BOARD BOOK OF
NOVEMBER 7, 2019

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 2018

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 that were served and total funding either administered or pledged for Fiscal Year 2018 (September 1, 2017 through August 31, 2018) – 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: 14,832
Total Funding: $1,460,067,840

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: 8,018
Total Funding: $1,279,041,464

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: 2,667
Total Funding: $21,395,454

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

Total Households Served: 151,141
Total Funding: $108,351,163

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: 257
Total Funding: $15,545,196

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: 1,729
Total Funding: $10,145,027

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: 48,886
Total Funding: $12,811,075

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

Total Individuals Served: 385,869
Total Funding: $37,322,167

Sources: this data comes from the TDHCA 2019 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2018 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.

EQUAL HOUSING OPPORTUNITY

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
8:00 AM
NOVEMBER 7, 2019

Texas Capitol Extension, E2.028
1100 Congress Ave
Austin, Texas 78701

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

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

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

CONSENT AGENDA

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

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

ASSET MANAGEMENT

a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement — **Rosalio Banuelos**, Director of Asset Management

98170	Homes of Persimmons	Dallas
03245	Meadows Place Senior Village	Stafford
03257	Caney Run Estates	Victoria

b) Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount

16405	New Hope Housing at Harrisburg	Houston

BOND FINANCE

c) Presentation, discussion and possible action on Resolution No. 20-005 Authorizing the Execution of Escrow Agreements relating to the Variable Rate Demand Multifamily Housing Revenue Bonds for Creek Point Apartments Series 2000 and Timber Point Apartments Series 2000 — **Teresa Morales**, Director of Multifamily Bonds

COMPLIANCE

d) Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Jackie Robinson (19470) — **Patricia Murphy**, Director of Compliance

COMMUNITY AFFAIRS

e) Presentation, Discussion, and Possible Action on the 2020 Payment Standards for the Housing Choice Voucher Program (HCVP)

Michael De Young
Director of
Community Affairs

HOME AND HOMELESSNESS PROGRAMS

f) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family General Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register*

Abigail Versyp
Director of HOME and
Homelessness Programs

MULTIFAMILY FINANCE

g) Presentation, discussion, and possible action regarding an increase in the first lien loan amount for Casa de Manana (HTC #19051/ HOME Contract 1002924)

Andrew Sinnott
Multifamily Loans Program
Administrator

RULES

h) Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication for adoption in the *Texas Register*

Brooke Boston
Director of Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Outreach and Activities Report (Oct-Nov)

Michael Lyttle
Director of
External Affairs

b) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act

Ernie Palacios
Director of
Financial Administration

c) Report on the Department's SFY 2019 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2019

d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

Monica Galuski
Director of
Bond Finance

ACTION ITEMS

ITEM 3: OCI, HTF, AND NSP

Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Maverick County and Starr County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant Funding

Raul Gonzales
Director of
OCI, HTF, and NSP

ITEM 4: BOND FINANCE

a) Presentation, discussion, and possible action regarding Resolution No. 20-006 authorizing the form and substance of warehousing agreement, retained mortgage loan agreement and master trade confirmation; authorizing the execution of documents and instruments related to the foregoing; making certain finds and determinations in connection therewith; and containing other provisions relating to the subject

Monica Galuski
Director of
Bond Finance

b) Presentation, discussion, and possible action regarding the Issuance of a Multifamily Note (Ventura at Hickory Tree) Resolution No. 20-007 and a Determination Notice of Housing Tax Credits

Teresa Morales
Director of
Multifamily Bonds

ITEM 5: MULTIFAMILY FINANCE

a) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

19406	Primrose Village Apartments	Weslaco
19411	Bridge at Canyon View	Austin

Teresa Morales
Director of
Multifamily Bonds

19428	Riverstone Apartments	San Marcos
19438	Legacy Senior Residences	Round Rock
19439	Estates of Shiloh	Dallas
19444	Oaks on North Plaza	Austin

b) Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the *Texas Register*

Marni Holloway
Director of
Multifamily Finance

c) Presentation, discussion, and possible action on an award of a Predevelopment Grant from the Multifamily 2019-2 Special Purpose Notice of Funding Availability: Predevelopment

d) Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability

Andrew Sinnott
Multifamily Loans Program
Administrator

ITEM 6: RULES

a) 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 their publication in the *Texas Register*

Brooke Boston
Director of Programs

b) Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the *Texas Register*

Cate Tracz
Manager of
Fair Housing

c) Presentation, discussion, and possible action on amendments to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, in particular 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the *Texas Register*

Patricia Murphy
Director of Compliance

d) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*

Teresa Morales
Director of
Multifamily Bonds

e) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, an order adopting new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing their publication in the *Texas Register*

Raul Gonzales
Director of
OCI, HTF, and NSP

f) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their publication for public comment in the *Texas Register*

Monica Galuski
Director of
Bond Finance

g) Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program; proposed new 10 TAC Chapter 28, Taxable Mortgage Program; and directing their publication for public comment in the *Texas Register*

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

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

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

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

English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.
Personas que hablan español y requieren un intérprete, favor de llamar a 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 30.07, 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.

THIS RESTRICTION IS APPLICABLE TO THE IDENTIFIED MEETING ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Consent Agenda

1a

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Homes of Persimmons (HTC #98170)

RECOMMENDED ACTION

WHEREAS, Homes of Persimmons (the Development) received a 9% Housing Tax Credit (HTC) award in 1998 to construct 180 multifamily units in Dallas, Dallas 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 2015, the 84th Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Persimmons Townhomes, Ltd., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; 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 Development 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;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Homes of Persimmons 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

Homes of Persimmons received a 9% HTC award in 1998 to construct 180 multifamily units in Dallas, Dallas County. In a letter dated August 28, 2019, Joseph Kemp, representative of the General Partner and Limited Partner of Persimmons Townhomes, Ltd., the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 1998, the Housing Tax Credit application allotted five points to the Development 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 recorded in Dallas County on December 27, 2000.

As approved in 1998, 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)), the Department 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 19th year of the 40-year Extended Use 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 84th Texas Legislature, Regular Session, 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 an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 23, 2019, at the Development's onsite office/community clubhouse. No negative public comment was received regarding the requested amendment.

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

Persimmons Townhomes, LP
1015 N. Duncanville Road
Duncanville, Texas 75116

ORIGINAL

August 28, 2019 **TRANSMITTAL**

Texas Dept. of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410
Attn: Lee Ann Chance – Asset Mgmt Division

Re: TDHCA File Number 98170 – Persimmons Townhomes, LP

Dear TDHCA:

To insure that compliance is satisfied I have enclosed the following documents in response to a material LURA amendment to modify the two-year Right of First Refusal (ROFR) letter in regards to the sale of the identified property:

- **ROFR Amendment letter to TDHCA** **Dated August 28, 2019**
- **ROFR Letter to City of Dallas Councilman** **Dated September 4, 2019**
- **ROFR Letter to Dallas County Commissioner** **Dated September 4, 2019**
- **ROFR Letter to State Representative** **Dated September 4, 2019**
- **ROFR Letter to Property Loan Syndicator** **Dated September 4, 2019**
- **Letter to Property Residents** **Dated September 4, 2019**
- **LURA Amendment Fee $2,500.00 << Enclosed**
- **Schedule of Documents << Enclosed**

The information is provided to confirm my compliance regarding the **Right of First Refusal.** Please feel free to contact me regarding any questions, corrections, or comments you may have.

Respectively,

Joseph Kemp, Persimmons Townhomes, LP
Kemp@KRRCompanies.com
(972) 224-1096 (office)
Cc: Mark Allen, Colliers International
Michael Stein, Esq.
Connor Canale, Colliers International

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

August 28, 2019

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 98170 – Persimmons Townhomes, LP

Dear TDHCA:

The undersigned is the General Partner (herein so called) of **Persimmons Townhomes, LP**, a Texas Limited 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.

Background Information and Request

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 Asset Management Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period, also permitting resyndication and sale to qualified entities. This change will not result in any financial impact to the Property and the need for the change was not foreseeable at the time of the application.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, is delivering a fee in the amount of $2,500. In addition, the General Partner (Persimmons Townhomes, LP) commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. The General Partner, 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 General Partner (Persimmons Townhomes, LP), 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,

Joseph Kemp
General Partner
Persimmons Townhomes, LP

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

September 4, 2019

Councilman Tennell Atkins
City of Dallas District 8
1500 Marilla Street
Dallas, Texas 75201

Re: Persimmons Townhomes
3245 Simpson Stuart Road
Dallas, Texas 75241

Dear Councilman Atkins:

Joseph Kemp is the owner of Persimmons Townhomes which is located at 3245 Simpson Stuart Road, Dallas, Texas. 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, 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 the investors and lenders that have provided financing for the Community.

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 will take place at the persimmons Townhomes management office/clubhouse on **September 23rd, 2019, at 10:00 A.M.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

Sincerely,

Joseph Kemp, Persimmons Townhomes
Cc: File

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

September 4, 2019

Commissioner John Wiley Price
Dallas County District 3
411 Elm Street
Dallas, Texas 75202

Re: Persimmons Townhomes
3245 Simpson Stuart Road
Dallas, Texas 75241

Dear Commissioner Price:

Joseph Kemp is the owner of Persimmons Townhomes which is located at 3245 Simpson Stuart Road, Dallas, Texas. 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, 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 the investors and lenders that have provided financing for the Community.

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 will take place at the persimmons Townhomes management office/clubhouse on **September 23, 2019**, at **10:00 A.M.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

Sincerely,

Joseph Kemp, Persimmons Townhomes

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

September 4, 2019

State Representative Toni Rose
District 110
Dallas Office
3155 Lancaster Road – Suite 22
Dallas, Texas 75216

Re: Persimmons Townhomes
3245 Simpson Stuart Road
Dallas, Texas 75241

Dear Representative Rose:

Joseph Kemp is the owner of Persimmons Townhomes which is located at 3245 Simpson Stuart Road, Dallas, Texas. 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, 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 the investors and lenders that have provided financing for the Community.

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 will take place at the persimmons Townhomes management office/clubhouse on **September 23, 2019** at **10:00 A.M.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

Sincerely,

Joseph Kemp, Persimmons Townhomes
Cc: File

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

September 4, 2019

Steven Gray
Loan Surveillance Manager
Arbor Realty Trust, Inc.
3370 Walden Ave., Suite 114
Depew, NY 14043

Re: Persimmons Townhomes
3245 Simpson Stuart Road
Dallas, Texas 75241

Dear Mr. Gray:

Joseph Kemp is the owner of Persimmons Townhomes which is located at 3245 Simpson Stuart Road, Dallas, Texas. 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, 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 the investors and lenders that have provided financing for the Community.

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 will take place at the persimmons Townhomes management office/clubhouse on **September 23rd, 2019**, at **10:00 A.M**. Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

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

Sincerely,

Joseph Kemp, Persimmons Townhomes
Cc: File

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

September 4, 2019

Dear Resident: Unit No. _____

The Persimmons Townhomes, LP (Homes of Persimmons) is owned by Joseph Kemp. 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.
(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 Homes of Persimmons office/clubhouse on **September 23rd, 2019, at 10:00 A.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 Homes of Persimmons is your home and we invite you to attend and give your input on this proposal. Thank you for choosing Homes of Persimmons as your home.

Sincerely,

Joseph Kemp, Property Owner

Schedule of Documents:

1.	**Transmittal to TDHCA**	**August 28, 2019**
2.	**ROFR Amendment Letter**	**August 28, 2019**
3.	**ROFR Letter to City of Dallas**	**September 4, 2019**
4.	**ROFR Letter to Dallas County**	**September 4, 2019**
5.	**ROFR Letter to State Rep**	**September 4, 2019**
6.	**ROFR Letter to Loan Syndicator**	**September 4, 2019**
7.	**Letter to property Residents**	**September 4, 2019**
8.	**Public Hearing at Property**	**September 23, 2019**

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

MEETING AGENDA

September 23, 2019
10:00 AM

Subject: ROFR Public Hearing Meeting for Homes of Persimmons

Location: Homes of Persimmons
3245 Simpson Stuart Road
Dallas, Texas 75241

Attendees: Joseph Kemp, Persimmons Townhomes, LP
Brandy Kemps, Property Manager
Jonathan Smith, Leasing Agent
Councilman Tennell Atkins (Invited)
Commissioner John Wiley Price (Invited)
State Representative Toni Rose (Invited)
Steve Gray, Arbor Realty Trust (Invited)
Homes of Persimmons Tenants

Agenda: Items

1. Introductions
2. Current Status
3. Questions
4. Closing Remarks

Attached Sign-In Sheet

HOP

HOMES OF PERSIMMONS
3245 SIMPSON STUART ROAD, DALLAS, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

MEETING SIGN-IN SHEET

September 23, 2019
10:00 AM

Name	Email	Phone	Concern Citizen / Resident – Yes / No	
Johnita Smith	[redacted]		Yes	
Brandy Kemps			Yes	
Cynthia Jefferson				
Burney Alicia			Yes	
Khanay Turner			NO Observation	
Amanda W			53	
Christa Smith			Yes	
Darrell Cook			Yes	
James Taylor			NO	
Rosalyn King			Yes	

HOP

Homes of Persimmons
3245 Simpson Stuart Road, Dallas, TEXAS 75241
(214) 374-6701 FAX (214) 374-6191

MEETING NOTES

September 23, 2019
10:00 AM

Memo: The following notes were taken by staff based on the items discussed at the September 23, 2019 meeting provided at the Persimmons Townhomes property.

Sign-In: Sheet Original copy of sign-in sheet is attached to this document

Meeting: Notes

1- One of the tenants provided a question regarding work orders and the direction of who should receive this information. Property Manager provided a detailed response of this process.
2 - Tenant requested additional BBQ areas if possible. Joseph Kemp identified The City of Dallas required locations that were provided for occupancy.
3 – A tenant asked the question regarding background check. The property manager, Brandy Kemps provided an explanation as it applies to the application.
4 – Fair Housing; was explained by assistant property manager Jonathan Smith as Provided regarding rules and guidelines.
5 – Joseph Kemp asked members in attendance to help to report any criminal activity they view on the property.
6 – It was brought to attendees the schedule for future crime watch meetings
7 – Joseph Kemp provided an explanation of the curfew that is to be followed on the property for tenants and their guests.
8 – Tenants wanted to know the Right of First Refusal letters they received in advance of this meeting. Detail explanation was provided regarding the Sale of the property and their rights as tenants and how they will not be in jeopardy.

