed~~period has ended, Applications will be reviewed on a first-come first served basis within their set-aside, or as reflected in the NOFA.

(2) Priority 2: Applications layered with ~~2018~~ current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation. All Priority 2 applications will be deemed received on the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar. In order for an MFDL application layered with ~~2018~~ 9% HTC to be considered complete, Applications for both programs must be timely received. Priority 2 applications will be recommended for approval at the same meeting when the Board approves the ~~2018~~ 9% HTC allocations. Applications that are on the wait list for a 9% HTC allocation 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.

(3) Priority 3: Applications that are received after the Market Analysis Delivery Date as described in 10 TAC §11.2 Program Calendar for ~~2018~~ 9% HTC Applications ~~deadline~~ on a first come first served basis for any remaining funds until the final deadline identified in the annual NOFA.

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

§13.5 Award Process

(a) Notice of Funding Availability ("NOFA"). All MFDL funds from the annual allocation will be distributed pursuant to the terms of a published ~~through a~~ NOFA that provides the specific collapse dates and deadlines as well as set-aside and RAF amounts applicable to the MFDL

program, along with 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, RAF, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as long as the NOFA itself did not require Board action.

(b) Date of Receipt. Applications will be considered received on the business day of receipt. If an application is received after 5pm Austin Local Time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all required third party reports and application fee(s), in addition to the application, are received by the Department. Within certain set-asides, the date of receipt may be fixed, regardless of the earlier actual date a complete application is received. If multiple applications are received on the same date, in the same region, and within the same set-aside, then score and tiebreaker factors, as described in §13.6 for MFDL or 10 TAC §11.9 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 1110, Subchapter C, Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules for Applications. Failure to timely respond to any notice of Administrative Deficiency will result in suspension of the Application anda 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 Application received prior to the new application 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) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80 percent.

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

(2) 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. The Department will provide notice to all impacted Applicants in the case of over-subscription.

(3) 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 sources of funds- for recommended Applications in the order described in (A)-(C), 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:

(A) Federal funds that have commitment and expenditure deadlines;
(B) Federal funds that do not have commitment and expenditure deadlines;
(C) Nonfederal funds that do not have commitment and expenditure deadlines.

(~~d~~e) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to the requirements of this Chapter and Chapter ~~10~~ 11 of this title (relating to ~~Uniform Multifamily Rules~~the Qualified Allocation Plan). If there are changes to the Application at any point prior to MFDL loan closing that have an adverse effect on the score and ranking order and that would have resulted in the application being ranked below another application in the ranking, the Department may terminate the Application.

(1) Applicants requesting MFDL as the only source of Department funds may meet the Experience Requirement under 10 TAC §~~10~~11.~~.~~204(6) ~~of this Chapter~~ or by providing evidence of the successful development, and operation for at least 5 years, of at least twice as many affordability restricted units as requested in the Application.

(2) Applications for Developments previously given awards from the Department, or where construction has already started or been completed, regardless of fund source and are not proposing acquisition and 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. An application that requires a finding of eligibility by the Board must identify that fact in their application so that the staff may present the matter to the Board for an eligibility determination. A finding of eligibility under this section does not guarantee an award. In general, these applications will not be funded with HOME or NHTF funds.
(A) Requests for eligibility determinations under this paragraph must be received with the Application, so that staff may present the matter to the Board for an eligibility determination, and will not be considered more than 30 calendar days prior to the first Application acceptance date published in the NOFA.
(B) Criteria for the Board to consider would include (i) - (iii) of this subparagraph:
(i) evidence of circumstances beyond the Applicant's control which could not have been prevented by timely start of construction; or
(ii) Force Majeure events; and
(iii) evidence that no further exceptional conditions exist that will delay or cause further cost increases
(C) Applications for Developments previously given awards from the Department that ~~s~~ have not yet achieved Construction Completion, ~~Department funds~~ Applications will be evaluated at no more than the amount of Developer Fee proposed in the original Application. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

(f) 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, prior to execution of such contract, there are new rules in effect, the Applicant may elect to be governed by the new rules.

§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 other applications were received on the same date and within the same set-aside and prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC layered application will be utilized for scoring for an MFDL Application, and evaluated in the same manner except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this Chapter to the extent

that an MFDL Application is also concurrently requesting 9% housing tax credits.:
(1) Applicants eligible for points under 10 TAC §11.9(c)(4) related to the Opportunity Index (7 points).
(2) Tenant Services. Applicants eligible for points under 10 TAC §11.9(c)(3)(A) related to Tenant Services (9 points) Applicants eligible for points under 10 TAC §11.9(c)(3)(B) related to Tenant Services (1 point).
(3) Underserved Area. Applicants eligible for points under 10 TAC §11.9(c)(6) related to Underserved Area (up to 5 points).
(4) Subsidy per Unit. An application that caps the per unit subsidy limit ~~(inclusive of match)~~ for all Direct Loan units regardless of unit size at:
(A) $100,000 per MFDL unit (4 points).
(B) $80,000 per MFDL unit (8 points).
(C) $60,000 per MFDL unit (10 points).
(5) Rent Levels of Tenants. An Application may qualify to receive up to thirteen (13) points for placing the following rent and income restrictions on the proposed Development for the entire Affordability Period. These Units may not be restricted to 30 percent or less of AMGI by another fund source.
(A) At least 20 percent of all low-income Units at 30 percent or less of AMGI (13 points);
(B) At least 10 percent of all low-income Units at 30 percent or less of AMGI or, for a Development located in a Rural Area, 7.5 percent of all low-income Units at 30 percent or less of AMGI (12 points); or
(C) At least 5 percent of all low-income Units at 30 percent or less of AMGI (7 points).
(6) Tenant Populations with Special Housing Needs. An Application may qualify to receive two (2) 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 Project Rental Assistance Program ("Section 811 PRA Program") will do so in order to receive two (2) points. In order to qualify for points, the Existing Development must commit to the Section 811 PRA Program at minimum 10 Section 811 PRA Program Units, unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one 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 is eligible to receive two (2) points by committing Units in the proposed Development to participate in the Department's Section 811 PRA Program. In order to be eligible for points, Applicants must commit at least 10 Section 811 PRA Program Units in the proposed Development for participation in the Section 811 PRA Program unless the Integrated Housing Rule, 10 TAC §1.15, or the 811 Program Rental Assistance Rule ("811 Rule"), 10 TAC Chapter 8, limits the Development to fewer than 10 Section 811 PRA Program Units. The same Section 811 PRA Program Units cannot be used to qualify for points in more than one Application. The Applicant will comply with the requirements of 10 TAC Chapter 8.

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

§13.7 Maximum Funding Requests

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

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

§13.8 Loan Structure and Underwriting Requirements

(a) Except for awards made under the ~~SR/SH~~SH/SR set-aside, all Multifamily Direct Loans awarded will be underwritten as fully repayable (must pay) at ~~not less than the Discount window primary credit rate published by the Federal Reserve (https://www.federalreserve.gov/releases/h15/)~~ a rate specified ~~on the date of initial publication of~~ in the NOFA and approved by the Board, ~~plus 200 basis points~~ and a 30 year amortization with a term that matches the term of any superior loans (within 6 months) at the time of application. If the Department determines that the Development does not support this structure, the Department may recommend an alternative that makes the development feasible under all applicable sections of 10 TAC §~~10~~11.300 related to Underwriting Policy, and §13.8(c). The interest rate, amortization period, and term for the loan will be fixed by the Board at Award, and can only be amended prior to closing by the process in §13.12 of this chapter.

(b) Changes to the total development cost and/or other sources of funds from the publication of the initial Underwriting Report to the time of loan closing must be reevaluated by Real Estate Analysis staff, who may recommend changes to principal amount and/or repayment structure for the Multifamily Direct Loan that will allow the Department to mitigate any increased risk. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board.

(c) Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (7) of this subsection if being requested as construction-to-permanent loans:

(1) The term for permanent loans shall be no less than ten (10) years and no greater than forty (40) years and the amortization schedule shall be thirty (30) years. The Department's loan must mature at the same time or within six (6) months of the shortest term of any senior debt so long as neither exceeds forty (40) years and six (6) months.

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

(3) If the first lien mortgage is a federally insured HUD or FHA mortgage ~~or if a surplus cash flow structure is required for a loan from the SH/SR set-aside,~~ the Department may approve a loan structure with annual payments payable from Surplus Cash Flow~~surplus cash flow~~ provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter.

(~~3~~4) 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~~surplus cash flow~~, staff will require the debt service coverage ratio on both the federally insured loan and the Department's loan – as restricted to 75% of Surplus Cash Flow~~surplus cash flow~~ – to continue to meet the minimum

1.15 in accordance with 10 TAC §10.302(d)(4)(D).

(~~4~~5) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions or in which the lender has an identity of interest with any member of the Development Team; and,

(~~5~~6) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:

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

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

(~~6~~7) If the Direct Loan is the only source of permanent Department funding for the Development:

~~(A) The Development Owner must provide equity in an amount not less than 20 percent of Total Housing Development Costs.~~

(~~B~~A) 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 §~~10~~11.304 which results in total repayable loan to value of not greater than 80% must be provided.

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

(~~7~~8) All Direct Loan applicants where other third-party financing entities are part of the sources of funding must submit a pro_forma and lender approval letter evidencing review of the Development and the Principals ~~in accordance with~~as described in 10 TAC §11.9(e)(1). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the applicant.

(d) 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. In the event that the Direct Loan is the only construction loan, the term may not exceed 24 months;
2. The ~~minimum~~ interest rate will be specified in the NOFA and approved by the Board~~2%~~; and
3. Up to ~~75~~50% of the construction loan may be advanced at loan closing should there be sufficient costs to reimburse that amount.