Meeting: Closing Meeting concluded at 11:15 AM

Prepared by: **Jonathan Smith, Persimmons Townhomes** JS

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Meadows Place Senior Village (HTC #03245)

RECOMMENDED ACTION

WHEREAS, Meadows Place Senior Village (the Development) received a 9% Housing Tax Credit (HTC) award in 2003 to construct 182 multifamily units for elderly households in Stafford, Fort Bend 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 2015, the 84th Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Meadows Place Village, L.P., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; 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 Development 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;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Meadows Place Senior Village 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

Meadows Place Senior Village received a 9% HTC award in 2003 to construct 182 multifamily units for elderly households in Stafford, Fort Bend County. In a letter dated September 12, 2019, H. Chris Richardson, Manager of Meadows Place Senor Housing, LLC, co-general partner, and Christian Fuqua, President of Richco Rinehart Investments, L.L.C., co-general partner of the Development Owner, Meadows Place Village, L.P., requested approval to amend the HTC LURA related to the ROFR provision.

In 2003, the Housing Tax Credit application allotted five points to the Development 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 recorded in Fort Bend County on October 1, 2003.

As approved in 2003, 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)), the Department 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 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 84th Texas Legislature, Regular Session, 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 an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 23, 2019, at the Development's onsite office/community clubhouse. No negative public comment was received at the public hearing regarding the requested amendment.

The Department did receive one negative comment, via email, from a tenant in opposition of the amendment request. The email states that, if communities like the Development are quickly sold to entities that are solely interested in making a profit, it will somehow create a loophole for the new owners to significantly raise the rent as soon as the current contract expires. However, staff's review revealed that most of the units are at the maximum rents allowed under the HTC program. Tex. Gov't Code §2306.185(c) also requires the Development through the Land Use Restriction Agreement to

remain affordable for a minimum of 30 years, so a simple ownership transfer via sale will not have an effect on the affordability restrictions on this property.

The Development Owner had entered into a Purchase Agreement dated June 3, 2019 with Rama Meadows Village LLC as buyer. The purchase sale closed on September 30, 2019. The buyer approved of the LURA amendment request. Because of this timing, if approved, the LURA amendment requested herein will be executed and recorded by the buyer. As the Development is still within the 15-year Compliance Period, this sale did not trigger the ROFR provision.

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

MEADOWS PLACE VILLAGE, L.P.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

September 12, 2019

VIA ELECTRONIC DELIVERY
Ms. Lucy Trevino ***email: lucy.trevino@tdhca.state.tx.us***
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 03245
Meadows Place Senior Village (the "**Property**")

Dear Ms. Trevino:

The undersigned, being the Co-General Partners (herein so called) of Meadows Place Village, L.P., a Texas limited partnership (the "**Partnership**") and the current owner of the Property, submit this request for a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

The Partnership entered into that certain Purchase Agreement for the Property (the "**Purchase Agreement**") dated June 3, 2019 between the Partnership, as seller, and Rama Meadows Village LLC, a Texas limited liability company ("**New Owner**"), as buyer. The Partnership and New Owner anticipate the fee simple purchase and sale of the Property contemplated by the Purchase Agreement will close September 30, 2019. Because of this timing, it is anticipated the LURA amendment requested herein will be issued and recorded in favor of New Owner. New Owner, by its execution hereof, approves of the Partnership's LURA amendment request.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day 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 Co-General Partners, 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 $2,500. 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,

MEADOWS PLACE VILLAGE, L.P.,
a Texas limited partnership

By: Meadows Place Senior Housing, LLC,
a Texas limited liability company,
its co-general partner

By: _____
H. Chris Richardson, Manager

By: Richco Rinehart Investments, L.L.C.,
a Texas limited liability company,
its co-general partner

By: _____
Christan Fuqua, President

Sincerely,

RAMA MEADOWS VILLAGE LLC,
a Texas limited liability company

By: _____
Arun Verma, Manager

MEADOWS PLACE VILLAGE, L.P.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

September 12, 2019

Dear Resident:

Meadows Place Senior Village (the "**Community**") is owned by Meadows Place Village, 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 **Monday, September 23, 2019** at **3:00 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 Meadows Place Senior Village is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Meadows Place Senior Village as your home.

Sincerely,

MEADOWS PLACE VILLAGE, L.P.,
a Texas limited partnership

By: Meadows Place Senior Housing, LLC,
a Texas limited liability company,
its co-general partner

By: _____
H. Chris Richardson, Manager

By: Richco Rinehart Investments, L.L.C.,
a Texas limited liability company,
its co-general partner

By: _____
Christan Fuqua, President

MEADOWS PLACE VILLAGE, L.P.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

September 12, 2019

Investor -Via Federal Express
Boston Financial Investment Management
c/o Eric Bonney
101 Arch Street
Boston, MA 02110

Dear Eric:

Meadows Place Village, L.P. (the "**Owner**") is the owner of Meadows Place Senior Village (the "**Community**") which is located at 12221 S. Kirkwood Road, Meadows Place, Texas 77477. 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 **Monday, September 23, 2019** at **3:00 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,

MEADOWS PLACE VILLAGE, L.P.,
a Texas limited partnership

By: Meadows Place Senior Housing, LLC,
a Texas limited liability company,
its co-general partner

By: _____
H. Chris Richardson, Manager

By: Richco Rinehart Investments, L.L.C.,
a Texas limited liability company,
its co-general partner

By: _____
Christan Fuqua, President

MEADOWS PLACE VILLAGE, L.P.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

September 12, 2019

Lender – Via Federal Express
Jones Lang Lasalle
c/o Nelly Ruvalcaba
28050 US Hwy 19 North, Suite 500
Clearwater, FL 33761

Dear Nelly:

Meadows Place Village, L.P. (the "**Owner**") is the owner of Meadows Place Senior Village (the "**Community**") which is located at 12221 S. Kirkwood Road, Meadows Place, Texas 77477. 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 **Monday, September 23, 2019** at **3:00 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,

MEADOWS PLACE VILLAGE, L.P.,
a Texas limited partnership

By: Meadows Place Senior Housing, LLC,
a Texas limited liability company,
its co-general partner

By: _____
H. Chris Richardson, Manager

By: Richco Rinehart Investments, L.L.C.,
a Texas limited liability company,
its co-general partner

By: _____
Christan Fuqua, President

MEADOWS PLACE VILLAGE, L.P.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

September 12, 2019

Lender – Via Federal Express
Covenant Community Capital
c/o Stephen Fairfield
3300 Lyons Avenue, Suite 203
Houston, TX 77020

Dear Stephen:

Meadows Place Village, L.P. (the "**Owner**") is the owner of Meadows Place Senior Village (the "**Community**") which is located at 12221 S. Kirkwood Road, Meadows Place, Texas 77477. 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 **Monday, September 23, 2019** at **3:00 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,

MEADOWS PLACE VILLAGE, L.P.,
a Texas limited partnership

By: Meadows Place Senior Housing, LLC,
a Texas limited liability company,
its co-general partner

By: _____
H. Chris Richardson, Manager

By: Richco Rinehart Investments, L.L.C.,
a Texas limited liability company,
its co-general partner

By: _____
Christan Fuqua, President

Meadows Place Senior Village
TDHCA File No. 03245

AGENDA FOR PUBLIC HEARING

I. Welcome and Call to Order

II. Introduction of Representatives of Property Owner and Property Manager *(and other representatives as appropriate)*

III. Reason for Tenant Notice and Public Hearing *(ROFR requirement in LURA)*

IV. Questions from Tenants

V. Adjournment

FORM FOR
MINUTES

Date: September 23, 2019, 3:00 p.m.
Public Hearing regarding Meadows Place Senior Village's LURA Amendment / ROFR Requirement

The public hearing related to the request to amend the LURA Amendment - Right of First Refusal ("ROFR") period was held in the Onsite Community Club House. Nathan Kelley and Julianne Slen were in attendance representing the owner and property manager *[add other representatives as appropriate]*. There were 48 residents in attendance. The meeting was recorded (*) and a summary of the discussion is as follows:

(1) outlines reason for public hearing and explains ROFR change.

(2) Addresses questions regarding LURA, Rental restrictions, maintenance items, the pending sale of the property, etc.

(3) closes the hearing!

Nathan Kelley adjourned the meeting at 3:42 p.m. after all the questions from the residents were discussed.

** Recording the meeting is not necessary, but may prove helpful with preparing the minutes. **

MEADOWS PLACE SENIOR VILLAGE
RESIDENT PUBLIC MEETING SIGN-IN SHEET

MEETING DATE: September 23, 2019, AT 3:00 P.M.

PLACE/ROOM: ONSITE COMMUNITY CLUB HOUSE / MEETING ROOM

Resident Name	Unit
Nancy A. Casapiano	2301
Pedro M. Casapiano	2301
Mark Pereira	1228
Elaine Pereira	1228
Shek Ali Mitha	2308
SHARON GIBSON	1202
Elaine Koon	1101
Dorothy Brazillo	2215
Douglas Melancon	2332
Gail McKellar	1317
Marilyn Brooks	2303
Sharon/Chuck McCarty	2339
THU-SUONG HUYNH	2223
Janet Daniel	1205
Irene V Hart	2323
RINA TIRADO	1230
Dale Gibson	2207
Fred M. Gibson	2207

Resident Name	Unit
Dee Flowers	2101

MEADOWS PLACE SENIOR VILLAGE
RESIDENT PUBLIC MEETING SIGN-IN SHEET

MEETING DATE: September 23, 2019, AT 3:00 P.M.

PLACE/ROOM: ONSITE COMMUNITY CLUB HOUSE / MEETING ROOM

Resident Name	Unit
Francisco Ramos Ruiz	2110
Sofia (Jo) Partida	1311
Adalberto Jesús Zuniga	2121
María Hadaya Zuniga	2121
Regina Weber	1328
Chuck & Sharon McCarley	2339
James Kitsell	2105

Resident Name	Unit

MEADOWS PLACE SENIOR VILLAGE
RESIDENT PUBLIC MEETING SIGN-IN SHEET

MEETING DATE: September 23, 2019, AT 3:00 P.M.

PLACE/ROOM: ONSITE COMMUNITY CLUB HOUSE / MEETING ROOM

Resident Name	Unit	Resident Name	Unit
Kenea Williams	2235		
Barbara Johnson	1336		
Donald Thomas	1337		
Rosanna Rubio	1337		
Tracey Doctor	2210		
Norma J. Moore	1237		
Diane Burkett	1112		
Julia A. Dennis	2306		
Beatrice A Terry	1318		
Meg Costa	1113		
Mary Reardon	1209		
[illegible]	1325		
DeCondaRichardson	1206		

MEADOWS PLACE SENIOR VILLAGE
RESIDENT PUBLIC MEETING SIGN-IN SHEET

MEETING DATE: September 23, 2019, AT 3:00 p.M.

PLACE/ROOM: ONSITE COMMUNITY CLUB HOUSE / MEETING ROOM

Resident Name	Unit
CHIU-LAN FAN	2113
MARTIN WEHMEIER	2338
KIRBY DIPPEL	2106
Robert C Gulley	2131
Linda Doty	1111
Grace Freeman	2325
V.C. Alonzo	1107
Bernice Olson	2115
Inge Urez	2204

From:	Rosalio Banuelos
To:	Lucy Trevino
Subject:	FW: Meadows Place Senior Village
Date:	Monday, September 23, 2019 8:37:28 AM

Lucy,

We received the email below stating opposition to the LURA amendment request to change the ROFR period for Meadows Place Senior Village (#03245). Please point this out in the BAR.

Thank you,

Rosalio Banuelos
Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: Robert Cotten (ELNK) <rcotten12314@earthlink.net>
Sent: Sunday, September 22, 2019 3:13 PM
To: asset management <asset.management@mail.tdhca.state.tx.us>
Subject: Meadows Place Senior Village

To: Texas Department of Housing and Community Affairs

I am opposed to changing the contractual restriction imposed by the Texas Department of Housing and Community Affairs that mandates if an Owner decides to sell the Community (Meadows Place Senior Village) at a certain time, the Owner will offer the Community for sale to a non-profit organization or 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. I think this kind of rule was put in place to prevent Communities like Meadows Place Senior Village from being quickly sold to entities that are solely interested in making a profit. I think if Communities like Meadows Place Senior Village are sold too quickly it will somehow create a loop hole for the new owners to significantly raise the rent as soon as the current contract expires.

Thanks for allow me to submit my concerns.

Respectfully,

Kimsey Cotten
Apartment# 1332
Meadows Place Senior Village

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Caney Run Estates (HTC #03257)

RECOMMENDED ACTION

WHEREAS, Caney Run Estates (the Development) received a 9% Housing Tax Credit (HTC) award in 2003 to construct 116 multifamily units in Victoria, Victoria 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 2015, the 84th Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Caney Run, Ltd., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; 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 Development 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;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Caney Run Estates 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

Caney Run Estates received a 9% LIHTC award in 2003 for the new construction of 116 multifamily units in Victoria, Victoria County. In a letter dated October 1, 2019, the Development Owner, Caney Run, Ltd. (Peter A. Spier), requested approval to amend the HTC LURA related to the ROFR provision.

In 2003, the Housing Tax Credit application allotted five points to the Development 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 recorded in Victoria County on September 21, 2006.

As approved in 2003, 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)), the Department 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 14th year of the 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 84th Texas Legislature, Regular Session, 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 an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on October 14, 2019, at the Development's onsite office/community clubhouse. No negative public comment was received regarding the requested amendment.

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

CANEY RUN, LTD.
101 S. Ben Jordan St.
Victoria, Texas 77901

October 1, 2019

VIA ELECTRONIC DELIVERY

Mr. Rene Ruiz ***email: rene.ruiz@tdhca.state.tx.us***
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 03257
Caney Run Estates (the "**Property**")

Dear Mr. Ruiz:

The undersigned, being the Developer General Partner (herein so called) of Caney Run, Ltd., 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 Developer 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,

CANEY RUN, LLC,
a Florida limited liability company doing business as Caney Run I, LLC

By: Merrit Housing GP, LLC,
a Florida limited liability company,
its sole member

By: TWC Housing, LLC,
a Texas limited liability company,
its sole member

By: Hunt ELP, Ltd.,
a Texas limited partnership,
s sole member

By: _____
Peter A. Spier
Senior Vice President

CANEY RUN, LTD.
101 S. Ben Jordan St.
Victoria, Texas 77901

October 1, 2019

Dear Resident:

Caney Run Estates (the "**Community**") is owned by Caney Run, 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 **October 14, 2019** at **5:30 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 Caney Run Estates is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Caney Run Estates as your home.