§13.9 Construction Standards

All Developments financed with Direct Loans will be required to meet at a minimum all applicable state and local codes, ordinances, and standards; the 2012 International Existing Building Code ("IEBC") or International Building Code ("IBC") as applicable. Rehabilitation Developments must meet the requirements in paragraphs (1) - (6) of this section.

(1) recommendations made in the Environmental Assessment and any Physical Conditions Assessment with respect to health and safety issues, life expectancy of major systems (structural

support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

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

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

(4) the broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) or 24 CFR §93.301(a)(2)(vi) or 24 CFR 93.301(b)(2)(vi) as applicable;

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

(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 Development and Unit Requirements

(a) The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested~~, inclusive of Match,~~ as a percentage of total Direct Loan eligible costs. As a result of this requirement, the Department will always use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15 except as described in (b) of this section. Additionally, the amount of Direct Loan funds requested ~~inclusive of Match~~ cannot exceed the per-unit subsidy limit included in the NOFA. ~~For example, in a 20 Unit Development composed of 6 1-bedroom, 10 2-bedroom, and 4 3-bedroom units, where the amount of Direct Loan funds requested is $1,000,000, and the total Direct Loan-eligible project costs are $4,000,000, 25 percent of each unit type must be a Direct Loan Unit ($1,000,000 Direct divided by $4,000,000). In the example below, the square footages are the same for each unit that has the same number of bedrooms and all fractional units are rounded up to require the next whole number of MFDL Units. In this example, even though the amount of Direct Loan funds (inclusive of Match) as a percentage of total Direct Loan-eligible costs (25 percent) would result in a minimum 5 units if the percentage was applied on a total unit basis, the 25 percent must be applied to each unit type with partial Units rounded up to the next whole number, resulting in 2 additional units for a total of 7 Direct Loan Units. Please see CPD Notice 16-15 for further guidance.~~ 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) 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 Land Use Restriction Agreement ("LURA"), or as specifically approved in writing by the Department.

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

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

(e) If the Direct Loan funds are layered in a 9% 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 Award Letter and Loan Term Sheet provided by the Department within thirty (30) calendar days after receipt of the letter. The Award Letter and Loan Term Sheet will be conditional in nature and provide a basic outline of the terms and conditions approved by the Board.

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

(c) Direct Loan awardees must ~~obtain~~ submit a fully completed environmental ~~clearance~~ review (if applicable) including any applicable reports ~~(if applicable)~~ ~~and meet all requirements for commitment of funds~~ to the Department within ~~180~~ 90 days after ~~award~~the Board approval date. Direct Loan awardees that commit any choice limiting activities prior to obtaining environmental clearance may lead to termination of the Direct Loan award.

(d) Direct Loan awardees must execute a Contract within sixty (60) ~~months~~ days of ~~the Board approval date~~environmental clearance being obtained, or, if environmental clearance is not required, within 60 days after the Board approval date.

(e) Loan closing must occur and construction must begin no later than three_(3) months from the effective date of a Contract.

(f) The Development Owner is required to submit quarterly construction status reports to the Asset Management Division as described and by the deadlines specified in §10.402(h).

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

(h) Construction must be completed, as reflected by the development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), and a final development inspection request must be submitted to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. The final development inspection letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements.

(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. 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.

(j) Extensions to ~~any of~~ the ~~above~~ benchmarks in subsections (a) to (i) of this section may only be ~~made for good cause and~~ approved by the ~~Department~~ Executive Director or authorized designee ~~if construction is timely started~~in accordance with §13.12 or §13.13 of this Chapter as applicable;

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

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

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

~~(n) Closing Deadline: Awards will be made subject to closing deadlines established at the time of award by the Board subject to the conditions in §13.8(a), which may only be extended in accordance with §13.12 on the basis of delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing~~. ~~An extension will not be available if an Applicant has:~~

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

~~(A) finalizing all equity and debt financing; or~~

~~(B) the environmental review process; or~~

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

(n~~o~~) Loan Closing: In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) - (7) of this subsection:
(1) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.
(2) Due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department.
(3) Where the Department will have a first lien position and the Applicant provides personal guarantees from all principals, as well as documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;
(4) When Department funds have a first lien position 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;
(5) Documentation required for closing includes, but is not limited to:
(A) Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;
(B) survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

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

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

(E) final Development information, including but not limited to a final development cost schedule, sources and uses, operating 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;

((6) if required by the fund source, prior to Contract Execution unless an earlier period is described in Chapter 10 of this title, the Development Owner must provide verification of:

(A) environmental clearance;

(B) Site and Neighborhood clearance;

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

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

(7) The Direct Loan Contract as executed, which will be drafted by counsel 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.

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

(1) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) 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 or 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 eighteen (18) months of the final Direct Loan draw; termination and repayment of the Direct Loan award in full will be required for any Development that is not completed within four (4) years of the date of Direct Loan Contract execution.

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

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

requirements may be required with a request for disbursement:

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

(2) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703;

(3) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702. For release of retainage the down-date endorsement to the Direct Loan title policy or Nothing Further Certificate must be dated at least thirty (30) calendar days after the date of the ~~construction~~ completion as certified on the Certificate of Substantial Completion (AIA Form G704) with $0 as the work remaining to be completed. Disbursement requests for acquisition and closing costs~~, or requests for soft costs only,~~ are exempt from this requirement;

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

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

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

(7) Developer fee disbursement shall be limited by Section 13.11(p)(9) and further conditioned upon:

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

(B) for Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department except as follows. If all other lenders and syndicator in a Housing Tax Credit development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees, they ~~developer fees~~ shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement 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;

(~~7~~8) ~~expenditures~~ 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;

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

(910) Following fifty percent construction completion, any funds will be released in accordance with the percentage of construction completion. , not to exceed ninety percent of award, 10 percent 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. Retainage will be held until aAll of the items described in subparagraphs (A) - (G) of this paragraph are receivedrequired 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;

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

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

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

(E) Receipt of Certificate(s) of Occupancy (if New Construction);

(F) Development completion reports which includes but is not limited to documentation of full compliance with the Uniform Relocation Act/104(d), Davis-Bacon Act, 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

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

(1011) The final draw request must be submitted within 24 months from loan closing. Extensions to this deadline may only be granted in accordance with §13.12(3) of this Chapter.

§13.12 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 6 months to the loan closing date specified by the Board required in §13.11(e) in accordance with §13.11(m) of this Chapter. An Applicant must document good cause, which includes but is not limited to delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple source closing.; An extension will not be available if an Applicant has:

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

(i) finalizing all equity and debt financing; or

(ii) the environmental review process; or

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

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to 12 months to §13.11(h) or (i)for the construction completion, loan

~~conversion date, and/or final draw deadline~~ date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;
(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increase the annual repayment amount;
(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA;
(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

§13.13 Post-Closing Amendments to Direct Loan Terms

(a) The Executive Director or authorized designee may approve extensions of up to 12 months to §13.11(h), (i), or (p)(11) of this Chapter based on documentation that there is good cause for the extension.

(b) Except in cases of Force Majeure, changes to federal awards will only be processed after the Development is reported to the federal oversight entity as completed and the last of the MFDL funds have been drawn.

(~~b~~c) The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this section. Board approval is necessary for any other changes post closing.
(1) changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term, provided the changes result in the Direct Loan continuing to meet the requirements of §13.8(c)(1) and (3);
(2) resubordination of the Direct Loan in conjunction with refinancing provided the conditions in (A) – (E) 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 ~~of outstanding debt or profit directly~~ 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) 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.
(3) Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement.

7d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion and possible action on an order proposing the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and an order proposing new 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and directing publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department is authorized to issue multifamily housing revenue bonds for the State of Texas by Tex. Gov't Code §2306.351 and Tex. Gov't Code §2306.359 requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities;

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of the current 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and the proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, is approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to cause the proposed repeal of the current 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and the proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

Attached to this Board Action Request is a draft that reflects the proposed changes to the 2019 Draft Multifamily Housing Revenue Bond Rules ("Bond Rules") which incorporates staff's recommendations for the Board's consideration. The proposed changes include:

- Making the Bond Rules consistent with the proposed changes to the 2019 Draft Qualified Allocation Plan ("QAP"), at 10 TAC Chapter 11;
- Clarifying that taxable bonds are not eligible for housing tax credits;
- Clarifying that threshold requirements at full application are not reviewed at the time of pre-application;
- Clarifying how statements made by a state elected official would constitute support and ensuring consistency with how such statements are evaluated under the Qualified Allocation Plan;
- Updating references to other rules that are cited within the Bond Rules;
- Clarifying that rehabilitation developments may proceed with closing without providing the Department with evidence that building permits will be received prior to closing, so long as confirmation that the lender and/or equity partners are comfortable with proceeding with closing;
- Clarifying that applications layered with housing tax credits may elect the income averaging set-aside, but specifying that bond restrictions are not eligible for income averaging; and
- Clarifying how the first year of issuer administration fee and the ongoing issuer administration fee is calculated.
- Additionally, to the extent that there are changes made by the Board to the 2019 Draft QAP that would apply to the Bond program, the QAP would take precedence over the 2019 Bond Rules in the event of conflict.

Upon Board approval, the draft Bond Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 21, 2018, and October 12, 2018. The Bond Rules will be brought before the Board for final approval and will subsequently be published in the *Texas Register*.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule ("Bond Rule"). The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

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

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

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

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

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the issuance of PABs.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002.
The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).

Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action for administering the issuance of PAB. There will not be economic costs to individuals required to comply with the repealed section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 12, 2018, to receive stakeholder comment on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannon.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

Attachment 2: Preamble, including required analysis, for proposed new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule ("Bond Rule"). The purpose of the proposed new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify that taxable bonds are not eligible for housing tax credits, clarify that threshold requirements at full application are not reviewed at the time of pre-application, clarifies how statements made by a state elected official would constitute support and ensures consistency with how such statements are evaluated under the Qualified Allocation Plan, update references to other rules that are used, clarify that rehabilitation developments may proceed with closing without providing the Department with evidence that building permits will be received prior to closing, so long as confirmation that lender and/or equity partners are comfortable with proceeding with closing, clarify that applications layered with housing tax credits may elect the income averaging set-aside but that bond restrictions are not eligible for income averaging, and clarify how the first year of issuer administration fee and the ongoing issuer administration fee is calculated.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action pursuant to item (9), which excepts rule changes necessary to implement legislation. The proposed rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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

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

Timothy K. Irvine, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

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

3. The proposed rule changes do not require additional future legislative appropriations.

4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The proposed rule does not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this proposed rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.359.

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

2. This rule relates to the procedures in place for entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the proposed rule for which the economic impact of the rule would be a flat fee of $8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from $480 to $2,400 which is based on $30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 80 Units.

These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the proposed rule for which the economic impact of the rule is projected to be $0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB Development will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

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

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

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

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

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

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based on these rule changes. The proposed rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the same processes described by the rule have already been in place through the rule found at this section being repealed.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 12, 2018, to receive stakeholder comment on the new proposed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Shannon Roth, Bond Rule Public Comment, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895, attn: Shannon Roth, Bond Rule Public Comments, or by email to shannonn.roth@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§12.1. General.

(a) Authority. The rules in this chapter apply to the issuance of multifamily housing revenue bonds ("Bonds") by the Texas Department of Housing and Community Affairs ("Department"). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this Chapter to the contrary, Bonds which are 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, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code ("Code"), §142.

(b) General. The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) ~~and Chapter 10 of this title (relating to Uniform Multifamily Rules)~~ for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan ("QAP") ~~and Uniform Multifamily Rules~~ in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board ("TBRB"). If the applicable QAP or Uniform Multifamily Rules contradict rules set forth in this Chapter, the applicable QAP ~~or Uniform Multifamily Rules~~ will take precedence over the rules in this Chapter except in an instance of a conflicting statutory requirement, which shall always take precedence. ~~The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.~~

(c) Costs of Issuance. The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

(d) Taxable Bonds. The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

(e) Waivers. Requests for any permitted waivers of program rules must be made in accordance with §11~~10~~.207 of this title (relating to Waiver of Rules).

§12.2. 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, and Chapter 11~~10~~ of this title (relating to Housing Tax Credit

Program Qualified Allocation Plan~~Uniform Multifamily Rules~~).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. Bond Rating and Investment Letter.

(a) Bond Ratings. All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

(b) Investment Letters. Bonds rated less than "A~~,~~" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds ~~shall~~must also be qualified as Institutional Buyers and must~~shall~~ execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars ($100,000), and must~~shall~~ carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. Pre-Application Process and Evaluation.

(a) Pre-Inducement Questionnaire. Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can ~~get~~have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

(b) ~~Undesirable Neighborhood Characteristics~~Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11~~10~~.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the ~~undesirable neighborhood characteristics~~neighborhood risk factors become available while the full Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11~~10~~.101(a)(3)(B) of this title (relating to Site and Development Requirements and Restrictions) and the Applicant failed to disclose.

(c) Pre-Application Process. An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11~~10~~ of this title (relating to ~~Uniform Multifamily Rules~~Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

(d) Scoring and Ranking. The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this Chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

(e) Inducement Resolution. After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of ~~undesirable neighborhood characteristics~~ neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should

this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

§12.5. Pre-Application Threshold Requirements.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11~~10~~, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the multifamily bond pre-application in the form prescribed by the Department;

(2) Completed Bond Review Board Residential Rental Attachment for the current program year;

(3) Site Control, evidenced by the documentation required under §11~~10~~.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(10) of this title at the time of Application;

(4) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(5) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(6) Distribution List Form, as provided in the pre-application, to include the anticipated financing participants;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11~~10~~.203 of this title (relating to Public Notifications (§2306.6705(9)). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10 percent or a 5 percent increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should ~~a change in elected official occur~~the person holding any position or role identified in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new~~ly elected (or appointed) official~~ person no later than the Full Application Delivery Date.

§12.6. Pre-Application Scoring Criteria.

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of Units rent capped at 60 percent AMGI; or
(ii) Set aside 15 percent of Units rent capped at 30 percent AMGI and the remaining 85 percent of Units rent capped at 60 percent AMGI; or
(iii) Set aside 100 percent of Units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed $95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

(A) five-hundred-fifty (550) square feet for an Efficiency Unit;
(B) six-hundred-fifty (650) square feet for a one Bedroom Unit;
(C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;
(D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
(E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of thirty-five (35) years.

(5) Unit and Development Construction Features. A minimum of (~~7~~9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11~~10~~.101(b)(6)(B) of this title (relating to Site and Development Requirements and

Restrictions). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §11~~10~~.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

(A) Developments with 16 to 40 Units must qualify for (4 points);
(B) Developments with 41 to 76 Units must qualify for (7 points);
(C) Developments with 77 to 99 Units must qualify for (10 points);
(D) Developments with 100 to 149 Units must qualify for (14 points);
(E) Developments with 150 to 199 Units must qualify for (18 points); or
(F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident~~Tenant~~ Supportive Services. (~~8~~7 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11~~10~~.101(b)(7) of this title, appropriate for the ~~proposed tenants~~residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents ~~tenants~~ for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site is located in an Underserved Area as further described in §11.9(c)(5)(A) - (E) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received ten (10) business days prior to ~~the date of~~ the Board's ~~meeting at which~~consideration of the pre-application.~~ will be considered.~~ Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials ~~to be considered are those~~must be in office ~~at the time~~when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points.~~ under this exhibit.~~ Neutral letters~~, letters~~ that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e., ~~a letter that says~~ "the local jurisdiction

supports the Development and I support the local jurisdiction") ~~will be treated~~counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

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

(10) Preservation Initiative. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

§12.7. Full Application Process.

(a) Application Submission. Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11~~10~~.201 of this title (relating to Procedural Requirements for Application Submission).

(b) Eligibility Criteria. The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in ~~Chapter 10 of this title (relating to Uniform Multifamily Rules) and~~ Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code~~,~~ Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

(c) Bond Documents. Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

(d) Public Hearings. The Department will hold a public hearing to receive comments ~~from the public~~ pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

(e) Approval of the Bonds. Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to ~~Staff~~ Appeals Process).~~ and §1.8 of this title (relating to Board Appeals Process).~~ To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

(f) Local Permits. Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

§12.8. Refunding Application Process.

(a) Application Submission. Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

(b) Bond Documents. Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

(c) Public Hearings. Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval

and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

(d) Rule Applicability. Refunding Applications must meet the requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) and Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11~~10~~.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. Occupancy Requirements.

(a) Filing and Term of Regulatory Agreement. A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

(1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;

(2) the end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or

(3) the period required by the Code.

(b) Federal Set Aside Requirements.

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph.~~:~~ Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph.

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must, ~~designate~~ at the time of Application, indicate which of

the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321.~~ The Regulatory Agreement will reflect the income and rent limits as identified in the Department's Underwriting Report, constituting the eligible tenants of the Development and monitored as such by the Department.~~ Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. Fees.

(a) Pre-Application Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $2,500 (payable to the Department's bond counsel) and $5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

(b) Application Fees. At the time of Application the Applicant is required to submit a tax credit application fee of $30 per Unit based on the total number of Units and a bond application fee of $20 per Unit based on the total number of Units. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as ~~part of ~~a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff~~the Executive Director~~.

(c) Closing Fees. The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to $25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year following closing.

(d) Application and Issuance Fees for Refunding Applications. For refunding Applications the application fee will be $10,000 unless the refunding is not required to have a public hearing, in which case the fee will be $5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.

(e) Administration Fee. The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount ~~on its date of calculation~~at the inception of each payment period and is paid as long as the Bonds are outstanding.

(f) Bond Compliance Fee. The Bond compliance monitoring fee is equal to $25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement.

7e

BOARD ACTION REQUEST

EXECUTIVE DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities, and directing publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, pursuant to Tex. Gov't Code §2001.039, state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist;

WHEREAS, pursuant to Tex. Gov't Code Chapter 2306, Subchapter LL, relating to Migrant Labor Housing Facilities, a person may not establish, maintain, or operate a migrant labor housing facility without obtaining a license from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of licenses;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with Tex. Gov't Code Chapter 2306, Subchapter LL, for which these rules establish the administrative procedures and substantive requirements, as required by statute;

WHEREAS, this rule was last adopted in 2006, with the exception of the forms noted in 10 TAC §90.8, which were last adopted in 2014, and changes are now needed to add the purpose of the rule, remove definitions redundant with statute, add a definition for the term: "Provider," add a section addressing Applicable Standards, significantly reduce and streamline the section that had provided Facility standards, revise the fee structure for a reduced application fee in certain circumstances to prevent providers being discouraged from pursuing license because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and proposed new 10 TAC Chapter 90, Migrant Labor Housing Facilities are approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of

the Department to cause the proposed repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, and proposed new 10 TAC Chapter 90, Migrant Labor Housing Facilities, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

Rule Review Overview

Tex. Gov't Code §2001.039 requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist; based on the assessment the rule can then be readopted as is, readopted with amendments, or repealed. Even rules that have been amended within the last four years require this review if the amendment did not specifically state that it included this review step. Several of the Department's rules exceed this four year review period and a project has been initiated to evaluate all rules and bring them into compliance with these timelines. One of the results of such a review is that the rule is determined to be necessary but that there are significant enough revisions to warrant repeal and proposal of a new rule in its place. This type of action also is an acceptable response to the four year review requirement and "resets the clock" on that review period.