Sincerely,

CANEY RUN, LTD.,
a Texas limited partnership

By: Caney Run, LLC,
a Florida limited liability company doing business as Caney Run I, LLC, its developer general partner

By: Merrit Housing GP, LLC,
a Florida limited liability company,
its sole member

By: TWC Housing, LLC,
a Texas limited liability company,
its sole member

By: Hunt ELP, Ltd.,
a Texas limited partnership,
s sole member

By: _____
Peter A. Spier
Senior Vice President

CANEY RUN, LTD.
101 S. Ben Jordan St.
Victoria, Texas 77901

October 1, 2019

Lender
Mr. Dan Lundell
NorthMarq
3500 American Blvd. West, Suite 500
Bloomington, MN 55431

Dear Mr. Lundell:

Caney Run, Ltd. (the "**Owner**") is the owner of Caney Run Estates (the "**Community**") which is located at 101 S. Ben Jordan St., Victoria, Texas 77901. 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 **October 14, 2019** at **5:30 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,

CANEY RUN, LTD.,
a Texas limited partnership

By: Caney Run, LLC,
a Florida limited liability company doing business as Caney Run I, LLC, its developer general partner

By: Merrit Housing GP, LLC,
a Florida limited liability company,
its sole member

By: TWC Housing, LLC,
a Texas limited liability company,
its sole member

By: Hunt ELP, Ltd.,
a Texas limited partnership,
s sole member

By: _____
Peter A. Spier
Senior Vice President

CANEY RUN, LTD.
101 S. Ben Jordan St.
Victoria, Texas 77901

October 1, 2019

Investor
Mr. Peter Stoughton
AIG
777 S. Figueroa St., 16th Floor
Los Angeles, CA 90017-5800

Dear Mr. Stoughton:

Caney Run, Ltd. (the "**Owner**") is the owner of Caney Run Estates (the "**Community**") which is located at 101 S. Ben Jordan St., Victoria, Texas 77901. 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 **October 14, 2019** at **5:30 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,

CANEY RUN, LTD.,
a Texas limited partnership

By: Caney Run, LLC,
a Florida limited liability company doing business as Caney Run I, LLC, its developer general partner

By: Merrit Housing GP, LLC,
a Florida limited liability company,
its sole member

By: TWC Housing, LLC,
a Texas limited liability company,
its sole member

By: Hunt ELP, Ltd.,
a Texas limited partnership,
s sole member

By: _____
Peter A. Spier
Senior Vice President

Caney Run Estates

101 South Ben Jordan

Victoria, Texas 77901

361-579-0324

October 14, 2019

Re: Caney Run Estates property meeting.

On October 14, 2019 @ 5:30 pm, I held the Caney Run Estates property meeting inside our Clubroom. The meeting started around 5:40 to allow any other residents to attend. When meeting was started, I had three residents present. They all signed in on the sign in sheet that was provided. In regards to any concerns, none were presented during this time. As for the representatives for Caney Run Estates was the Community manager, Kimberly Ross and the assistant manager Nicole Clouatre.

Thank you

Kimberly Ross

Kimberly Ross

Caney Run Estates Community Meeting

October 14, 2019

Please Sign In

1	Mah Mil apt. 802	31	
2	Shannon Mathias 3003	32	
3	John Ross 2101	33	
4		34	
5		35	
6		36	
7		37	
8		38	
9		39	
10		40	
11		41	
12		42	
13		43	
14		44	
15		45	
16		46	
17		47	
18		48	
19		49	
20		50	
21		51	
22		52	
23		53	
24		54	

1b

BOARD ACTION REQUEST

ASSET MANAGEMENT DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding an increase to the Housing Tax Credit amount for New Hope Housing at Harrisburg (HTC #16405)

RECOMMENDED ACTION

WHEREAS, New Hope Housing at Harrisburg (the Development) received a 4% Housing Tax Credit (HTC) award in 2016 to construct 175 single room occupancy (SRO) units in Houston, Harris County;

WHEREAS, construction of the Development has been completed, and Harrisburg SRO, Ltd. (the Development Owner or Owner) requests, at cost certification, to increase the annual HTC amount to $976,560, which is 115.25% of the amount of tax credits reflected in the Determination Notice, $847,339;

WHEREAS, §42(m)(2) of the Internal Revenue Code allows an increase of tax credits for a bond financed project when the increase is determined necessary as demonstrated through the submission of the cost certification package;

WHEREAS, 10 TAC §10.402(c) requires approval by the Board if an increase to the amount of tax credits exceeds 110% of the amount of credit reflected in the Determination Notice; and

WHEREAS, a review of the cost certification package submitted by the Development Owner supports the need for the additional tax credits requested, and staff has determined that the increase is necessary for the viability of the transaction;

NOW, therefore, it is hereby

RESOLVED, that the housing tax credit increase for New Hope Housing at Harrisburg requested by the Development Owner is approved as presented to 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

New Hope Housing at Harrisburg received a 4% HTC award in 2016 to construct 175 SRO units in Houston, Harris County. On March 8, 2016, a Determination Notice was issued with an approved annual tax credit amount of $847,339. The Development also received a TCAP-RF award of $607,698 in the form of a 30-year, surplus cash flow, note at 0% interest. The residential building in the Development placed in service on January 30, 2018, and the final cost certification was received by the Department on February 14, 2019.

In conjunction with the cost certification, Karen Briggs Gwin, the representative for the Development Owner, requested to increase the annual tax credit award to $976,560, an increase of $129,221 (15.25%) from the amount reflected in the Determination Notice. The representatives for the Development Owner explained that the Development incurred unforeseen delays and increased costs during construction.

The construction contract was signed in April 2016, and construction started timely. However, progress slowed due to underground debris during excavation and complications from inclement weather and heavy rains, including Hurricane Harvey in August 2017. Construction of the residential building was substantially completed in February 2018, and construction of the community service facility was completed in June 2018.

A comparison of the development costs from the time of the TCAP-RF loan closing, in 2016, to cost certification indicates that total development costs increased approximately $920K (3.43%), from $26,800,226 to $27,720,202. Hard costs, including contractor fees, increased slightly (approximately $9.5K or less than 0.1%). Indirect construction costs increased from $2,302,602 to $3,004,228 (a $701K or 30.47% increase), while financing costs increased from $1,740,851 to $1,827,851 (an $87K or 5% increase). These increases are due to an eleven month extension in the construction schedule. Karen Briggs Gwin, Treasurer & CFO of Houston Area Community Development Corporation (HACDC), the sole member of the General Partner, explained that architectural and engineering fees increased by approximately $352K due to redesign of multiple systems. Building permits and related costs increased by $235K due to multiple attempts to locate the appropriate water main tie-in. Furniture, fixtures and equipment costs increased by $169K, due to the furnishings required for the community service center.

The syndication rate remained constant at approximately $1.10, but due to the requested increase of the HTC amount, the syndication proceeds at cost certification are over $1.37M (14.76%) greater at cost certification than at Application. The deferred developer fee amount decreased from over $1.1M to zero. At the TCAP-RF loan closing, costs supported $944,217 in tax credits, an 11% increase from Application. The final increase to the credit amount was anticipated to be requested at cost certification. The third-party debt amount remained constant; however, multiple funding sources were consolidated into a loan from HACDC of over $9.6M.

Staff's analysis of this transaction at cost certification has concluded that the Development supports a tax credit allocation of the requested amount. This results in a 15.25% increase from the original annual HTC amount in the Determination Notice, going from $847,339 to $976,560. In accordance with 10 TAC

§10.402(c), Board approval is required because the requested tax credit amount exceeds 110% of the HTC amount reflected in the Determination Notice. The Development Owner will be required to submit the Tax-Exempt Bond Credit Increase Request Fee required in 10 TAC §11.901(9) for any increase to the HTC amount.

In conjunction with this action, the TCAP-RF Contract and LURA will be amended to further clarify that none of the TCAP-RF units will also have Project-Based vouchers under 24 CFR Part 983. The cost certification has been underwritten with this assumption.

Staff recommends approval of the increase in the tax credit award as presented herein.

HARRISBURG SRO, LTD.

September 13, 2019

Ms. Lucy Trevino
Senior Asset Manager
Texas Department of Housing and Community Affairs
221 East 11th Street
P. O. Bix 13941
Austin, Texas 78711

Via Email: lucy.trevino@tdhca.state.tx.us

RE: Request for Issuance of Additional Credits – New Hope Housing at Harrisburg; HTC 16405

Dear Lucy,

In accordance with our Final Cost Certification submission for the above referenced project, we hereby request issuance of $976,560 in housing tax credits. This request represents a $129,221 increase, which is more than a 110% increase, from the amount in the Determination Notice of $847,339. Further, it is our understanding that this increase will require TDHCA Board approval.

Please let me know if I can provide any further detail or answer any questions. As always, we are eager to deliver the 8609's to our investors and work with you, Lucy, through this Cost Certification process. We so appreciate all your efforts in getting this across the finish line.

Sincerely,

Harrisburg SRO, Ltd., a Texas Limited Partnership

By: NHH at Harrisburg, LLC, a Texas Limited Liability Company, its General Partner

By: Houston Area Community Development Corporation, a Teas Nonprofit Corporation, its Sole Member

By: _____
Karen Briggs Gwin, CPA, MBA
Its: Treasurer & CFO

UNIT MIX/RENT SCHEDULE

New Hope Housing at Harrisburg, Houston, # 16405

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
PROGRAM REGION:	6
PIS Date:	On or After 5/13/2016
IREM REGION:	Houston
Carryover Date:	3/28/2016 – 5/12/2016

UNIT DISTRIBUTION					
# Beds	# Units	% Total		Income	# Units
Eff	175	100.0%		30%	0
1				40%	0
2				50%	0
3				60%	175
4				MR	0
TOTAL	175	100.0%		TOTAL	175

PRO FORMA ASSUMPTIONS	
REVENUE GROWTH:	2.00%
EXPENSE GROWTH:	3.00%
HIGH COST ADJUSTMENT:	130%
APPLICABLE FRACTION:	100.00%
APP % - ACQUISITION:	3.18%
APP % - CONSTRUCTION:	3.18%
AVERAGE SF	273

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		HOME (Rent/Inc)		Other		Unit Mix				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Tenant Pd UA's (Verified)	Max Net Program Rent	Delta to Max Program	Rent per NRA	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent per NRA	Delta to Max Program	Market Rent	Rent per NRA	TDHCA Savings to Market
TC60%	$787	30%/30%	$393	0		8	0	1	256	$393	$0	$393	$0	$1.54	$393	**$3,144**	**$3,144**	$393	$12.28	$0		0.00	
TC60%	$787	0%		PBV		120	0	1	256	$701	$0	$701	$0	$2.74	$701	**$84,120**	**$84,120**	$701	$328.59	$0		0.00	
TC60%	$787	30%/30%	$393	0		2	0	1	310	$393	$0	$393	$0	$1.27	$393	**$786**	**$786**	$393	$2.54	$0		0.00	
TC60%	$787	0%		PBV		36	0	1	310	$701	$0	$701	$0	$2.26	$701	**$25,236**	**$25,236**	$701	$81.41	$0		0.00	
TC60%	$787	30%/30%	$393	0		1	0	1	350	$393	$0	$393	$0	$1.12	$393	**$393**	**$393**	$393	$1.12	$0		0.00	
TC60%	$787	0%		0		4	0	1	350	$500	$0	$500	($107)	$1.12	$393	**$1,572**	**$2,000**	$500	$5.71	$0		0.00	
TC60%	$787	0%		PBV		4	0	1	350	$701	$0	$701	$0	$2.00	$701	**$2,804**	**$2,804**	$701	$8.01	$0		0.00	
TOTALS / AVERAGES:						**175**			**47,698**				**($2)**	**$2.48**	**$675**	**$118,055**	**$118,483**	**$677**	**$231.65**	**$0**	**$0**	**$0.00**	**($677)**
ANNUAL POTENTIAL GROSS RENT:																**$1,416,660**	**$1,421,796**						

PRO FORMA ANALYSIS & DEVELOPMENT COSTS

					TDHCA CC	TDHCA - TCAP Closing	% DIFF	Owner - TCAP Closing	Owner CC				
POTENTIAL GROSS RENT					$1,421,796	$1,038,660	0%	$1,038,660	$1,416,660				
Secondary Income			Per Unit/Month	$10.00	$21,000	$21,000	-2%	$21,000	$20,640	$9.83	Per Unit Per Month		
Other Income:							#DIV/0!		$0	$0.00	Per Unit Per Month		$9.83
Other Income:							#DIV/0!		$0	$0.00	Per Unit Per Month		
POTENTIAL GROSS INCOME					$1,442,796	$1,059,660	0%	$1,059,660	$1,437,300				
Vacancy & Collection Loss			% of PGI	-7.5%	($108,210)	(79,475)	0%	(79,475)	(107,798)	-7.5%	% of PGI		
EO/Non-Rental Units/Concessions	Operating Subsidy				$0	115,000	#DIV/0!	-	(110,532)				
EFFECTIVE GROSS INCOME					$1,334,586	$1,095,186	-8.66%	$980,186	$1,218,971				