This rule review initiative also includes a management-wide evaluation of whether a rule is:

- Statutorily required, and if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation, and if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Executive Director and the Board.

Upon approval in draft form by the Board, rules under review will be released for public comment in the *Texas Register* and returned to the Board for final direction and adoption.

10 TAC Chapter 90, Migrant Labor Housing Facilities

Authority: Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921-2306.930), provides for the Department to serve as the agency that provides licenses to any person or entity that establishes, maintains or operates a migrant labor housing facility, and outlines requirements relating to license applications, inspections, failing to meet standards, reinspection, license issuance and term, license posting, fees, and suspension or revocation of license.

Department Policy: While Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the direction and authority of the licensing activity of Migrant Labor Housing Facilities, it does not provide the administrative specificity to fully implement this activity. As such, these rules set Department policy only so far as they provide the administrative implementation of the statutory activity.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained but that this be accomplished through repeal of the existing rules and the proposal of new rules. The new proposed rules reflect changes that add the purpose of the rule, remove definitions redundant with statute, add a definition for the new term: "Provider," add a section addressing Applicable Standards, significantly streamline the section that had provided Facility standards and make it better align with federal requirements applicable to housing for workers here under H2-A visas, revise the fee structure for a reduced application fee in certain circumstances to prevent providers being

discouraged from pursuing license because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity.

Behind the proposed preamble for the proposed new action a draft of the rule is shown in its clean new form. However, to assist reviewers with understanding what has changed from the current version of the rule, a blacklined version is also provided, reflecting changes to the rule that is proposed for repeal.

Migrant Labor Housing Initiatives

Recently the Department has been pursuing several initiatives to improve the Department's licensing responsibilities. First, staff has initiated discussions with our sister agency, the Texas Workforce Commission ("TWC"), who inspects housing that is being provided for workers obtaining H-2A visas through the US Department of Labor ("DOL"). TWC has indicated that many providers of such housing were unaware of the need to obtain a license from the Department and the possibility that housing that met the DOL standards might not meet Texas licensing standards.

Second, staff has developed a list of agricultural related entities and notified them that, if they house workers, they may be required to obtain a license under the Tex. Gov't Code Chapter 2306, Subchapter LL. We have given them information about the statutory requirement, the proposed rule changes, rulemaking process, the requirements for obtaining a license, and how to proceed. We hope to raise awareness of the licensing requirement by reaching out to these organizations, many of which appear to have been unaware that licensing (even where an H2-A visa had been obtained and the housing inspected in connection with that federal program), other than possible labor-related licensing, was required or applicable.

Third, the Department is developing a brand recognition campaign for housing providers to use so that workers can quickly and easily recognize where licensed housing exists. We are reaching out to trade organizations as well as advocacy groups to help promote this effort, educating providers and workers on the benefits of properly licensed housing. The logo was developed by the Department's communications division with input from several focus groups of migrant farm workers. The logo will be required to be displayed at the facility along with basic information about the facilities license such as the year it was inspected, the approved capacity of the facility and contact information with regard to complaints. The logo may also be used in marketing material for employers and laborers about the Migrant Labor Housing Facilities Licensing Program. Below is a copy of the logo.

Lastly, we are updating our inspection procedures so that all required inspections are able to timely occur when requested, aligning the requirements with the Federal requirements set out in 29 CFR §500.132, (the Employment and Training Administration "ETA" and Occupational Safety and Health Administrations "OSHA" housing standards also referred to as the "ETA and OSHA Housing Standards") and identifying those additional requirements imposed by state rule under the authority of Tex. Gov't Code Chapter 2306, Subchapter LL.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 90, Migrant Labor Housing Facility

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 90, §§90.1-90.8, concerning Migrant Labor Housing Facilities. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed repeal would be in effect, the proposed rule does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, of the rules governing licensing of migrant labor housing facilities.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor does the repeal reduce work load such that any existing employee positions could be eliminated.

3. The proposed rule changes do not require additional future legislative appropriations, but this conclusion is based on assumptions as to the number of additional unlicensed facilities that would be required to obtain licenses.

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

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

6. The proposed action will repeal an existing regulation but is associated with the simultaneous readoption making changes to an existing activity, the licensing of migrant labor facilities.

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

8. The proposed repeal will not negatively nor positively affect this state's economy.

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

The Department has evaluated this rule and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities, as the repealed rule will be replaced with a similar rule. Micro-businesses not already licensed but operating migrant farmworker housing facilities were already subject to the legal requirement to be licensed. To the extent they were not already licensed but met the requirements of the federal regulations, they may need to incur the costs of making changes to their facilities to bring them into compliance with these rules.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment, as the repealed rule will be replaced with a similar rule; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal of this rule is in effect, the public benefit anticipated as a result of the repealed section will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Tom Gouris, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email tom.gouris@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm, Austin local time, OCTOBER 22, 2018.

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

10 TAC Chapter 90, Migrant Labor Housing Facility

Attachment 2: Preamble for proposed new 10 TAC Chapter 90, Migrant Labor Housing Facilities

In accordance with Tex. Gov't Code Chapter 2306, Subchapter LL, a person may not establish, maintain, or operate a Migrant Labor Housing Facility without obtaining a license from the Department, and Subchapter LL further outlines requirements relating to the application, inspection, fees, and suspension of licenses.

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 90, §§90.1-90.9, concerning Migrant Labor Housing Facilities. The purpose of the proposed new Chapter is to provide compliance with Tex. Gov't Code Chapter 2306, Subchapter LL and update the rule to add the purpose of the rule, remove definitions redundant with statute, add a definition for the term Provider, add a section addressing Applicable Standards, significantly reduce and streamline the section that had provided Facility standards, revise the fee structure for a reduced application fee in certain circumstances to prevent providers being discouraged from pursuing license because of possible cost, revise the inspection timeline to ensure timeliness and reduce the likelihood of a timing conflict, update the process for handling complaints, update the applicable forms, and improve readability and clarity.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it is exempt under both §2001(0045(c)(6) which exempts rule changes necessary to protect the health, safety, and welfare of the residents of this state, and §2001.0045(c)(9), which exempts rule changes necessary to implement legislation. Compliance with the proposed rule is intended to ensure adherence to reasonable standards to benefit the health, safety, and welfare of those migrant laborers housed in the facilities required to be licensed. Tex. Gov't Code Chapter 2306, Subchapter LL, provides for the implementation of this activity.

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

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

Mr. Irvine has determined that, for the first five years the proposed rulemaking would be in effect:

1. Mr. Irvine has determined that, for the first five years the proposed new rule would be in effect, the proposed rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the licensing and oversight of migrant labor housing facilities.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the acceptance of additional license applications and fees, added inspections, and follow-up of compliance with possible inspections findings, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

3. The proposed rule changes do not require additional future legislative appropriations.

4. In accordance with Tex. Gov't Code §2306.929, the Department is authorized to set the license fee in an amount not to exceed $250. This rule has already had the fee set at $250 since 2006 and the

Department is not suggesting changing that fee. However, the Department does anticipate an increase in the possible fees received, as there is a much more targeted initiative to encourage those providers that are currently not licensed to apply for licensure, which would increase fee receipts. As an offset to this potential increase and to the extent that the Department can utilize the inspections conducted by other state agencies and thereby limit the cost by eliminating the duplication of work, the department is proposing to reduce the fee for the first two years of new licensees where they already have a satisfactory inspection by another state agency.

5. The proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the proposed rule clarifies the scope of facilities, standards, and individuals subject to the rule. Many providers of such housing may have been unaware of the need to obtain a license from the Department, and were unaware of the possibility that housing that met the standards of the Department of Labor might not also meet the Texas licensing standards. This addition to the rule is necessary to clarify the statutory scope of who must be licensed and ensure compliance with Tex. Gov't Code, Chapter 2306, Subchapter LL and to ensure the health, safety, and welfare of those migrant laborers housed in facilities arranged for by others.

7. The proposed rule does increase the number of individuals subject to the rule's applicability as described in item 6 above.

8. The proposed rule may be considered to have a negative effect on the state's economy because of potential expense to bring their Migrant Labor Housing Facility into compliance with the requirements of the rule and statutorily-required licensure or impact the ability to procure the labor needed, which may affect the overall productivity of their industry and contribution to the state economy. This is a natural and unavoidable consequence of enforcement of the statute. The Department is not able to quantify or determine that at this time the extent of Providers that are not currently licensed and the extent to which their facilities are not up to licensure standard

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this rule and determined that:

1. TDHCA has, in drafting this proposed rule attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, ch. 2306, subchapter LL.

2. None of the adverse effect strategies outlined in this subsection are applicable.

3. Based on raw data regarding H2-A visas that required housing inspections, there could be between 100 and 350 small or micro-businesses initially subject to the proposed rule, not already licensed and compliant. NAICS data from the Comptroller shows Vegetable and Melon Farming as having 132 small businesses. The Department has determined that there may be an adverse economic effects on small or micro-businesses for those providers of migrant labor housing that are not currently providing housing to their laborers that will meet the proposed standard, but these economic effects are a natural and unavoidable consequence of enforcement of the statutes. A minimal fee of $250 is already in the current version of the rule and is not being increased so does not present a new cost, other than for those not previously licensed. The economic impact of the rule beyond the fee can vary significantly per provider depending on the extent to which their facilities are not up to standard. Because the amount of work and materials needed to bring a facility

up to standard can vary dramatically from a facility only needing to make a few minor repairs, to a possibly significant renovation of facilities, an estimate is not able to be calculated. Moreover, though employers of workers on H2-A visas are required to provide housing to their workers, the Department cannot estimate the economic impact of the proposed rule if agricultural employers who currently provide housing to migrant laborers decide to cease providing housing rather than comply with the licensure standards.

The rule is not directly applicable to rural communities, other than through the business entities that reside in those communities, and therefore no economic impact of the rule is projected for rural communities.

(3-a) The proposed rule identifies the applicable federal standard for housing of farm workers, where applicable, and an additional nine requirements, which were part of the prior rule but exceed one or both of the federal standards. Further, though federal requirements exempt places of public accommodation (such as hotels) from inspection, the proposed rules account for the statutory requirements regarding licensure of facilities by placing the onus on an agricultural employer (who contracts for Facilities used by migrant workers) to obtain a license and facilitate an inspection of such a Facility – which would include rental accommodations such as a hotel.

The purpose of Tex. Gov't Code, ch. 2306, subchapter LL, is clearly grounded in protection of the health, safety, and welfare of migrant farm workers. Tex. Gov't Code §2306.925 provides the Department with regulatory flexibility to define "the reasonable minimum standards of construction, sanitation, equipment, and operation" in order for a migrant labor housing facility to receive a license. The minimum federal standards are set out in 29 CFR §§500.130 and 500.132–500.135, (the Employment and Training Administration "ETA" and Occupational Safety and Health Administrations "OSHA" housing standards also referred to as the "ETA and OSHA Housing Standards") and the proposed rule eliminates the exception for inspecting public accommodations provided in 29 CFR §500.131, and adds nine additional standards – all grounded in enhanced health and safety. Whether, in accordance with the requirements of this analysis, the proposed rule uses "regulatory methods that will accomplish the objectives of the applicable rules while minimizing adverse impacts on small businesses" is a matter of perspective. Any additional regulations that increase health and safety standards accomplish the objectives of the rules; but each comes at a cost above the "minimum" required by federal regulation.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule may have a negative effect on a local economy and its employment if the local Providers in that community conclude that to bring their facilities into compliance would be cost prohibitive, impact their hiring decisions, and/or impact their ability to procure the labor needed. These issues could possibly effect the overall productivity of their business and impact on local employment. Depending on the extent of how many providers are in a given local economy and the extent to which that Providers' facilities would not meet standards, this might be a concern; however, the Department is not able to quantify or determine that at this time for any given community.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic area affected by the rule . . ." Considering that the licensing standards in the new rule have been largely been in effect for several years, there are no "probable" effects of the new rules on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be increased assurance of the health, safety, and welfare of migrant labor workers. The possible economic costs to any individuals required to comply with the new section will be the $250 fee for those providers not already licensed, and the cost of improvements needed to bring a facility into compliance.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Irvine also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does have some foreseeable implications related to costs or revenues of the state or local government: The minimal revenue to the state of $250 per application will be used to offset additional expenses associated with inspection travel for each application. The other costs to administer the increased activity are being absorbed within current resources by the Department. There are no foreseeable implications relating to cost or revenues of local governments from enforcing or administering the proposed rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2018, to October 22, 2018, to receive input on the new Chapter. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Tom Gouris, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email tom.gouris@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 pm, Austin local time, OCTOBER 22, 2018.

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

10 TAC Chapter 90 Migrant Labor Housing Facilities

§90.1 Purpose.
The purpose of Chapter 90 is to establish rules governing migrant labor housing facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921-2306.933). Alignment of state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs such as with the U. S. Department of Labor's H2-A visa program is intended to reduce inspection conflicts and allow for cooperative efforts between the Department and other state and federal entities to share information and reduce redundancies.

§90.2 Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921-2306.933, 29 CFR §§500.130-500.135, 20 CFR §§654.404 et seq. and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--the state law that governs the operation and licensure of migrant labor housing facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.933.
(2) Board--The governing board of the Texas Department of Housing and Community Affairs.
(3) Business Day--any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.
(4) Business hours--8 a.m. to 5 p.m., local time.
(5) Department--The Texas Department of Housing and Community Affairs.
(6) Director--The Executive Director of the Department.
(7) Family--a group of people, whether legally related or not, that act as and hold themselves out to be a family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.
(8) Licensee--any person that holds a valid license issued in accordance with the Act.
(9) Occupant--any person, including a worker, who uses a migrant labor housing facility for housing purposes.
(10) Provider-- any person who knowingly provides for the use of a Migrant Labor Housing Facility by Migrant agricultural workers, whether the Facility is owned by the Provider or is contractually obtained for (or otherwise arranged by) the Provider.
(11) Worker--A migrant agricultural worker, as defined in the Act, being an individual who is:
(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and
(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3. Applicability.
(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by employers in the agricultural or agriculturally related industry to house migrant agricultural workers, must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135 without the exception provided in 29 CFR §500.131.
(b) Where agricultural employers own, lease, rent, or otherwise contract for Facilities "used" by individuals or households that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a migrant labor housing facility, and is the responsible entity for obtaining and "maintaining" the license on such facility, as those terms are used in Tex. Gov't Code §2306.921 - .922.
(c) A prospective licensee must facilitate an inspection by the Department with the owner of the Migrant Labor Housing Facility.
(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with agricultural employers or other Providers to house migrant agricultural workers are not required to be licensed. Further, since a "Facility" under Tex. Gov't Code §2306.921(1) requires both elements of one or more structure, trailer, or vehicle, as well as the land appurtenant, no license would be required by an agricultural worker using his own structure, trailer, or vehicle but temporarily residing on the land of another.

§90.4. Standards and Inspections.
(a) The appropriate housing standard is defined in 29 CFR §500.132, (the Employment and Training Administration "ETA" and Occupational Safety and Health Administrations "OSHA" housing standards also referred to as the "ETA and OSHA Housing Standards"). The inspection checklists setting forth those standards are available on the Department's website at https://www.tdhca.state.tx.us/migrant-housing/index.htm.

(b) Inspections of the facilities of applicants for a license and licensees may be conducted by the Department under the authority of §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies on behalf of the Department on forms promulgated by those agencies.
(c) In addition to the standards noted in subsection (a) of this section, all facilities must comply with the following additional state standards:
(1) Facilities shall be constructed in a manner to insure the protection of occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher.
(2) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In family housing units, separate sleeping accommodations shall be provided for each family unit.
(3) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.
(4) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with department rules on food services sanitation, 25 TAC §§229.161 - 229.171 (relating to Food Service Sanitation).
(5) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck facilities shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.
(6) Communal bathrooms shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.
(7) In all communal bathrooms separate shower stalls shall be provided.
(8) Mechanical clothes washers shall be provided in a ratio of one per 50 persons. In addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided. In lieu of mechanical clothes washers, one laundry tray or tub per 25 persons may be provided.
(9) All facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

§90.5. Licensing.
(a) Tex. Gov't Code, §2306.922 requires the licensing of migrant labor housing facilities.
(b) Any person who wants to apply for a license to operate a facility may obtain the application form from the Department. The required form is available on the Department's website at https://www.tdhca.state.tx.us/migrant-housing/index.htm
(c) An application must be submitted to the Department prior to the intended operation of the facility, but no more than 60 days prior to said operation.
(d) The fee for a license is $250 per year, except in such cases where the facility was previously unlicensed by the Department but inspected and approved to be utilized for housing under a State or Federal migrant labor housing program and it is anticipated that an acceptable inspection conducted by a State or Federal agency in accordance with the rules in this chapter will be provided to the Department. In such cases, the fee is reduced to $25 per year for up to two years.). If a

separate inspection or re-inspection by the Department is required, the reduced fee does not_apply. The license is valid for one year from the date of issuance unless sooner revoked or suspended.
(e) Fees shall be tendered by check or money order payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any license that has been issued in reliance upon such payment being made is null and void.
(f) A fee, when received in connection with an application is earned and is not subject to refund.
(g) Upon receipt of a complete application and fee, the Department shall schedule an inspection of the facility by an authorized representative of the Department. Inspections shall be conducted during business hours on business days and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this license only if notice is given to the Department prior to the inspection, the fee described in subsection (d) of this section has been provided, notice of the additional state standards described in §90.4 (g) is provided to the applicant, the documentation of an acceptable written inspection of the facility in accordance with the rules in this Chapter is provided to the Department by an authorized representative of the State or Federal agency, and a certification to meeting the addition state standards described in §90.4 (g) along with any required supplemental documentations such as photographs are provided by the applicant.
(h) The person performing the inspection on behalf of the Department shall prepare a report of findings of that inspection.
(1) If the person performing the inspection finds that the migrant labor housing facility, based on the inspection, will be in compliance with §90.4 of these rules, and the Director finds that there is no other impediment to licensure, the license will be issued.
(2) If the person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the license will be issued subject to such conditions as the Director may specify. The applicant may, by signed letter, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department or treat the Director's imposing of conditions as a denial of the application.
(3) If the person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the inspector or Department, within 60 days from the date of written notice of the findings, of a time when the facility maybe re-inspected. If a re-inspection is required the License will not be eligible for the reduced fee described in subsection (d) of this section and the balance of the $250 fee ($225) must be remitted to the Department prior to the re-inspection. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the license will be issued.
(4) If the person performing the inspection finds that the migrant labor housing facility is in material non-compliance with §90.4 of these rules or that one or more imminent threats to health or safety are present, the Director may deny the Application.
(i) If the Director determines that an application for a license ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the license, and such order shall:
(1) Be clearly incorporated by reference on the face of the license;
(2) Specify the conditions and the basis in law or rule for each of them; and
(3) Such conditions may include limitations whereby parts of a migrant labor housing facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(j) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs Attention: Migrant Labor Housing Facilities PO BOX 12489 AUSTIN TX 78711-2489

(k) Within 14 days of the date of receipt of an application and license fee, the Department shall issue a written notice informing the applicant that the application is complete and accepted for filing, or, if the application is deficient, a letter specifying what is else needed in order to process the application.