EXPENSES		% of EGI	Per Unit	Per SF						Per SF	Per Unit	% of EGI
General & Administrative		4.26%	$325	$1.19	$56,915	$80,800	17%	$80,800	$66,591	$1.40	$381	5.46%
Management		5.00%	$381	$1.40	$66,729	$54,759	-4%	$49,009	$64,257	$1.35	$367	5.27%
Payroll & Payroll Tax		29.11%	$2,220	$8.14	$388,481	$263,000	18%	$263,000	$457,815	$9.60	$2,616	37.56%
Repairs & Maintenance		8.09%	$617	$2.26	$107,921	$103,250	7%	$103,500	$115,968	$2.43	$663	9.51%
Electric/Gas		5.74%	$438	$1.61	$76,605	$61,000	12%	$61,000	$85,500	$1.79	$489	7.01%
Water, Sewer, & Trash		2.36%	$180	$0.66	$31,473	$41,000	45%	$41,000	$45,600	$0.96	$261	3.74%
Property Insurance		5.46%	$417	$1.53	$72,895	$77,000	23%	$77,000	$89,760	$1.88	$513	7.36%
Property Tax	2.68	6.88%	$525	$1.93	$91,827	$57,000	-25%	$57,000	$69,000	$1.45	$394	5.66%
Reserve for Replacements		3.93%	$300	$1.10	$52,500	$43,750	0%	$43,750	$52,500	$1.10	$300	4.31%
Cable TV		1.19%	$91	$0.33	$15,928	$5,100	16%	$5,100	$18,480	$0.39	$106	1.52%
Supportive service contract fees		0.00%	$0	$0.00	$0	$0	#DIV/0!	$0	$0	$0.00	$0	0.00%
TDHCA Compliance fees		0.52%	$40	$0.15	$7,000	$7,000	0%	$7,000	$7,000	$0.15	$40	0.57%
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)		0.00%	$0	$0.00	$0	$0	#DIV/0!	$0	$0	$0.00	$0	0.00%
Security		4.21%	$321	$1.18	$56,201	$0	0%	$50,000	$56,296	$1.18	$322	4.62%
Other: SRO Evening Receptionist Payroll		0.00%	$0	$0.00	$0	$25,000	#DIV/0!	$25,000	$0	$0.00	$0	0.00%
TOTAL EXPENSES		76.76%	$5,854	$21.48	$1,024,476	$818,659	10%	$863,159	$1,128,767	$23.66	$6,450	92.60%
NET OPERATING INCOME		23.24%	$1,772	$6.50	$310,110	$276,526	-71%	$117,026	$90,204	$1.89	$515	7.40%

DEBT

First Lien: New Hope Housing, Inc.	$0		#DIV/0!		$0	
Other: TDHCA	$0	$20,257	#DIV/0!		$0	
Other: Houston Area Community Development Corporation	$0	$199,541	#DIV/0!		$0	
Other: Houston Area Community Development Corporation	$0	$21,050	#DIV/0!		$0	
TOTAL DEBT SERVICE	$0	$240,848	#DIV/0!	$0	$0	
NET CASH FLOW	$310,110	$35,678	-71%	$117,026	$90,204	
AGGREGATE DEBT COVERAGE RATIO	#DIV/0!	1.15		#DIV/0!	#DIV/0!	
RECOMMENDED DEBT COVERAGE RATIO	1.29					

CONSTRUCTION COST		% of TOTAL	Per Unit	Per SF	TDHCA CC	TDHCA - TCAP Closing		Owner - TCAP Closing	Owner CC	Per SF	Per Unit	% of TOTAL
Land Acquisition		8.20%	$13,028	$47.80	$2,279,952	$2,280,052	0%	$2,280,052	$2,279,952	$48	$13,028	8.22%
Building Acquisition		0.00%	$0	$0.00	$0	$0	#DIV/0!	$0	$0	$0	$0	0.00%
Off-Sites		0.00%	$0	$0.00	$0	$0	#DIV/0!	$0	$0	$0	$0	0.00%
Sitework		7.01%	$11,141	$40.87	$1,949,588	$1,270,500	0%	$1,270,500	$1,949,588	$41	$11,141	7.03%
Site Amenities		0.00%	$0	$0.00	$0	$225,000	#DIV/0!	$225,000	$0	$0	$0	0.00%
Retail (4,180 SF - Spec Shell)						$718,411		$900,000				
Office (6,949 SF - Shell)						$720,811	#DIV/0!	$600,000				
Building Costs		47.43%	$75,359	$276.49	$13,187,850	$11,042,192	-1%	$11,243,504	$13,100,929	$275	$74,862	47.26%
Contingency						$835,111	#DIV/0!	$835,111				
Contractor's Fees		7.37%	$11,715	$42.98	$2,050,067	$2,016,954	0%	$2,016,954	$2,050,067	$43	$11,715	7.40%
Indirect Construction		10.80%	$17,167	$62.98	$3,004,228	$2,302,602	0%	$2,302,602	$3,004,228	$63	$17,167	10.84%
Developer's Fees	14.55%	11.08%	$17,607	$64.60	$3,081,213	$2,932,347	0%	$2,959,278	$3,081,213	$65	$17,607	11.12%
Financing		6.57%	$10,445	$38.32	$1,827,851	$1,740,851	0%	$1,740,851	$1,827,851	$38	$10,445	6.59%
Reserves		1.53%	$2,436	$8.94	$426,374	$426,374	0%	$426,374	$426,374	$9	$2,436	1.54%
TOTAL COST		100%	$158,898	$583	$27,807,123	$26,511,204	-0.31%	$26,800,226	$27,720,202	$581	$158,401	100%
Construction Cost Recap		**54.44%**	**$86,500**	**$317.36**	**$15,137,438**				**$15,050,517**	**$315.54**	**$86,003**	**54.29%**

SOURCES OF FUNDS										RECOMMENDED	
First Lien: New Hope Housing, Inc.		35%	$55,126	$202	$9,647,117	$0	#DIV/0!	$0	$9,647,117	$9,647,117	Developer Fee Available
Other: TDHCA	TDHCA MF Direct Loan	2%	$3,473	$13	$607,698	$607,698	0%	$607,698	$607,698	607,698	$3,081,213
Other: Houston Area Community Development Corporation	City of Houston via HOME Loan	22%	$34,207	$126	$5,986,233	$5,986,234	0%	$5,986,234	$5,986,233	5,986,233	
Other: Houston Area Community Development Corporation	City of Houston (GO Bonds)	2%	$3,609	$13	$631,500	$631,500	0%	$631,500	$631,500	631,500	
Other: 0	Houston Baseball Partners	0%	$0	$0	$0	$4,000,000	100%	$4,000,000	$0	0	
Other: 0	Hamilton Sale Proceeds	0%	$0	$0	$0	$2,250,000	100%	$2,250,000	$0	0	
Other: 0	EOG Resources	0%	$0	$0	$0	$100,000	100%	$100,000	$0	0	
Other: 0	Houston Endowment	0%	$0	$0	$0	$1,250,000	100%	$1,250,000	$0	0	
Other: 0	The Brown Foundation, Inc	0%	$0	$0	$0	$500,000	100%	$500,000	$0	0	
Other: 0	Hildebrand Foundation	0%	$0	$0	$0	$250,000	100%	$250,000	$0	0	
Other: 0	JPMorgan Chase Foundation	0%	$0	$0	$0	$115,000	100%	$115,000	$0	0	
Other: 0	NHHI Operating Funds	0%	$0	$0	$0	$666,463	100%	$666,463	$0	0	
HTC Equity: National Equity Fund, Inc.		38%	$61,124	$224	$10,696,755	$9,320,733	-15%	$10,443,333	$10,696,756	10,696,756	
263A Avoided Cost Interest		1%	$862	$3	$150,899	$0	#DIV/0!	$0	$150,899	150,899	% of Dev. Fee Deferred
Deferred Developer Fee: Houston Area Community Development Corporation		0%	$0	$0	$0	$1,122,598	100%	$0	$0	0	0%
Additional (Excess) Funds Req'd		0%	$497	$2	$86,921	($289,022)	100%	($2)	$0	(1)	15-Yr Cumulative Cash Flow
TOTAL SOURCES					$27,807,123	$26,511,204	-5%	$26,800,226	$27,720,202	$27,720,202	$4,112,534

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

New Hope Housing at Harrisburg, Houston, # 16405

DIRECT CONSTRUCTION COST ESTIMATE

CATEGORY	FACTOR	UNITS/ SF	PER SF	AMOUNT
Base Cost:			$177.51	$8,466,863
Adjustments				
Exterior Wall Finish	0.00%		0	$0
	0.00%		0	0
	0.00%		0	0
Roofing			0.00	0
Subfloor			#DIV/0!	#DIV/0!
Floor Cover			2.54	121,153
Breezeways	$0.00	0	0.00	0
Balconies	$0.00	0	0.00	0
Plumbing Fixtures	$890	0	0.00	0
Rough-ins	$440	175	1.61	77,000
Built-In Appliances	$1,625	175	5.96	284,375
Exterior Stairs	$2,025	0	0.00	0
Heating/Cooling			1.95	93,011
Enclosed Corridors	$164.64		0.00	0
Carports	$10.75	0	0.00	0
Garages	$30.00	0	0.00	0

PROPOSED PAYMENT COMPUTATION

First Lien: New Hope Housing,	$9,647,117	Amort	360
Int Rate	1.25%	DCR	#DIV/0!
Other: TDHCA	$607,698	Amort	360
Int Rate	0.00%	DCR	#DIV/0!
Other: Houston Area Communi	$5,986,233	Amort	360
Int Rate	0.00%	DCR	#DIV/0!
Other: Houston Area Communi	$631,500	Amort	360
Int Rate	0.00%	DCR	#DIV/0!
Other: 0	$0	Amort	0
Int Rate	0.00%	DCR	#DIV/0!

Comm &/or Aux Bldgs	$0.00	0	0.00	0
Other:			0.00	0
Other:			0.00	0
Other: fire sprinkler	$2.20	47,698	2.20	104,936
SUBTOTAL			**#DIV/0!**	**#DIV/0!**
Current Cost Multiplier	0.99		#DIV/0!	#DIV/0!
Local Multiplier			#DIV/0!	#DIV/0!
TOTAL DIRECT CONSTRUCTION COSTS			**#DIV/0!**	**#DIV/0!**
Plans, specs, survey, bldg permits	3.90%		#DIV/0!	#DIV/0!
Contractor's OH & Profit	11.50%		#DIV/0!	#DIV/0!
NET DIRECT CONSTRUCTION COSTS			#DIV/0!	$13,187,850

RECOMMENDED FINANCING STRUCTURE: TDHCA NOI

First Lien: New Hope Housing, Inc.	$0
Other: TDHCA	20,257
Other: Houston Area Community Development Corporation	199,541
Other: Houston Area Community Development Corporation	21,050
Other: 0	0
Other: 0	0
Other: 0	0
Other: 0	0
TOTAL DEBT SERVICE	**$240,848**

First Lien: New Hope Housing,	$9,647,117	Amort	360
Int Rate	1.25%	DCR	#DIV/0!

Other: TDHCA	$607,698	Amort	360
Int Rate	0.00%	Aggregate DCR	15.31

Other: Houston Area Communi	$5,986,233	Amort	360
Int Rate	0.00%	Aggregate DCR	1.41

Other: Houston Area Communi	$631,500	Amort	360
Int Rate	0.00%	Aggregate DCR	1.29

LONG TERM OPERATING PRO FORMA

	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 25	YEAR 30	YEAR 35	YEAR 40
EFFECTIVE GROSS INCOME	$1,334,586	$1,361,278	$1,388,504	$1,416,274	$1,444,599	$1,594,954	$1,760,958	$1,944,240	$2,146,598	$2,370,018	$2,616,691	$2,889,039
LESS: TOTAL EXPENSES	1,024,476	1,054,543	1,085,498	1,117,369	$1,150,182	1,329,390	$1,536,725	1,776,626	2,054,231	2,375,493	2,747,307	3,177,661
NET OPERATING INCOME	**$310,110**	**$306,735**	**$303,005**	**$298,904**	**$294,417**	**$265,564**	**$224,233**	**$167,614**	**$92,367**	**($5,475)**	**($130,616)**	**($288,622)**
LESS: DEBT SERVICE	0	0	0	0	0	0	0	0	0	0	0	0
NET CASH FLOW	**$310,110**	**$306,735**	**$303,005**	**$298,904**	**$294,417**	**$265,564**	**$224,233**	**$167,614**	**$92,367**	**($5,475)**	**($130,616)**	**($288,622)**
CUMULATIVE NET CASH FLOW	$310,110	$616,846	$919,851	$1,218,755	$1,513,172	$2,903,190	$4,112,534	$5,070,582	$5,691,106	$5,869,334	$5,478,499	$4,365,782
DEFERRED DEVELOPER FEE BALANCE	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
DCR ON UNDERWRITTEN DEBT (Must-Pay)	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
EXPENSE/EGI RATIO	76.76%	77.47%	78.18%	78.90%	79.62%	83.35%	87.27%	91.38%	95.70%	100.23%	104.99%	109.99%

HTC ALLOCATION ANALYSIS - New Hope Housing at Harrisburg, Houston, # 16405

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S ACQUISITION ELIGIBLE BASIS	TDHCA ACQUISITION ELIGIBLE BASIS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
Acquisition Cost						
Purchase of land	$2,279,952	$2,279,952				
Purchase of buildings	$0	$0				
Closing costs & Acq. Legal Fees	$0	$0				
Off-Site Improvements	$1,949,588	$1,949,588				
Sitework	$0	$0			$1,949,588	$1,949,588
Building Costs	$13,100,929	$13,187,850			$13,100,929	$13,187,850
Contingency	$0	$0				$0
Contractor's Fees	$2,050,067	$2,050,067			$2,050,067	$2,050,067
Indirect Construction	$3,004,228	$3,004,228	$0	$0	$2,971,978	$2,971,978
Interim Financing	$1,827,851	$1,827,851	$0	$0	$1,110,495	$1,110,495
Developer Fees						
Developer Fees	$3,081,213	$3,081,213	$0	$0	$3,081,213	$3,081,213
Development Reserves	$426,374	$426,374				
TOTAL DEVELOPMENT COSTS	$27,720,202	$27,807,123	$0	$0	$24,264,270	$24,351,191

Deduct from Basis:						
	$0					
Describe: COMMERCIAL SPACE					$641,636	$641,636
Describe:						
Describe:						
Describe:						
Describe:					$0	$0
TOTAL ELIGIBLE BASIS			$0	$0	$23,622,634	$23,709,555
High Cost Area Adjustment					130%	130%
TOTAL ADJUSTED BASIS			$0	$0	$30,709,424	$30,822,422
Applicable Fraction			100%	100%	100%	100%
TOTAL QUALIFIED BASIS			$0	$0	$30,709,424	$30,822,422
Applicable Percentage			3.18%	3.18%	3.18%	3.18%
TOTAL AMOUNT OF TAX CREDITS			$0	$0	$976,560	$980,153
Syndication Rate		**1.0954**	**$0**	**$0**	**$10,696,753**	**$10,736,112**

Total Tax Credits (Eligible Basis Method)	**$976,560**	**$980,153**
Syndication Proceeds	**$10,696,753**	**$10,736,112**
Approved Tax Credits	**$847,339**	
Syndication Proceeds	**$9,281,333**	
Requested Tax Credits	**$976,560**	
Syndication Proceeds	**$10,696,756**	
Gap of Syndication Proceeds Needed	**$10,696,755**	
Total Tax Credits (Gap Method)	**$976,560**	
Recommended Tax Credits	**976,560**	
Syndication Proceeds	**$10,696,756**	

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING TAX CREDIT PROGRAM
DETERMINATION NOTICE

This Determination Notice (the "**Notice**") in connection with an award of Housing Tax Credits associated with a Certificate of Reservation from the 2016 Private Activity Bond Ceiling is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, (the "**Department**"), and **HARRISBURG SRO, LTD.,** (the "**Development Owner**"), herein collectively referred to as the "**Parties.**" This Notice does not constitute an allocation as defined by Section 42 of the Internal Revenue Code.