(l) An applicant or licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a license or an election to appeal the imposing of conditions upon a license, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each licensee shall maintain on premises, available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;

(2) A current list of the occupants of the facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Operator notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than ten (10) days of making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved.

(b) A licensee, through its Provider, shall be provided a copy of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be ten (10) business days.

(1) Complaints may be made in writing or by telephone to 1-877-724-5676.

(2) Complaints may be made in Spanish or in English.

(3) To the fullest extent permitted by applicable law, the identity of any complaint shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an occupant for making a complaint in good faith.

(5) A Licensee shall post in at least one conspicuous location in a facility:

(A) A copy of the license;

(B) Any logo or symbol provided by the Department recognizing the license and the year for which the license was granted; and,

(C) The following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this facility or your unit, the Texas Department of Housing and Community Affairs (the "Department") is the state agency that licenses and oversees this facility. You may make a complaint to the Department by calling, toll-free, 1-877-724-5676, or by writing to

Migrant Labor Housing, TDHCA, 4413 82nd Street, Lubbock, TX 79424-3366. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condición u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalacion. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-877-724-5676 u escribiendo a Migrant Labor Housing, TDHCA, 4412 82nd Street, Lubbock, TX 79424-3366. La oficina tiene personal que habla español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación u el operador contra personas que se quejen contra ellos.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of Providers and occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions or appeal or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

§90.8. Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth below. Nothing herein limits the right, as set forth in the Act, to seek injunctive relief.

(b) For each violation of the Act or rules a penalty of up to $200 may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected license.

§90.9. Dispute Resolution, Appeals, and Hearings.

(a) A licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a license or issuing a license subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located unless the licensee agrees otherwise.

(c) A licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at 10 TAC, §1.17.
(d) All appeals are contested cases subject to and to be handled in accordance with Chapter 2001, Tex. Gov't Code.

7f

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

SEPTEMBER 6, 2018

Presentation, discussion, and possible action on the proposed amendment of 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication for public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the "Department") is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposes clarifications and changes to improve the efficiency of post award and asset management activities of multifamily developments awarded funds under various Department programs;

WHEREAS, staff also proposes changes to 10 TAC §10.405 to allow for the election of income averaging, as permitted by amendments to the Internal Revenue Code under the Federal Consolidated Appropriations Act of 2018;

WHEREAS, staff recommends to the Board that there is a continuing need for these rule sections to exist, which is to ensure compliance with applicable sections of Tex. Gov't Code Chapter 2306, Internal Revenue Code §42, and applicable sections of 24 CFR §92.252 (and as adopted for the Texas Neighborhood Stabilization Program), 24 CFR §92.219, and 24 CFR §93.302;

WHEREAS, this rule was last adopted in 2016 and changes are now needed to add direction for Owners wishing to amend applications to make the income averaging election, remove or correct duplicative language and references, establish consistency with rules in 10 TAC Chapter 11 Subchapter D, further clarify language and requirements on which questions are often received, correct references to forms or attachments that have been updated, clarify and add to notification requirements that do not result in an amendment item, clarify the Department's interpretation of Right of First Refusal statutory requirements, and replace undefined terms with defined terms where appropriate; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments of 10 TAC Chapter 10, together with the preamble presented to this meeting, are hereby approved for publication in the *Texas Register* for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendment of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.406, Post Award and Asset Management Requirements, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation and requested revisions to the subchapter specific preambles.

BACKGROUND

Rule Review Overview

Tex. Gov't Code §2001.039 requires that state agencies review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist; based on the assessment the rule can then be readopted as is, readopted with amendments, or repealed. Even rules that have been amended within the last four years require this review if the amendment did not specifically state that it included this review step. Several of the Department's rules exceed this four year review period and a project has been initiated to evaluate all rules and bring them into compliance with these timelines. One of the results of such a review is that the rule is determined to be necessary but that there are significant enough revisions to warrant repeal and proposal of a new rule in its place. This type of action also is an acceptable response to the four year review requirement and "resets the clock" on that review period

This rule review initiative also includes a management-wide evaluation of whether a rule is:

- Statutorily required, and if not, evaluating its necessity;
- Setting policy beyond those established in state or federal authorizing statute or regulation, and if so, affirming the purpose and need for that policy; and
- In harmony with the direction and policy of the Executive Director and the Board.

Upon approval in draft form by the Board, rules under review will be released for public comment in the *Texas Register* and returned to the Board for final direction and adoption.

10 TAC Chapter 10, Subchapter E, §§10.400 – 10.406, Post Award and Asset Management Requirements

Authority: Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program. The Asset Management Division and its Rules, as a whole, are an integral part of administering the Department's federal housing programs, assisting in reviewing and ensuring the long-term affordability and safety of multifamily rental housing developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, performing the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and performing essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

Department Policy: While Tex. Gov't Code provides for direction and authority for certain, specific activities for the Division, it does not provide the administrative specificity necessary to address all of the asset management activities that are necessary to ensure all state and federal program requirements are met. As such, these rules set Department policy to the extent necessary to provide for the administrative implementation of federal and state directives and requirements.

Consistency with Executive Direction and Proposed Changes: Staff recommends that these rules be retained and that this be accomplished through the proposed amendment of the existing rules. The amendments proposed add direction for Owners wishing to amend applications under the average income election (revised election under §42(g) of the Code) prior to filing of IRS Forms 8609, remove or correct duplicative language and references, establish consistency with rules in 10 TAC Chapter 11 Subchapter D, further clarify language and requirements on which questions are often received, correct references to forms or attachments that have been updated, clarify and add to notification requirements that do not result in an amendment item, clarify the Department's interpretation of Right of First Refusal statutory requirements, and replace undefined terms with defined terms where appropriate.

Behind the proposed preamble for the proposed amendment action a draft of the rule is shown in its clean new form. However, to assist reviewers with understanding what has changed from the current version of the rule, a blacklined version is also provided, reflecting the changes proposed in the amended rule.

The proposed draft of the 2019 Post Award and Asset Management Requirements reflects staff's recommendations for the Board's consideration. The more significant changes to specific sections are summarized below. Changes made only for purposes of correcting previous grammatical errors or spacing, re-numbering, or re-aligning requirements with updated references to sections elsewhere in rule are not specifically discussed.

Upon Board approval, the proposed 2019 Asset Management Rules will be posted to the Department's website and published in the *Texas Register*. Public comment will be accepted between September 28, 2018, and October 12, 2018. The Asset Management Rules, after consideration of

public comment, will be brought before the Board in November for final approval and subsequently published in the *Texas Register* for adoption.

Summary of Proposed Changes: Most of the changes proposed by staff are clarifying in nature; however, this section outlines the more significant recommendations made by staff.

1. 10.402(h)(2)-(4) Construction status reports. Staff has added prime subcontract, Affiliate, and Related Party subcontractor contracts to reporting requirements as well as prime subcontractor, Affiliate, and Related Party Applications and Certifications for Payment. These requirements were added to develop consistency with Subchapter D, Underwriting and Loan Policy, §10.302(e)(6) which states, "Any contractor fees to Affiliates or Related Party subcontractors regardless of the percentage of the contract sum in the construction contract(s) will be treated collectively with the General Contractor Fee limitations." Third Party report requirements were also clarified under §10.402(h)(4) to include "a discussion of site conditions as of the date of the site visit" to ensure that dates of the site visits and discussions of site conditions would be shown as typically included on most relevant Third Party reports and in response to frequent questions relating to the formatting of such reports when provided by an Architect.

2. 10.402(j) Cost Certification. Item xix was updated to develop consistency with Subchapter D, Underwriting and Loan Policy, §10.302(e)(6) as stated above so that the Application for Final Payment is also required, if applicable, from Affiliated Contractors and Related Party Contractors.

3. 10.403(a) Review of Annual HOME/NSP/TCAP-RF (when used as HOME match) and National Housing Trust Fund Rents. Applicability. Federal rules require an annual review of certain program rents and Asset Management staff has changed the deadline for such review from June 1st to July 1st in order to allow additional days for the review and implementation of new rents issued by HUD, which are routinely released towards the end of May, making a June 1st submission difficult.

4. 10.403(b) Review of Annual HOME/NSP/TCAP-RF (when used as HOME match) and National Housing Trust Fund Rents. Documentation for Review. Updates were made to reflect changes in the forms packet available on the Department's website; the packet requests a current rent roll or unit status report, a copy of information used to determine gross Direct Loan rents, and utility allowance information to complete the review. These items were changed in the rule to reflect the items requested.

5. 10.405(a)(2)(C) Amendments and Extensions (Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6731(b)). Notification Items. Staff suggests clarifying that increases *or* decreases in net rentable square footage or common areas that do not result in a material amendment should be handled as a notification item to avoid additional external and internal time spent on processing items not

subject to a 3% reduction and requiring an amendment before the Board as a material item under Tex. Gov't Code §2306.6712.

6. 10.405(a)(2)(E) Amendments and Extensions (Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6731(b)). Notification Items. Staff suggests revisions as the original version of the rule was difficult to understand. Staff also seeks to include previous participation reviews done at times other than at initial application (such as during a recent ownership transfer or amendment).

7. 10.405(a)(4)(G)-(I) & 10.405(a)(7)(A)(i)-10.405(a)(7)(A)(ii) Amendments and Extensions (Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6731(b)). Material amendments. Staff suggests adding an item (G) in order to allow for amendment requests seeking to implement a revised minimum election as permitted by amended Section 42(g)(1) of the Internal Revenue Code as adopted by the Federal Consolidated Appropriations Act of 2018. Section 10.405(a)(7)(A)(i) was also added to ensure that changes in any such election were addressed with investor and lender parties prior to submission of amendment requests and other requests for reductions in numbers of low income units were divided into §10.405(a)(7)(A)(ii) to be addressed separately with appropriate documentation as has been previously collected by the Department to allow the Board to make its necessary determinations on any request for a reduction in the total number of Low Income Units or reductions in Low Income Units at any rent or income level.

8. 10.405(b) Amendments to the LURA. Staff suggests clarifying language related to financial impacts on a Development as a result of an amendment request, replacing "financial information if the change will result in any financial impact on the development" with "financial information related to any financial impact on the development".

9. 10.405(b)(2)(B) Material LURA Amendments. Staff suggests adding language to item (B) so that it reads "changes to the income or rent restrictions (including a request to implement a revised election under §42(g) of the Code)" to allow for requests for LURA amendments that will allow an Owner to implement changes under revised elections as permitted by amended Section 42(g)(1) of the Internal Revenue Code as adopted by the Federal Consolidated Appropriations Act of 2018.

10. 10.406(b)(4) Ownership Transfers. Exceptions. Staff suggests changes in language for exceptions relating to foreclosures in order to widen the notifications to any acquiring parties and request that the Department be notified as soon as possible of the revised structure and ownership contact information so that communication is not lost with the acquiring parties/entities. The change is also intended to remove the inference that entities that are

not the lender or financial institution involved in the transaction require advance approval prior to acquiring a property through the foreclosure process.

11. 10.406(e) Ownership Transfers. Transfers Prior to 8609 Issuance or Construction Completion. Staff suggests changing the use of 'control' to the defined term 'Control' which is included in the wider section of the Uniform Multifamily Rules in §10.3 'Definitions'. Staff also suggests removing the word "such" where it occurs before control to avoid confusion in applying the rule, as it was not previously clear whether the same percentages of control (given the term 'such') would need to be present in order to approve the requested amendment change. Staff has additionally suggested that the Executive Director be given the authority to approve transfers prior to the issuance of IRS Forms 8609 or completion of construction rather than these transfers having to go before the Board for decision making. Staff believes such a change would allow such transfers to be approved more quickly and efficiently.

12. 10.407(a)(6)(C) Right of First Refusal Requirements. Staff suggests the addition of (C) beneath §10.407(a)(6) which is intended to clarify how the Department will monitor the end of the Compliance Period if there are multiple buildings in the Development with different placed in service dates. This is an important clarification and a common question associated with Developments seeking to understand whether the Right of First Refusal ("ROFR") process has been triggered. The Department has suggested that if multiple buildings in the Development have various placement in service dates (credit period begin dates), the end of the 15th year of the Compliance Period will be based on the date the last building(s) began their credit period (the last placed in service date).

13. 10.407(b)(2) and 10.407(d) Right of First Refusal Offer Price. Staff suggests adding language to clarify the operation of the Right of First Refusal ("ROFR") process as set forth in statute. The Department's rules regarding the ROFR are intended to implement what staff believes is the most reasonable reading of the statute, taking into account all aspects of the statute and seeking to harmonize them. The relevant statutory provisions are set forth Tex. Gov't Code §§2306.6725(b)(1) relating to Scoring of Applications and 2306.6726 relating to Sale of Certain Low Income Housing Tax Credit Developments.

    When we read the statute as a whole it appears that although labeled as a right of first refusal it operates chiefly as a set of restrictions and priorities on negotiations. The various classes of potential buyers are given sequential opportunities to engage in negotiations with the seller. The statutory provisions make reference to the purchasing "at the minimum sales price provided in, and in accordance with the requirements of, Section 42(i)(7)." Under that Section a minimum sales price is just that, a minimum, a sale price below which tax consequences are triggered. If the actual sale price is the minimum price and there is no possibility of a higher negotiated price, the concept of negotiation loses its meaning. The plain meaning is that the parties will engage in discussion with an eye to reaching agreement but the possibility that they may not reach agreement.

Thus, if true negotiation is an element of the statute, which it clearly is, the offering party has every incentive to maximize its sale price and the priority classes have exclusive sequential rights to try to negotiate successfully. If, at the end of the sequential exclusive negotiation periods, the seller has not negotiated an acceptable transaction, it should be free to negotiate with others, but it seems that before finalizing any such agreement, the offering party ought to give the unsuccessful priority negotiation parties an opportunity to meet those terms, thereby giving effect to the reference within the statute to a "right of first refusal."

The Department does not find that there is authority or basis for inserting ourselves in any of these negotiation processes, only for confirming that the sequential negotiations occurred as required and that any final negotiated price beyond those priority classes was offered to them as a right of first refusal.

Attachment 1: Preamble, including required analysis, for proposed amendment of 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements

The Texas Department of Housing and Community Affairs (the "Department") proposes the amendment of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the proposed amendment is to make corrections to gain consistency across other sections of rule, correct references, clarify existing language and processes, and adopt changes as required by the Federal Consolidated Appropriations Act of 2018, which amended Section 42(g)(1) of the Internal Revenue Code to create a permanent new minimum set-aside election known as "average income".

> Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset. In general, most changes proposed are corrective in nature, intended to gain consistency across other sections of rule, correct rule references, and clarify language or process to more adequately communicate the language or process. The only substantial changes proposed in §10.405(a)(4), §10.405(a)(7)(A)(i), and §10.405(b)(2)(B), related to Amendments and Extensions, is a result of the Federal Consolidated Appropriations Act, 2018, which amended Section 42(g)(1) of the Internal Revenue Code to create a permanent new minimum set-aside election known as "average income". Thus, §10.405, Amendments and Extensions, has been amended to comply with federal law and implement this new election in accordance with requirements already specified in Texas Government Code §2306.6712.

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

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

1. Mr. Irvine has determined that, for the first five years the proposed amendment would be in effect, the proposed amendment does not create or eliminate a government program, but relates to making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit ("LIHTC") Developments.

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

3. The proposed amendment does not require additional future legislative appropriations.

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

5. The proposed amendment is not creating a new regulation other than adopting changes in §10.405(a)(4), §10.405(a)(7)(A)(i), and §10.405(b)(2)(B) as necessary to implement changes as required by the Federal Consolidated Appropriations Act of 2018.

6. The proposed amendment will not repeal an existing regulation.

7. The proposed amendment will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed amendment will not negatively nor positively affect this state's economy.

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

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

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the proposed rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed amendment does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

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

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the proposed rule has no economic effect on local employment because this rule only provides for administrative processes required of properties in the Department's portfolio. No program funds are channeled through this rule, so no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.002(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule…" Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amended sections would be increased clarity and consistency across rule sections along with the revisions necessary as specified in §10.405 to allow the public to claim the average income set aside under Section 42(g)(1) of the Internal Revenue Code as introduced into law by the Federal Consolidated Appropriations Act of 2018.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 28, 2018 to October 12, 2018 to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Laura DeBellas, Asset Management Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email to laura.debellas@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time OCTOBER 12, 2018.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements

Subchapter E

Post Award and Asset Management Requirements

§10.400. Purpose. The purpose of this Subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This S~~s~~ubchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this ~~s~~Subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department, or waived by the Board, before a request for any post award activity described in this S~~s~~ubchapter will be acted upon.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and rule, including but not limited to the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter

(relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this Chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in ~~§10.901~~Chapter 11, Subchapter ~~G~~E of this ~~chapter~~title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) Tax Credit Amount. The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the

Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director and are subject to the Credit Increase Fee as described in ~~§10.901~~Chapter 11, Subchapter ~~G~~E of this ~~chapter~~title.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, in the recommendations to the Board from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C, or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(7) for Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes ("PILOT") agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in subparagraphs (A) - (E) of this paragraph.

(A) a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(B) a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training. The certificate must not be older than two years from the date of submission;

(C) evidence that the financing has closed, such as an executed settlement statement;

(D) a confirmation letter from the Compliance Division evidencing receipt of the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms pursuant to §10.607(a); and

(E) initial construction status report consisting of items (1) – (5) as outlined in §10.402(h) of this chapter (relating to Construction Status Reports).

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is ~~final and not appealable~~subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final ~~issuance of notice of~~ termination by the Board,~~-~~ staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan~~, under §11.2~~, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (8) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (8) of this subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this Subchapter and 10 TAC §13.12(1) of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10 Percent Test includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10 Percent Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter;

(4) a current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) for the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10 Percent Test Documentation;

(7) a Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application, a non-material amendment must be requested by the Applicant in accordance with §10.405 of this subchapter, and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews); and

(8) a Development Owner's preliminary construction schedule or statement showing the prospective construction loan closing date, construction start and end dates, prospective placed in service date for each building, and planned first year of the credit period.

(h) Construction Status Report (All Multifamily Developments). All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire development is complete as evidenced by one of the following: certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704) for the entire development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10th following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in §10.402(e) of this section. The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – (5) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs (3) – (5) of this paragraph and must include any changes or amendments to items in subparagraphs (1) – (2) if applicable:

(1) the executed partnership agreement with the investor (accompanied by identification of ~~ying~~ all Guarantors) or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material

amendment must be requested in accordance with §10.405 of this subchapter and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews);

(2) the executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s) and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s); and

(4) all Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

(5) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30 percent of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

(i) LURA Origination.

(1) The Development Owner must request a copy of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. The original or a copy of the recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original or a copy of the properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only). The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxvi) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter ~~G~~ E of ~~this chapter~~Chapter 11 (relating to Fee Schedule, Appeals and Other Provisions).