RECITALS

WHEREAS, the Development Owner agrees to carry out the new construction, rehabilitation, and/or reconstruction of the Development as more fully described in application TDHCA number **16405** (the "Application") approved by the Governing Board of the Department on **FEBRUARY 25, 2016** and in accordance with all representations made in the Application, Chapter 2306 of the Texas Government Code ("Chapter 2306"), Title 10 of the Texas Administrative Code, Chapter 1, Chapter 2, Chapter 10 Uniform Multifamily Rules (all collectively referred to as "the Rules") and Chapter 11 Qualified Allocation Plan ("QAP"), Section 42 of the Internal Revenue Code ("Code") and all applicable Internal Revenue Service ("IRS") notices and revenue rulings, and all applicable Treasury Regulations and Decisions, as may be amended from time to time. All laws, rules, and requirements referenced in this recital paragraph as collectively referred to herein as the "Legal Authorities";

WHEREAS, the Department has reviewed the Application and the Governing Board of the Department approved the issuance of this Determination Notice for Housing Tax Credits in accordance with the Legal Authorities;

NOW, THEREFORE, for and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Notice, and which may be more thoroughly set forth in the Application and Land Use Restriction Agreement ("LURA").

TERMS

Development	**NEW HOPE HOUSING AT HARRISBURG**
Development Type	**NEW CONSTRUCTION**
Development Owner	**HARRISBURG SRO, LTD.**
Development Address	**3315 HARRISBURG BOULEVARD HOUSTON, HARRIS COUNTY**
	77003
Bond Issuer ("Issuer")	**HOUSTON HOUSING FINANCE**

	CORPORATION
Bond Review Board Docket Number	**4147**
Bond Priority Designation	**3**
Annual Tax Credit Commitment Amount	**$847,339**
Building Identification Numbers (BIN)*	**TX 16-40501 – TX 16-40599**
Contact Person	**JOY HORAK-BROWN**
Contact Address	**1117 TEXAS AVENUE**
City, State, ZIP	**HOUSTON, TX 77002**
Contact Phone/Email	**JOY@NEWHOPEHOUSING.COM**
Effective Date of Determination Notice	**MARCH 4, 2016**
Expiration Date of Determination Notice	**APRIL 4, 2016**

* The BIN numbers noted should be used in any future correspondence with the Department.

CONDITIONS

The Development may be eligible to claim Housing Tax Credits with respect to all or a portion of its qualified basis if, among other standards, the Development satisfies the requirements for an allocation of Housing Tax Credits under the Rules and QAP, as applicable. The Department is the sole housing credit agency for the State of Texas and has adopted the Rules and QAP, as amended in the Texas Administrative Code Title 10 Chapters 10 and 11. The Department has determined that the Development, as described in the Application, satisfies the requirements of all applicable subchapters and sections of the Rules and QAP for an allocation of Housing Tax Credits.

In issuing this Notice, the Department has relied upon the information submitted by the Development Owner to be accurate and complete in all material respects. The Department reserves the right to revoke, rescind or terminate this Notice if the Department determines that the Development Owner has provided erroneous, misleading or fraudulent information to the Department or other parties for which the Legal Authorities require notification in connection with the Application for Housing Tax Credits.

The Development Owner has represented to the Department that the Development is being financed by a tax-exempt obligation identified in §42(h)(4) of the Code, to be issued by the issuer named above (the "Issuer"). The Development Owner has represented and will ensure that such tax-exempt obligation will finance fifty (50) percent or more of the aggregate basis of the Development's land and building(s).

This Notice does not represent the making of a Housing Tax Credit allocation for the Development or any building therein or a determination that the Development is eligible to claim credits pursuant to §42(h)(4) of the Code. Such determination rests solely with the Internal Revenue Service and is subject to final cost certification review and issuance of IRS Form(s) 8609 by the Department. This Notice also does not represent any allocation, representation, or determination regarding the ability of the Development Owner to make use of tax-exempt bond financing.

Section 42(m)(2)(D) of the Code requires that a determination be made regarding a bond-financed Development's financial feasibility and its viability as a qualified low-income housing Development. With respect to the Development, as of the date hereof, the feasibility and viability determination has been made by the:

Department as Issuer; and/or
✓ Department as the Housing Credit Agency.

Pursuant to §10.402(b) of the Rules, this Notice shall expire on the date specified herein unless the Development Owner indicates acceptance by executing the Notice, paying the required fees specified in §10.901 of the Rules, and satisfies any conditions set forth in the Rules or herein. Failure to submit the documentation in sections (A) – (G) below by the specified submission dates may result in the termination of the award documented in this Notice. The Notice expiration date may not be extended without prior Board approval for good cause and this Notice is binding on all successors.

The Notice will terminate if the tax-exempt bonds are not issued within the timeframe provided for under the Certificate of Reservation by which the Application was approved or if the financing or characteristics of the Development changes materially as determined by the Department.

A. No later than **April 4, 2016**, which is the expiration date of this Notice, the Development Owner must provide all of the following items to the Department (if not already provided).

I. This Notice containing an original signature from a duly authorized individual.

II. Determination Notice fee in the amount of **$33,894** in accordance with §10.901(9) of the Rules.

III. Building Inspection fee in the amount of **$750** in accordance with §10.901(10) of the Rules.

IV. Evidence of the following pursuant to §10.402(d) of the Rules:

a. Evidence of authority to do business in Texas. For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation and a Certificate of Fact from the Office of the Secretary of State. If formed outside the state of Texas, a Certificate of Application for foreign qualification in Texas and a Certificate of Fact from the Texas Secretary of State. If a Certificate of Fact is not available with respect to a newly formed entity, a statement is provided to that effect, together with a representation as to when it will be received;

b. Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly formed and no status is available then a statement to such effect shall be submitted;

c. Evidence in the form of a corporate resolution that the signer (s) of the Determination Notice has sufficient authority to sign on behalf of the Applicant and indicates the

sub-entity in Control is consistent with the entity contemplated and described in the Application;

d. Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

e. Satisfaction of any conditions identified in the Credit Underwriting Analysis Report or any other conditions of the award required to be met at Determination Notice;

f. Documentation of any changes to representations made in the Application relating to §10.405 of the Rules (relating to Amendments and Extensions); and

g. If applicable, Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney indentifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. 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.

B) In accordance with §10.402(h) of the Rules the Development Owner must submit a construction status report to the Department within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter.

C) In accordance with §10.402(j) of the Rules the Development Owner 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. The Department's commitment to issue IRS Forms 8609 will be subject to the requirements as set forth in the Department's Rules and QAP, as applicable. The anticipated first year of the Credit Period is 20_____.

D) An original recorded LURA in the form required by the Department must be returned to the Department no later than the end of the first year of the Credit Period. The Development Owner hereby agrees and acknowledges that all pledges, conditions, restrictions, representations and obligations which the Development Owner undertook in applying for an allocation will be incorporated in a LURA or other applicable document with respect to the Development. Such LURA or document will also incorporate provisions requiring compliance with the Rules, the Code and with Chapter 2306, including but not limited to requirements for: annual reporting and periodic inspections; payment of fees, charges, and expenses of the Department in connection with its monitoring and compliance activities; management, operating, maintenance and repair standards; tenant selection and income certification; limitations on rents, charges and fees payable by tenants; cost controls and management selection; and a minimum thirty-year affordability period, or the period stated in the Application, whichever is greater. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development prior to the recording of the LURA, the Development Owner shall also obtain and submit to the Department the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien.

E) In accordance with §10.402(e) of the Rules, the Development Owner is required to submit the following within 60 calendar days of closing on the bonds:

I. A Management Plan that meets the requirements in §10.610 of the Uniform Multifamily Rules regarding Tenant Selection Criteria.

II. An Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program. The form should be completed and signed. If an alternative format for the Affirmative Marketing Plan is being submitted, then the information contained in the Plan must, at a minimum, contain all the information that is included in the HUD Form. The Affirmative Marketing Plan must be in compliance with the Department's Affirmative Marketing Rule in §10.617 of the Uniform Multifamily Rules.

III. Evidence that the Development Owner and on-site or regional property manager has attended at least five (5) hours of a Department-approved Fair Housing training. A list of approved trainings can be found on the Department's Fair Housing web page under TDHCA Approved Fair Housing Training, "Property Owner and Managers". Certifications must be dated within the last year as of the date of the submission deadline of these documents.

IV. The Development lead Architect or Engineer responsible for certifying compliance with the Department's accessibility and construction standards must attend at least five (5) hours of a Department–approved Fair Housing training. A list of approved trainings can be found on the Department's Fair Housing web page under TDHCA Approved Fair Housing Training, "Architect and Engineers". Certifications must be dated with the last year as of the date of the submission of these documents.

V. Evidence that the financing has closed, such as an executed settlement statement.

VI. Agreement and Election Statement. Should the Development Owner elect to fix the applicable percentage at the time of the bond closing, then the Development Owner shall submit the executed Agreement and Election Statement with the Post Bond Closure submission documents as noted above. A form-fill-able version of the Agreement and Election Statement can be found on the Department's website at the following link: http://www.tdhca.state.tx.us/multifamily/htc/index.htm.

VII. Reporting Requirements. The Development Owner must file the Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts with the Department pursuant to §10.607(a) of the Uniform Multifamily Rules. Confirmation from the Department that such agreements have been filed must be submitted with these 60-day documents.

F) This Notice is subject to the following Development specific conditions. The documentation required to satisfy these conditions must be submitted to the Department by Cost Certification unless otherwise noted below.

1. Receipt and acceptance before Determination Notice:
    a. A commitment from the City of Houston to provide a loan to the Houston Area Community Development Corporation (HACDC) in the amount of $631,500, with all terms of the financing stated.
    b. A commitment from the City of Houston to provide a loan to HACDC in the amount of $5,986,233, with all terms of financing stated.

2. Receipt and acceptance by Cost Certification:
    a. Signed HAP contract stating the Section 8 rents.
    b. An attorney opinion clearing establishing all office tenants and their operations as satisfying the requirements for "community service facility" per the Internal Revenue Code, Section 42 (d)(4)(C)(iii).
    c. An attorney or CPA opinion clearly establishing that the proposed loan from the HACDC can be considered a valid debt with reasonable expectation that it will be repaid in full. Opinion must include calculations and assumptions used.

3. Should any terms of the proposed capital structure change, the analysis must be re-evaluated and an adjustment to the credit allocation and/or terms of other Department funds, if any, may be warranted.

Margaret L. Holloway
Director of Multifamily Finance

March 4, 2016
Date

I (We), Development Owner, hereby acknowledge and agree to abide by all terms and conditions stated in this Notice and any referenced documentation contained herein.

I (We), Development Owner, hereby acknowledge and agree that pursuant to §10.406 of the Rules, the transfer of an allocation of Housing Tax Credits or ownership of a Development supported with an allocation of Housing Tax Credits to any person including an Affiliate of the Development Owner shall not occur unless the Development Owner obtains the Department's prior, written approval of the transfer.

I (We), Development Owner, hereby acknowledge that failure to comply with this Notice, the Department's Rules and QAP, as applicable, and any referenced documentation contained therein may result in a refusal of the Department to issue IRS Form(s) 8609 for purposes of Housing Tax Credits as well as its exercise of other remedies, including revocation of this Notice.

I (We), Development Owner, hereby acknowledge that the Development will be constructed or rehabilitated in compliance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671,* and as further amended by 10 TAC Chapter 1, Subchapter B.

Development Owner

3.8.16
Date

Joy Horak-Brown, President + CEO
Development Owner (Printed Name, Title)

1c

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion and possible action on Resolution No. 20-005 authorizing the execution of Escrow Agreements relating to the Variable Rate Demand Multifamily Housing Revenue Bonds for Creek Point Apartments Series 2000 and Timber Point Apartments Series 2000

RECOMMENDED ACTION

WHEREAS, the Department issued Variable Rate Demand Multifamily Housing Revenue Bonds Series 2000 in the aggregate principal amount of $7,200,000 to the Creek Point Apartments development in McKinney to construct 200 units of affordable multifamily rental housing;

WHEREAS, the Department issued Variable Rate Demand Multifamily Housing Revenue Bonds Series 2000 in the aggregate principal amount of $8,100,000 to the Timber Point Apartments development in Houston to construct 240 units of affordable multifamily rental housing;

WHEREAS, the Borrower is requesting the Department's approval to enter into Escrow Agreements among the Department as Bond Issuer, the Owner and The Bank of New York Mellon Trust Company, N.A.,

WHEREAS, the Escrow Agreements would provide for the defeasance, payment and discharge of all the outstanding Series 2000 Variable Rate Demand Multifamily Housing Revenue Bonds associated with each development; and

WHEREAS, the Escrow Agreements will provide for the purchase of escrowed securities and funds to be used to pay required debt service on the defeased bonds, until the first call date on December 2, 2019;

NOW, therefore, it is hereby

RESOLVED, that Resolution No. 20-005 relating to the Escrow Agreements for Creek Point Apartments and Timber Point Apartments is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that staff is authorized, empowered and directed for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

The bonds for Creek Point Apartments were originally issued through the Department in April 2000, in the amount of $8,100,000. The original financing structure included credit enhanced bonds placed with Freddie Mac. As part of the current proposal, the borrower has requested the Department enter into an Escrow Agreement that would provide for the bonds to be defeased in accordance with the terms of the Trust Indenture, dated May 2000. The tax-exempt bonds would be defeased until the first call date of December 2, 2019, and funds will be provided that will pay the required debt service on the defeased bonds. The proceeds to fund the escrow will come from the sale of the property, which is contemplated to occur on November 26, 2019.

The bonds for Timber Point Apartments were originally issued through the Department in April 2000 in the amount of $8,100,000. The original financing structure included credit enhanced bonds placed with Freddie Mac. As part of the current proposal, the borrower has requested the Department enter into an Escrow Agreement that would provide for the bonds to be defeased in accordance with the terms of the Trust Indenture, dated April 2000. The tax-exempt bonds would be defeased until the first call date of December 2, 2019, and funds will be provided that will pay the required debt service on the defeased bonds. The proceeds to fund the escrow will come from the sale of the property, which is contemplated to occur on November 26, 2019.

RESOLUTION NO. 20-005

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF ESCROW AGREEMENTS IN CONNECTION WITH VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS (TIMBER POINT APARTMENTS PROJECT) SERIES 2000 AND VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE BONDS (CREEK POINT APARTMENTS PROJECT) SERIES 2000; 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, (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, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Department has previously issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Creek Point Apartments Project) Series 2000 in the original principal amount of $7,200,000 (the "Creek Point Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of May 1, 2000 (the "Creek Point Indenture"), between the Department and The Bank of New York Mellon Trust Company, N.A. (as successor trustee to Bank One, Texas, N.A.) (the "Creek Point Trustee"); and

WHEREAS, the proceeds of the Creek Point Bonds were loaned to Creek Point Limited Partnership, a limited partnership organized and existing under the laws of the State of Texas ("Creek Point") for the purpose of financing a portion of the costs of a multifamily housing development known as Creek Point Apartments, pursuant to that certain Financing Agreement dated as of May 1, 2000 (the "Creek Point Financing Agreement") among the Department, Creek Point and the Creek Point Trustee; and

WHEREAS, the Department has previously issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Timber Point Apartments Project) Series 2000 in the original principal amount of $8,100,000 (the "Timber Point Bonds" and together with the Creek Point Bonds, the "Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of April 1, 2000 (the "Timber Point Indenture" and together with the Creek Point Indenture, the "Indentures"), between the Department and The Bank of New York Mellon Trust Company, N.A. (as successor trustee to Wells Fargo Bank Texas, N.A.) (the "Timber Point Trustee" and together with the Creek Point Trustee, the "Trustee"); and

WHEREAS, the proceeds of the Timber Point Bonds were loaned to Creek Point Limited Partnership, a limited partnership organized and existing under the laws of the State of Texas ("Timber Point" and together with Creek Point, the "Borrowers") for the purpose of financing a portion of the costs of a multifamily housing development known as Timber Point Apartments, pursuant to that certain Financing Agreement dated as of April 1, 2000 (the "Timber Point Financing Agreement" and together with the Creek Point Financing Agreement, the "Financing Agreements") among the Department, Timber Point and the Timber Point Trustee; and

WHEREAS, pursuant to the Financing Agreements and the Indentures, the Borrowers have requested and the Department has determined to take certain actions to provide for defeasance of each of the Creek Point Bonds and the Timber Point Bonds and discharge of each respective Indenture; and

WHEREAS, to effectuate the defeasance of the Creek Point Bonds, the Department has determined to enter into an Escrow Agreement (the "Creek Point Escrow Agreement") among the Department, Creek Point and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the "Escrow Agent"); and

WHEREAS, to effectuate the defeasance of the Timber Point Bonds, the Department has determined to enter into an Escrow Agreement (the "Timber Point Escrow Agreement" and together with the Creek Point Escrow Agreement, the "Escrow Agreements") among the Department, Timber Point and the Escrow Agent; and

WHEREAS, pursuant to its respective Escrow Agreement, each of the Borrowers will deposit in trust with the Escrow Agent funds sufficient to provide for the payment of the principal, redemption price, if any, and interest due or to become due on each of the Timber Point Bonds and the Creek Point Bonds, respectively, at the times and in the manner specified in the respective Indenture; and

WHEREAS, the Board has examined the proposed forms of the Escrow Agreements (which are attached to and comprises a part of this Resolution); has found the form and substance of each such document to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the execution and delivery of the Escrow Agreements and the taking of such other actions as may be necessary or convenient in connection therewith;

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, Execution and Delivery of Escrow Agreements. The Escrow Agreements, in substantially the forms presented at this meeting, are hereby approved and adopted by the Department, and the Authorized Representatives of the Department named in this Resolution are each hereby authorized and empowered to execute and deliver the Escrow Agreements on behalf of the Department, with such changes as may be approved by the Authorized Representative executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.2 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.3 Power to Revise Form of Documents. That, 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 execution of such documents by the Authorized Representatives.

Section 1.4 Exhibits Incorporated Herein. That 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	-	Creek Point Escrow Agreement
Exhibit B	-	Timber Point Escrow Agreement

Section 1.5 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 Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of

the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership of the Department, and the Secretary or 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.

Section 1.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the execution of the Escrow Agreements and the redemption and defeasance of the Bonds are hereby ratified and confirmed.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 2.2 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.3 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 2.4 Effective Date. This resolution shall be in full force and effect from and upon its adoption.

[The remainder of this page left intentionally blank.]

PASSED AND APPROVED this 7th day of November, 2019.

[SEAL]

By:_____
Chair, Governing Board

ATTEST:

_____
Secretary to the Governing Board

ESCROW AGREEMENT

Dated as of _____, 2019

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Issuer,

CREEK POINT LIMITED PARTNERSHIP,
as Borrower,

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Escrow Agent

Providing for the Defeasance, Payment, and Discharge of Certain Outstanding Multifamily Housing Revenue Bonds

ESCROW AGREEMENT

This **ESCROW AGREEMENT** dated as of _____, 2019 (the "***Agreement***"), among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "***Issuer***"), **CREEK POINT LIMITED PARTNERSHIP,** a Texas limited partnership (the "***Borrower***"), and THE **BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, having a corporate trust office located in Houston, Texas (the "***Escrow Agent***").

RECITALS

1. The Borrower is providing for the defeasance, payment, and discharge of all of the Issuer's outstanding Texas Department of Housing and Community Affairs Variable Rate Demand Multifamily Housing Revenue Bonds (Creek Point Apartments Project) Series 2000 (the "***Defeased Bonds***").

2. The Defeased Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable as shown on **Schedule 1** hereto.

3. The Borrower is providing for the defeasance and payment of the Defeased Bonds in accordance with the requirements of the hereinafter defined Indenture, through the deposit in trust with the Escrow Agent of $_____ provided by the Borrower.

4. The Escrow Agent is, by this Agreement, appointed by the hereinafter defined Trustee and is acting as master escrow agent for the Defeased Bonds under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Definitions.

Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in the Indenture. The following words and terms used in this Agreement shall have the following meanings:

"***Agreement***" means this Escrow Agreement, and any amendments hereto.

"***Bond Counsel***" means Bracewell LLP, or other firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to the Issuer, the Borrower and the Escrow Agent.

"***Bond Payment Date***" means any date on which any principal of, redemption premium, or interest on any of the Defeased Bonds is due and payable as shown on **Schedule 1** attached hereto, including the Redemption Date.

"***Borrower***" means CREEK POINT LIMITED PARTNERSHIP, a Texas limited partnership, and its successors and assigns.

"***Defeased Bonds***" means the outstanding Variable Rate Demand Multifamily Housing Revenue Bonds (Creek Point Apartments Project) Series 2000 of the Issuer, all of which are being defeased, paid and discharged pursuant to this Agreement.

"***Escrow Agent***" means THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., and its successor or successors at the time acting as the Escrow Agent under this Agreement.

"***Escrow Fund***" means the fund by that name established pursuant to **Section 3** of this Agreement.

"***Indenture***" means the Trust Indenture dated as of May 1, 2000, between the Issuer and the Trustee, under which the Defeased Bonds were issued, and any amendments or supplements thereto.

"***Issuer***" means the Texas Department of Housing and Community Affairs, the issuer of the Defeased Bonds, and its successors and assigns.

"***Redemption Date***" means [December 2, 2019].

"***Trustee***" means The Bank of New York Mellon Trust Company, N.A., and its successor or successors at the time acting as trustee for the Defeased Bonds pursuant to the Indenture.

2. Representations of the Escrow Agent.

(a) The Escrow Agent acknowledges receipt, concurrently with the execution and delivery of this Agreement, of a copy of the Indenture, and reference herein to or citation herein of any provisions of said document shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if such provisions were fully set forth herein.

(b) The Escrow Agent is duly authorized and empowered under the laws of the State of Texas to accept and execute agreements of the character herein set forth, and has the requisite power and authority to perform the duties of the Escrow Agent set forth in this Agreement.

3. Establishment of Escrow Fund.

The Escrow Agent shall establish a special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the "**Escrow Fund for Defeased Bonds – Creek Point Limited Partnership**" (the "***Escrow Fund***"). Except as otherwise provided herein, moneys in the Escrow Fund shall be held in trust by the Escrow Agent and shall be applied solely for the purpose of providing funds to the Trustee in accordance with this Agreement at the times and in the amounts required to pay debt service on the Defeased Bonds.

4. Deposits to the Escrow Fund.

Concurrently with the execution and delivery of this Agreement, the Borrower has deposited or caused to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of the following moneys, representing the necessary amounts to pay the principal and interest on the Defeased Bonds (calculated at the Maximum Rate, as such term is defined in the Indenture):

(a) Eligible Funds (as such term is defined in the Indenture) provided by the Borrower in the amount of $_____; and

(b) moneys transferred from funds held under the Indenture in the amount of $_____.

5. Reserved.

6. Creation of Lien.

The escrow created hereby shall be irrevocable. The holders of the Defeased Bonds are hereby given an express lien on and security interest in the cash in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. Such lien and security interest for the Defeased Bonds shall be in accordance with the debt service requirements of the Defeased Bonds as shown on **Schedule 1** hereto. The cash and all earnings thereon in the Escrow Fund are hereby pledged and assigned and shall be applied solely for the payment of the principal of, redemption premium, if any, and interest on the Defeased Bonds.

7. Application of Cash in the Escrow Fund.

(a) Except as otherwise expressly provided in this Section, the Escrow Agent shall have no power or duty to invest any money held hereunder.

(b) On or prior to each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Defeased Bonds becoming due and payable on such Bond Payment Date, as set forth in **Schedule 1** hereto, and shall transfer such amount to the office of the Trustee, so that immediately available funds in the required amounts will reach such office on or before **12:00** noon, central time, on such Bond Payment Date. The liability of the Escrow Agent to make the payments required by this subsection with respect to the Defeased Bonds shall be limited to the money in the Escrow Fund.

(c) Cash held from time to time in the Escrow Fund shall be held uninvested, with no liability for interest.

(d) Upon the payment in full of the principal of, redemption premium, if any, and interest on the last of the Defeased Bonds, all remaining money in the Escrow Fund, together with any interest thereon, shall be transferred to the Borrower.

(e) Notwithstanding any other provisions of this Agreement, the Borrower hereby covenants that no part of the moneys or funds in the Escrow Fund shall be used or directed to

be used by the Escrow Agent, at any time, directly or indirectly, in a manner that would cause any of the Defeased Bonds to be an "arbitrage bond" under Section 148 of the Internal Revenue Code.

8. Reserved.

9. Redemption of Defeased Bonds.

(a) The Borrower has provided for the defeasance, discharge and payment of the Defeased Bonds by deposit with the Escrow Agent, concurrently with the delivery of this Agreement and as provided in this Agreement, of moneys in such amounts, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Defeased Bonds on the Redemption Date. The Borrower hereby represents that it has irrevocably requested and directed the Trustee to (1) call all of the Defeased Bonds for redemption and payment on the Redemption Date at a redemption price equal to 100% of the outstanding principal amount thereof with respect to the Defeased Bonds, plus accrued interest thereon to the Redemption Date, (2) unless waived in writing by the owners of the Defeased Bonds, give notice of such redemption to the owners of the Defeased Bonds no later than ten (10) days prior to the Redemption Date, and otherwise in accordance with the requirements of the Indenture, and (3) take or cause to be taken all further action necessary to call and redeem the Defeased Bonds on the Redemption Date as provided herein.

(b) The Borrower directs the Escrow Agent and the Escrow Agent agrees, to the extent within its power, on behalf of the Trustee, to take or cause to be taken such further action as may be necessary under the Indenture to cause the redemption of said Defeased Bonds on the Redemption Date.

10. Reports of the Escrow Agent.

As long as any of the Defeased Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent, at least fifteen (15) days prior to each Bond Payment Date, shall determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Defeased Bonds on the next Bond Payment Date. If the Escrow Agent determines that sufficient funds will not be available on such Bond Payment Date to make the payment to be made on such Bond Payment Date pursuant to **Section 7**, then the Escrow Agent shall certify in writing to the Borrower and the Trustee the amount so determined, and provide a list of the money held by it in the Escrow Fund on the date of such certification, including all money held by it which was received as interest.

11. Liability of Escrow Agent.

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer, or other disposition made pursuant to this Agreement in compliance with the provisions hereof, other than as a result of the Escrow Agent's negligence or willful misconduct. The Escrow Agent shall have no lien whatsoever on any of the money on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the money to pay the Defeased Bonds. So long as the Escrow Agent applies the money as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Defeased Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the money received by it, said money shall be and remain the property of the Borrower in trust for the holders of the Defeased Bonds, and, if for any reason such money is not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) All covenants, stipulations, promises, agreements and obligations of the Escrow Agent contained in this Agreement shall be deemed to be the respective limited covenants, stipulations, promises, agreements, and obligations of the Escrow Agent, and not of any officer, employee, or agent of the Escrow Agent, nor of any incorporator, employee, or agent of any successor corporation to the Escrow Agent, in its individual capacity. No recourse shall be had against any such individual, either directly or otherwise under or upon any obligation, covenant, stipulation, promise, or agreement contained herein or in any other documents executed in connection therewith.