(i) Owner's Statement of Certification;

(ii) Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

(iii) Evidence of Qualified Nonprofit or CHDO Participation;

(iv)Evidence of Historically Underutilized Business (HUB) Participation;

(v) Development Team List;

(vi) Development Summary with Architect's Certification;
(vii) Development Change Documentation;
(viii) As Built Survey;
(ix) Closing Statement;
(x) Title Policy;
(xi) Title Policy Update;
(xii) Placement in Service;
(xiii) Evidence of Placement in Service;
(xiv) Architect's Certification of Completion Date and Date Ready for Occupancy;
(xv) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;
(xvi) Independent Auditor's Report;
(xvii) Independent Auditor's Report of Bond Financing;
(xviii) Development Cost Schedule;
(xix) Contractor's Application for Final Payment (G702/G703) for the General Contractor, ~~and~~ all prime subcontractors, Affiliated Contractors, and Related Party Contractors;
(xx) Additional Documentation of Offsite Costs;
(xxi) Rent Schedule;
(xxii) Utility Allowances;
(xxiii) Annual Operating Expenses;
(xxiv) 30 Year Rental Housing Operating Pro Forma;
(xxv) Current Operating Statement in the form of a trailing twelve month statement;
(xxvi) Current Rent Roll;
(xxvii) Summary of Sources and Uses of Funds;
(xxviii) Financing Narrative;
(xxix) Final Limited Partnership Agreement with all amendments and exhibits;
(xxx) All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);
(xxxi) Architect's Certification of Fair Housing Requirements;
(xxxii) Development Owner Assignment of Individual to Compliance Training;
(xxxiii) TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);
(xxxiv) TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division;
(xxxv) Completion Certificate (TDHCA Issued Bonds Only); and

(xxxvi) Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period or that have had a monitoring review where noncompliance was identified, will not be issued IRS Form(s) 8609s until all events of noncompliance are assessed, corrected, or otherwise approved by the Executive Award Review and Advisory Committee;

(G) completed an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

§10.403. Review of Annual HOME/NSP and National Housing Trust Fund Rents.

(a) Applicability. For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all NHTF participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also ~~is~~ required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF rents by no later than July ~~June~~ 1st of each year as further described in the Post Award Activities Manual.

(b) Documentation for Review. The Department will furnish a rent approval request ~~an Annual Rent Approval Request~~ packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll or unit status report, a copy of information used to determine gross ~~HOME~~Direct Loan rents, and ~~–~~utility allowance information~~an approved utility allowance letter from the Department's Compliance Division~~. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

(c) Review Process. Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed

letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

(d) Compliance. Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules regarding Rents and Limit Violations) -and may be subject to penalties under §10.624 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules in Subchapter F or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

§10.404. Reserve Accounts.

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter, and the Development does not have an existing replacement reserve account, or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a PCA, the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PCA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or

(B) the date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) date on which the Development is demolished;

(C) date on which the Development ceases to be used as a multifamily rental property; or

(D) end of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than $250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations (but not for the construction standards required by the NOFA or program regulations), or demonstrated financial hardship; or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or $300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA must be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department. PCAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the eleventh (11th) year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within

the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) whether a PCA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to $200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) a Reserve Account, as described in this section, has not been established for the Development;

(B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section or submit a copy of a PCA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party Property Condition Assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels;

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred developer fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from

the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department, Development Owner, and financial institution representative.

(4) Use of the funds in the Special Reserve Account is determined by a plan that is pre-approved by the Department. The Owner must create, update and maintain a plan for the disbursement of funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

§10.405. Amendments and Extensions.

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712). The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in ~~§10.901(13)~~Chapter 11, Subchapter ~~G~~E of this ~~Cchapter~~Title (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request~~,~~ and any additional information or documentation requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5 percent;

(B) minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of

buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) increases or decreases in net rentable square footage or common areas that do ~~will~~ not ~~significantly impact development costs~~result in a material amendment under 10.405(a)(4) of this Section;

(D) changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) changes in Developers or Guarantors with no new Principals (~~that do not include the addition of new entities or Principals~~ who were not previously checked by Previous Participation review) ~~at the time of Application or last amendment~~ that ~~and~~ retain ~~do not result in the removal of all~~ the natural person(s) used to meet the experience requirement in ~~§10.204(6) of this chapter~~Chapter 11 of this Title (relating to Required Documentation for Application Submission);

(F) any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) changes in the natural person(s) used to meet the experience requirement in ~~§10.204(6)~~Chapter 11 of this Title of this chapter provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) changes in Developers or Guarantors (to the extent Guarantors were identified in the Application) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in ~~§10.204(13)~~Chapter 11 of this Title and the credit limitation described in §11.4(a) of this Title.

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). Material Amendment requests may be denied

if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units ;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of at least 5 percent;

(G) a request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;

(~~G~~H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or

(~~H~~I) any other modification considered ~~significant~~ material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, or waived by the Board, before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either (i) or (ii) below must be presented to the Department to support the amendment. ~~In addition, f~~

(i) In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum ~~set~~

~~aside~~election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

(ii) For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, ~~such changes~~ prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to ~~if the change will result in~~ any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in ~~§10.901 of this c~~Chapter 11, Subchapter ~~G~~E (relating to Fee Schedule). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, waived by the Board, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements, Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter

2306, and the Fair Housing Act.~~,~~ For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) below. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Executive Director find that:

(i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(ii) the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

(iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this ~~Title~~subchapter;

(B) a change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division; or

(C) a correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least forty-five (45) calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider and approve the following material LURA amendments:

(A) reductions to the number of Low-Income Units;

(B) changes to the income or rent restrictions (including a request to implement a revised election under §42(g) of the Code);

(C) changes to the Target Population;

(D) the removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) a change in the Right of First Refusal period as described in amended §2306.6725 of the Tex. Gov't Code;

(F) any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(~~F~~G) any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least fifteen (15) business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) each tenant of the Development;

(B) the current lender(s) and investor(s);

(C) the State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) the chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) the county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) the Development Owner's name, address and an individual contact name and phone number;

(B) the Development name, address, city and county;

(C) the change(s) requested; and

(D) the date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three (3) business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least

thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers (§2306.6713).

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure ~~wherein the lender or financial institution involved in the transaction is the same resulting owner~~ do not require advance approval but acquiring parties must notify ~~be reported to~~ the Department as soon as possible of the revised

ownership structure and ownership contact information.~~, due to the sensitive timing and nature of the decision.~~

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §10.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this Subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having C~~c~~ontrol must remain in the ownership structure and retain ~~such~~ C~~c~~ontrol, unless approved otherwise by the Executive Director.~~Board.~~ A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their C~~c~~ontrol prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and

can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) the selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) the participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) the proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) a written explanation outlining the reason for the request;

(2) ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §10.204(13)(A) of Subchapter C;

(4) a list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §10.204(13)(B) of Subchapter C;

(6) agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §10.202 of Subchapter C (relating to ineligible applicants and applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) in cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

§10.407. Right of First Refusal.

(a) General. This section applies to Development Owners that agreed to offer a Right of First Refusal ("ROFR") to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as

memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) the LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) the LURA includes a two (2) -year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, as approved by the Department; or

(C) the LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation Reviews).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) The ROFR process is triggered upon:

(A) the Development Owner's determination to sell the Development -to an entity other than as permitted in paragraph (1) of this subsection; or

(B) the simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(C) if there are multiple buildings in the Development, the end of the 15th year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 1990 and one in 1991, the 15th year would be 2005.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) that is under common control with the Development Owner; and

(B) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in (A) and (B) of this paragraph. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5) -year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule);

(2) a notice of intent to the Department and to such other parties as the Department may direct at that time;

(3) evidence and certification that the residents of the Development have been provided with a notice of intent;

(4) documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) documentation verifying the ROFR offer price of the Property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as

described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) description of the Property, including all amenities and current zoning requirements;

(7) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) a current title commitment or policy ~~or a down date endorsement~~ not older than six months prior to the date of submission of the ROFR request;

(9) the most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/PCA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(11) the three (3) most recent consecutive audited annual operating statements, if available;

(12) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds ~~(including digital photographs that may be easily displayed on the Department's website)~~;

(13) current and complete rent roll for the entire Property;

(14) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases

(d) Posting and offers. Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the buyer list maintained by the Department to inform them of the availability of the Property at a negotiated price to be not less than the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two (2) -year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) during the first six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization ("CHDO") under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) during the next six (6) months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Texas Government Code §2306.6706, or a tenant organization may submit an offer; and

(C) during the final twelve (12) months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) during the first sixty (60) days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) during the second sixty (60) days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) during the final sixty (60) days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a 2-year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

(e) Acceptance of offers. A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification.

(f) Satisfaction of ROFR.

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) the Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(A) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer;

(B) the LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business;

(C) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(D) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(E) a bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price, the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(F) an offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price, and the Development Owner fails to accept any of such offers.

(3) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) the identified beneficiary is in existence and conducting business;

(B) the Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) if the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) the identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

(g) Activities Upon Satisfaction of ROFR.

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (3) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price.

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within twenty-four (24) months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until twenty-four (24) months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this twenty-four (24) month period.

(h) Sale and closing.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

(i) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)).

§10.408. Qualified Contract Requirements.

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

(b) Eligibility. Unless specifically provided for otherwise in the representations made to secure the award, Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service (§2306.185). ~~Unless otherwise permitted in the LURA,~~ Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if

a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) there is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) copy of the most recent Physical Needs Assessment/Property Condition Assessment, pursuant to Tex. Gov't Code §2306.186(e), conducted by a Third Party. If the PNA/PCA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all

secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Tex. Gov't Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds~~ (including digital photographs that may be easily displayed on the Department's website)~~;

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed six percent of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to

closing on the purchase. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

(2) keep the Department informed of potential purchasers; and

(3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this Chapter (relating to Compliance Monitoring).