(e) The Escrow Agent may rely and shall be protected in acting upon or refraining from acting upon in good faith any resolution, certification, statement, instrument, opinion, report, notice, request, direction, consent, verification, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Escrow Agent may refuse to perform any duty or exercise any right or power which would require it to expend its own funds or risk any liability if it shall reasonably believe that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(g) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.

(h) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer or employee of the Escrow Agent, unless it is proven that the Escrow Agent was negligent in ascertaining the pertinent facts, or for the misconduct or negligence of any agent appointed with due care.

(i) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this Section.

12. Fees and Costs of the Escrow Agent.

The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms, or provisions of this Agreement is a one-time fee in the amount of $1,000.00, which amount shall be paid by the Borrower concurrently with the execution and delivery of this Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the Borrower of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms, or provisions of this Agreement. Claims for such reimbursement may be made to the Borrower and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under the Agreement or otherwise.

If the Escrow Agent resigns or is removed prior to the expiration of this Agreement, the Escrow Agent shall rebate to the Borrower a ratable portion of any fee theretofore paid to the Escrow Agent for its services under this Agreement.

13. Resignation or Removal of Trustee, Successor Escrow Agent; Removal of Escrow Agent.

(a) In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture and any appointment of a successor trustee thereunder, such successor trustee, without any further act, deed, or conveyance, shall become the successor Escrow Agent fully vested with all the rights, immunities, powers, trusts, duties, and obligations of its predecessor hereunder, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Borrower, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall transfer and deliver all moneys held by it to its successor and shall execute any transfer, assignment, or instrument in writing necessary to so transfer said moneys. Should any other transfer, assignment, or instrument in writing from the Borrower be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Escrow Agent hereunder, any such transfer, assignment, and instruments in writing shall, on request, be executed, acknowledged, and delivered by the Borrower, as the case may be. In the event of resignation of the Escrow Agent, a pro rata portion of the amount paid to the Escrow Agent pursuant to **Section 12** hereof shall be returned to the Borrower. In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture, such resignation or removal shall not become effective until a successor trustee shall be in place and the cash held in the Escrow Fund have been transferred to the successor trustee.

(b) The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least thirty (30) days before the date specified for such resignation or removal to take effect.

14. Continuing Duties of Trustee.

Certain duties, rights, and obligations provided for in the Indenture (including but not limited to replacement of lost, mutilated, stolen, or destroyed bonds, the payment of interest and principal on the due dates thereof, the transfer and exchange and registration of bonds from time to time, the administration of any moneys remaining on deposit in any funds under the Indenture, the indemnification rights of the Trustee, and all immunities and protections of the Trustee) must, by their nature, be performed after the defeasance of the Defeased Bonds or must continue to benefit the Trustee until payment in full of the Defeased Bonds and, accordingly, the Trustee agrees to be bound by and to comply with those provisions of the Indenture. The Escrow Agent has been appointed under this Agreement by the Borrower, and the Borrower agrees that by such appointment the immunities, protections, rights, and indemnification provided to the Trustee under the Indenture and related documents, including but not limited to any loan agreements and guaranties, shall not cease, diminish or be modified in any way.

15. Appointment of Escrow Agent and Acceptance of Terms.

The Trustee, by execution of this Agreement in its capacity as Trustee, hereby agrees to and accepts the terms and provisions of this Agreement, and agrees to act as Escrow Agent under this Agreement and in accordance with the Indenture, to act in all capacities appropriate and necessary for the defeasance of the Defeased Bonds. In its capacity as the Escrow Agent, the Trustee shall be entitled to all of the rights, protections, immunities, and indemnities created in favor of the Trustee by the Indenture.

16. Amendments.

This Agreement may not be repealed, revoked, altered, or amended without the written consent of the Issuer, the Escrow Agent, the Borrower, and the owners of the Defeased Bonds; provided, however, that the Issuer, the Borrower, and the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the Defeased Bonds, any additional rights, remedies, powers, or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition, or elimination affects the rights of the holders of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

17. Termination.

This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

18. Notices.

Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand, or other paper required by this Agreement to be given to or filed with any of the following if the same shall be duly mailed by first class, certified or registered mail addressed (provided, however, that notice to the Escrow Agent will be effective only upon receipt):

(a) To the Issuer:

Texas Department of Housing and Community Affairs
Attention: Director of Multifamily Bonds
221 E. 11th Street
Austin, Texas 78701

(b) To the Borrower:

Creek Point Limited Partnership
247 North Westmonte Drive
Altamonte Springs, Florida 32714
Attention: Richard Haley

(c) To the Escrow Agent:

The Bank of New York Mellon Trust Company, N.A.
Corporate Trust Department
Attn: Lynette Lewandowski
601 Travis Street, 16th FL
Houston, Texas 77002

(d) To the Trustee and the owners of the Defeased Bonds at their respective addresses and by the method set forth in the Indenture.

19. Benefit of Escrow Agreement.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns, the Trustee, and the owners of the Defeased Bonds, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

20. Limitation on Issuer Liability.

The Issuer shall not be liable for the following:

(a) any loss resulting from any investment made pursuant to this Agreement;

(b) the accuracy of the calculations as to the sufficiency of the Escrow Fund to pay the principal, premium, if any, and interest on the Defeased Bonds;

(c) any action or inaction of the Escrow Agent or the Borrower in connection herewith and therewith; or

(d) any costs, fees, and expenses of the Escrow Agent hereunder.

21. Severability.

If any provision in this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

24. Electronic Transactions.

This Agreement and the transactions related hereto and described herein may be conducted and related documents may be sent, received and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts to such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

25. Compliance with Texas Government Code.

The Borrower, the Escrow Agent, and the Trustee each hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Borrower, the Escrow Agent, and the Trustee each understand 'affiliate' to mean an

entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

To the extent this Agreement is a contract for goods or services, the Borrower, the Escrow Agent, and the Trustee each represent that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf,
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes each of the Borrower, the Escrow Agent, and the Trustee and its respective parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Borrower, the Escrow Agent, and the Trustee each understand 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

ISSUER:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, as Issuer

By: _____
Name: Teresa Morales
Title: Director of Multifamily Bonds

BORROWER:

CREEK POINT LIMITED PARTNERSHIP, a Texas limited partnership

By: Picerne Creek Point, LLC, a Texas limited liability company, its general partner

By: _____
Richard R. Haley
Executive Vice President

ESCROW AGENT:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By:_____

Name:_____

Title:_____

The undersigned, as trustee with respect to the Defeased Bonds, hereby acknowledges receipt of the directions of the Borrower with respect to the defeasance and redemption of the Defeased Bonds set forth in **Section 9** of the foregoing Agreement and hereby acknowledges it has complied with such directions and acknowledges and agrees to Section 25 of the foregoing Agreement.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By:_____

Name:_____

Title:_____

SCHEDULE 1
TO ESCROW AGREEMENT

DEBT SERVICE SCHEDULE TO CALL FOR DEFEASED BONDS

[TO COME]

ESCROW AGREEMENT

Dated as of _____, 2019

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Issuer,

TIMBER POINT APARTMENTS LIMITED PARTNERSHIP,
as Borrower,

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Escrow Agent

Providing for the Defeasance, Payment, and Discharge of Certain Outstanding Multifamily Housing Revenue Bonds

ESCROW AGREEMENT

This **ESCROW AGREEMENT** dated as of _____, 2019 (the "***Agreement***"), among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "***Issuer***"), **TIMBER POINT APARTMENTS LIMITED PARTNERSHIP,** a Texas limited partnership (the "***Borrower***"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, having a corporate trust office located in Houston, Texas (the "***Escrow Agent***").

RECITALS

1. The Borrower is providing for the defeasance, payment, and discharge of all of the Issuer's outstanding Texas Department of Housing and Community Affairs Variable Rate Demand Multifamily Housing Revenue Bonds (Timber Point Apartments Project) Series 2000 (the "***Defeased Bonds***").

2. The Defeased Bonds will mature (or will be subject to redemption prior to maturity) and will have interest payable as shown on **Schedule 1** hereto.

3. The Borrower is providing for the defeasance and payment of the Defeased Bonds in accordance with the requirements of the hereinafter defined Indenture, through the deposit in trust with the Escrow Agent of $_____ provided by the Borrower.

4. The Escrow Agent is, by this Agreement, appointed by the hereinafter defined Trustee and is acting as master escrow agent for the Defeased Bonds under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Definitions.

Capitalized terms used in this Agreement and not otherwise defined have the meanings set forth in the Indenture. The following words and terms used in this Agreement shall have the following meanings:

"***Agreement***" means this Escrow Agreement, and any amendments hereto.

"***Bond Counsel***" means Bracewell LLP, or other firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to the Issuer, the Borrower and the Escrow Agent.

"***Bond Payment Date***" means any date on which any principal of, redemption premium, or interest on any of the Defeased Bonds is due and payable as shown on **Schedule 1** attached hereto, including the Redemption Date.

"***Borrower***" means TIMBER POINT APARTMENTS LIMITED PARTNERSHIP, a Texas limited partnership, and its successors and assigns.

"***Defeased Bonds***" means the outstanding Variable Rate Demand Multifamily Housing Revenue Bonds (Timber Point Apartments Project) Series 2000 of the Issuer, all of which are being defeased, paid and discharged pursuant to this Agreement.

"***Escrow Agent***" means THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., and its successor or successors at the time acting as the Escrow Agent under this Agreement.

"***Escrow Fund***" means the fund by that name established pursuant to **Section 3** of this Agreement.

"***Indenture***" means the Trust Indenture dated as of April 1, 2000, between the Issuer and the Trustee, under which the Defeased Bonds were issued, and any amendments or supplements thereto.

"***Issuer***" means the Texas Department of Housing and Community Affairs, the issuer of the Defeased Bonds, and its successors and assigns.

"***Redemption Date***" means December 2, 2019.

"***Trustee***" means The Bank of New York Mellon Trust Company, N.A., and its successor or successors at the time acting as trustee for the Defeased Bonds pursuant to the Indenture.

2. Representations of the Escrow Agent.

(a) The Escrow Agent acknowledges receipt, concurrently with the execution and delivery of this Agreement, of a copy of the Indenture, and reference herein to or citation herein of any provisions of said document shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if such provisions were fully set forth herein.

(b) The Escrow Agent is duly authorized and empowered under the laws of the State of Texas to accept and execute agreements of the character herein set forth, and has the requisite power and authority to perform the duties of the Escrow Agent set forth in this Agreement.

3. Establishment of Escrow Fund.

The Escrow Agent shall establish a special and irrevocable separate trust fund to be held in the custody of the Escrow Agent and designated as the "**Escrow Fund for Defeased Bonds – Timber Point Apartments Limited Partnership**" (the "***Escrow Fund***"). Except as otherwise provided herein, moneys in the Escrow Fund shall be held in trust by the Escrow Agent and shall be applied solely for the purpose of providing funds to the Trustee in accordance with this Agreement at the times and in the amounts required to pay debt service on the Defeased Bonds.

4. Deposits to the Escrow Fund.

Concurrently with the execution and delivery of this Agreement, the Borrower has deposited or caused to be deposited with the Escrow Agent, and the Escrow Agent acknowledges receipt and deposit into the Escrow Fund of the following moneys, representing the necessary amounts to pay the principal and interest on the Defeased Bonds (calculated at the Maximum Rate, as such term is defined in the Indenture):

(a) Eligible Funds (as such term is defined in the Indenture) provided by the Borrower in the amount of $_____; and

(b) moneys transferred from funds held under the Indenture in the amount of $_____.

5. Reserved.

6. Creation of Lien.

The escrow created hereby shall be irrevocable. The holders of the Defeased Bonds are hereby given an express lien on and security interest in the cash in the Escrow Fund and all earnings thereon until used and applied in accordance with this Agreement. Such lien and security interest for the Defeased Bonds shall be in accordance with the debt service requirements of the Defeased Bonds as shown on **Schedule 1** hereto. The cash and all earnings thereon in the Escrow Fund are hereby pledged and assigned and shall be applied solely for the payment of the principal of, redemption premium, if any, and interest on the Defeased Bonds.

7. Application of Cash in the Escrow Fund.

(a) Except as otherwise expressly provided in this Section, the Escrow Agent shall have no power or duty to invest any money held hereunder.

(b) On or prior to each Bond Payment Date, the Escrow Agent shall withdraw from the Escrow Fund an amount equal to the principal of, redemption premium, if any, and interest on the Defeased Bonds becoming due and payable on such Bond Payment Date, as set forth in **Schedule 1** hereto, and shall transfer such amount to the office of the Trustee, so that immediately available funds in the required amounts will reach such office on or before **12:00** noon, central time, on such Bond Payment Date. The liability of the Escrow Agent to make the payments required by this subsection with respect to the Defeased Bonds shall be limited to the money in the Escrow Fund.

(c) Cash held from time to time in the Escrow Fund shall be held uninvested, with no liability for interest.

(d) Upon the payment in full of the principal of, redemption premium, if any, and interest on the last of the Defeased Bonds, all remaining money in the Escrow Fund, together with any interest thereon, shall be transferred to the Borrower.

(e) Notwithstanding any other provisions of this Agreement, the Borrower hereby covenants that no part of the moneys or funds in the Escrow Fund shall be used or directed to be used by the Escrow Agent, at any time, directly or indirectly, in a manner that would cause any of the Defeased Bonds to be an "arbitrage bond" under Section 148 of the Internal Revenue Code.

8. Reserved.

9. Redemption of Defeased Bonds.

(a) The Borrower has provided for the defeasance, discharge and payment of the Defeased Bonds by deposit with the Escrow Agent, concurrently with the delivery of this Agreement and as provided in this Agreement, of moneys in such amounts, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay when due, the principal and interest due and to become due on the Defeased Bonds on the Redemption Date. The Borrower hereby represents that it has irrevocably requested and directed the Trustee to (1) call all of the Defeased Bonds for redemption and payment on the Redemption Date at a redemption price equal to 100% of the outstanding principal amount thereof with respect to the Defeased Bonds, plus accrued interest thereon to the Redemption Date, (2) unless waived in writing by the owners of the Defeased Bonds, give notice of such redemption to the owners of the Defeased Bonds no later than ten (10) days prior to the Redemption Date, and otherwise in accordance with the requirements of the Indenture, and (3) take or cause to be taken all further action necessary to call and redeem the Defeased Bonds on the Redemption Date as provided herein.

(b) The Borrower directs the Escrow Agent and the Escrow Agent agrees, to the extent within its power, on behalf of the Trustee, to take or cause to be taken such further action as may be necessary under the Indenture to cause the redemption of said Defeased Bonds on the Redemption Date.

10. Reports of the Escrow Agent.

As long as any of the Defeased Bonds, together with the interest thereon, have not been paid in full, the Escrow Agent, at least fifteen (15) days prior to each Bond Payment Date, shall determine the amount of money which will be available in the Escrow Fund to pay the principal of, redemption premium, if any, and interest on the Defeased Bonds on the next Bond Payment Date. If the Escrow Agent determines that sufficient funds will not be available on such Bond Payment Date to make the payment to be made on such Bond Payment Date pursuant to **Section 7**, then the Escrow Agent shall certify in writing to the Borrower and the Trustee the amount so determined, and provide a list of the money held by it in the Escrow Fund on the date of such certification, including all money held by it which was received as interest.

11. Liability of Escrow Agent.

(a) The Escrow Agent shall not be liable for any loss resulting from any investment, sale, transfer, or other disposition made pursuant to this Agreement in compliance with the provisions hereof, other than as a result of the Escrow Agent's negligence or willful misconduct. The Escrow Agent shall have no lien whatsoever on any of the money on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement or otherwise.

(b) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of the money to pay the Defeased Bonds. So long as the Escrow Agent applies the money as provided herein, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Defeased Bonds caused by such calculations. Notwithstanding the foregoing, the Escrow Agent shall not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Agreement.

(c) If the Escrow Agent fails to account for any of the money received by it, said money shall be and remain the property of the Borrower in trust for the holders of the Defeased Bonds, and, if for any reason such money is not applied as herein provided, the assets of the Escrow Agent shall be impressed with a trust for the amount thereof until the required application shall be made.

(d) All covenants, stipulations, promises, agreements and obligations of the Escrow Agent contained in this Agreement shall be deemed to be the respective limited covenants, stipulations, promises, agreements, and obligations of the Escrow Agent, and not of any officer, employee, or agent of the Escrow

Agent, nor of any incorporator, employee, or agent of any successor corporation to the Escrow Agent, in its individual capacity. No recourse shall be had against any such individual, either directly or otherwise under or upon any obligation, covenant, stipulation, promise, or agreement contained herein or in any other documents executed in connection therewith.

(e) The Escrow Agent may rely and shall be protected in acting upon or refraining from acting upon in good faith any resolution, certification, statement, instrument, opinion, report, notice, request, direction, consent, verification, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(f) The Escrow Agent may refuse to perform any duty or exercise any right or power which would require it to expend its own funds or risk any liability if it shall reasonably believe that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(g) The Escrow Agent undertakes to perform such duties and only such duties as are specifically set forth in this Agreement.

(h) No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that the Escrow Agent shall not be liable for any error of judgment made in good faith by an authorized officer or employee of the Escrow Agent, unless it is proven that the Escrow Agent was negligent in ascertaining the pertinent facts, or for the misconduct or negligence of any agent appointed with due care.

(i) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Escrow Agent shall be subject to the provisions of this Section.

12. Fees and Costs of the Escrow Agent.

The aggregate amount of the costs, fees, and expenses of the Escrow Agent in connection with the creation of the escrow described in and created by this Agreement and in carrying out any of the duties, terms, or provisions of this Agreement is a one-time fee in the amount of $1,000.00, which amount shall be paid by the Borrower concurrently with the execution and delivery of this Agreement.

Notwithstanding the preceding paragraph, the Escrow Agent shall be entitled to reimbursement from the Borrower of reasonable out-of-pocket, legal or extraordinary expenses incurred in carrying out the duties, terms, or provisions of this Agreement. Claims for such reimbursement may be made to the Borrower and in no event shall such reimbursement be made from funds held by the Escrow Agent pursuant to this Agreement. The Escrow Agent agrees that it will not assert any lien whatsoever on any of the money on deposit in the Escrow Fund for the payment of fees and expenses for services rendered by the Escrow Agent under the Agreement or otherwise.

If the Escrow Agent resigns or is removed prior to the expiration of this Agreement, the Escrow Agent shall rebate to the Borrower a ratable portion of any fee theretofore paid to the Escrow Agent for its services under this Agreement.

13. Resignation or Removal of Trustee, Successor Escrow Agent; Removal of Escrow Agent.

(a) In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture and any appointment of a successor trustee thereunder, such successor trustee, without any further act, deed, or conveyance, shall become the successor Escrow Agent fully vested with all the rights, immunities, powers, trusts, duties, and obligations of its predecessor hereunder, but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the Borrower, execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Escrow Agent shall transfer and deliver all moneys held by it to its successor and shall execute any transfer, assignment, or instrument in writing necessary to so transfer said moneys. Should any other transfer, assignment, or instrument in writing from the Borrower be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, rights, powers, and duties hereby vested or intended to be vested in the predecessor Escrow Agent hereunder, any such transfer, assignment, and instruments in writing shall, on request, be executed, acknowledged, and delivered by the Borrower, as the case may be. In the event of resignation of the Escrow Agent, a pro rata portion of the amount paid to the Escrow Agent pursuant to **Section 12** hereof shall be returned to the Borrower. In the event of any resignation or removal of the Escrow Agent as trustee under the Indenture, such resignation or removal shall not become effective until a successor trustee shall be in place and the cash held in the Escrow Fund have been transferred to the successor trustee.

(b) The Escrow Agent may resign or be removed, at any time, for any reason, by written notice of its resignation or removal to the proper parties at their respective addresses as set forth herein, at least thirty (30) days before the date specified for such resignation or removal to take effect.

14. Continuing Duties of Trustee.

Certain duties, rights, and obligations provided for in the Indenture (including but not limited to replacement of lost, mutilated, stolen, or destroyed bonds, the payment of interest and principal on the due dates thereof, the transfer and exchange and registration of bonds from time to time, the administration of any moneys remaining on deposit in any funds under the Indenture, the indemnification rights of the Trustee, and all immunities and protections of the Trustee) must, by their nature, be performed after the defeasance of the Defeased Bonds or must continue to benefit the Trustee until payment in full of the Defeased Bonds and, accordingly, the Trustee agrees to be bound by and to comply with those provisions of the Indenture. The Escrow Agent has been appointed under this Agreement by the Borrower, and the Borrower agrees that by such appointment the immunities, protections, rights, and indemnification provided to the Trustee under the Indenture and related documents, including but not limited to any loan agreements and guaranties, shall not cease, diminish or be modified in any way.

15. Appointment of Escrow Agent and Acceptance of Terms.

The Trustee, by execution of this Agreement in its capacity as Trustee, hereby agrees to and accepts the terms and provisions of this Agreement, and agrees to act as Escrow Agent under this Agreement and in accordance with the Indenture, to act in all capacities appropriate and necessary for the defeasance of the Defeased Bonds. In its capacity as the Escrow Agent, the Trustee shall be entitled to all of the rights, protections, immunities, and indemnities created in favor of the Trustee by the Indenture.

16. Amendments.

This Agreement may not be repealed, revoked, altered, or amended without the written consent of the Issuer, the Escrow Agent, the Borrower, and the owners of the Defeased Bonds; provided, however, that the Issuer, the Borrower, and the Escrow Agent may, without the consent of, or notice to, such owners, enter into such agreements supplemental to this Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the Defeased Bonds, any additional rights, remedies, powers, or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and

(c) to subject to this Agreement additional funds, securities or properties.

The Escrow Agent shall be entitled to rely exclusively upon an opinion of Bond Counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition, or elimination affects the rights of the holders of the Defeased Bonds, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

17. Termination.

This Agreement shall terminate when all transfers required to be made by the Escrow Agent under the provisions hereof shall have been made.

18. Notices.

Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand, or other paper required by this Agreement to be given to or filed with any of the following if the same shall be duly mailed by first class, certified or registered mail addressed (provided, however, that notice to the Escrow Agent will be effective only upon receipt):

(a) To the Issuer:

Texas Department of Housing and Community Affairs Attention:
Director of Multifamily Bonds
221 E. 11th Street
Austin, Texas 78701

(b) To the Borrower:

Timber Point Apartments Limited Partnership
247 North Westmonte Drive
Altamonte Springs, Florida 32714
Attention: Richard Haley

(c) To the Escrow Agent:

The Bank of New York Mellon Trust Company, N.A.
Corporate Trust Department
Attn: Lynette Lewandowski
601 Travis Street, 16th FL
Houston, Texas 77002

(d) To the Trustee and the owners of the Defeased Bonds at their respective addresses and by the method set forth in the Indenture.

19. Benefit of Escrow Agreement.

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns, the Trustee, and the owners of the Defeased Bonds, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

20. Limitation on Issuer Liability.

The Issuer shall not be liable for the following:

(a) any loss resulting from any investment made pursuant to this Agreement;

(b) the accuracy of the calculations as to the sufficiency of the Escrow Fund to pay the principal, premium, if any, and interest on the Defeased Bonds;

(c) any action or inaction of the Escrow Agent or the Borrower in connection herewith and therewith; or

(d) any costs, fees, and expenses of the Escrow Agent hereunder.

21. Severability.

If any provision in this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

22. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

24. Electronic Transactions.

This Agreement and the transactions related hereto and described herein may be conducted and related documents may be sent, received and stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts to such original documents for all purposes, including the filing of any claim, action, or suit in the appropriate court of law.

25. Compliance with Texas Government Code.

The Borrower, the Escrow Agent, and the Trustee each hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Borrower, the Escrow Agent, and the Trustee each understand 'affiliate' to mean an

entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

To the extent this Agreement is a contract for goods or services, the Borrower, the Escrow Agent, and the Trustee each represent that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website:

https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf,
https://comptroller.texas.gov/purchasing/docs/iran-list.pdf,
https://comptroller.texas.gov/purchasing/docs/fto-list.pdf.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes each of the Borrower, the Escrow Agent, and the Trustee and its respective parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Borrower, the Escrow Agent, and the Trustee each understand 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers as of the date first above written.

ISSUER:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, as Issuer

By: _____
Name: Teresa Morales
Title: Director of Multifamily Bonds

BORROWER:

TIMBER POINT APARTMENTS LIMITED PARTNERSHIP, a Texas limited partnership

By: Picerne Timber Point, LLC, a Texas limited liability company, its general partner

By: _____
Richard R. Haley
Authorized Designee

ESCROW AGENT:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By:_____

Name:_____

Title:_____

The undersigned, as trustee with respect to the Defeased Bonds, hereby acknowledges receipt of the directions of the Borrower with respect to the defeasance and redemption of the Defeased Bonds set forth in **Section 9** of the foregoing Agreement and hereby acknowledges it has complied with such directions and acknowledges and agrees to Section 25 of the foregoing Agreement.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By:_____

Name:_____

Title:_____

SCHEDULE 1
TO ESCROW AGREEMENT

DEBT SERVICE SCHEDULE TO CALL FOR DEFEASED BONDS

[TO COME]

1d

BOARD ACTION REQUEST

COMPLIANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding Jackie Robinson (19470)

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance within the last three years;

WHEREAS, there are two sponsors for Jackie Robinson (19470), the Housing Authority of the City of El Paso (HACEP) and Franklin Development. The combined portfolio of these two sponsors results in a portfolio of 75 properties with 48 Events of Noncompliance that were not corrected during the Corrective Action Period, therefore classifying them as a Category 3;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

WHEREAS, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely requested to have this matter presented to the Board;

WHEREAS, the portfolio and Events of Noncompliance associated with the HACEP were approved in the past by the Board with conditions, those conditions have been satisfied, and no new events of noncompliance have been identified to date that would suggest any change in performance since the prior approval;

WHEREAS, Tex. Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance; however, the Board must fully document and

disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, at the June 27, 2019, Board meeting, the Board approved a motion finding the compliance history of HACEP was acceptable as of that date, given the documentation and disclosure at that meeting, and should not preclude a positive recommendation from EARAC regarding four properties being considered at that meeting; and

WHEREAS, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions;

NOW, therefore, it is hereby

RESOLVED, that the Board has considered the compliance history of the Applicant, and determines, for application Jackie Robinson (19470), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

FURTHER RESOLVED, that the Application is authorized to proceed through its remaining evaluation and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EARAC because of its compliance history.

BACKGROUND

At the Board meeting of June 27, 2019, the Board considered documentation and testimony regarding the compliance history of HACEP, and approved a motion finding the compliance history of HACEP to be acceptable as of that date. Since that time, there have been no new reportable Events of Noncompliance identified, two Events of Noncompliance have "dropped off" because they have been corrected for over three years, and HACEP has satisfied all conditions previously imposed by the Board related to improving their compliance history.

1e

BOARD ACTION REQUEST

COMMUNITY AFFAIRS DIVISION

NOVEMBER 7, 2019

Presentation, Discussion, and Possible Action on the 2020 Payment Standards for the Housing Choice Voucher Program

RECOMMENDED ACTION

WHEREAS, the Department is designated as a Public Housing Authority (PHA) and operates a Housing Choice Voucher Program (HCVP); and

WHEREAS, 24 CFR §982.503 requires PHAs to establish Payment Standards annually for areas served by its vouchers;

NOW, therefore, it is hereby

RESOLVED, that the 2020 HCVP Payment Standards for the Department in its role as a PHA, and in accordance with 24 CFR §982.505, are hereby approved in the form presented to this meeting.

BACKGROUND

The U.S. Department of Housing and Urban Development (HUD) requires PHAs to adopt a payment standard schedule annually that establishes voucher payment standard amounts for each Fair Market Rent (FMR) area in the PHA jurisdiction. The PHA must establish payment standard amounts for each "unit size," defined as the number of bedrooms (one-bedroom, two-bedrooms, etc.) in each housing unit.

The Department, operating as a PHA, may establish the payment standard amount at any level between 90% and 110% of the published FMR for that unit size. In areas where market rents are high and there is high demand for rental units it can be challenging for a voucher holder to find a unit. Increased FMRs aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets.

The importance of trying to ensure that a household's voucher provides enough assistance to house them is balanced with the importance of beneficiaries of vouchers not being over-subsidized. Providing more assistance per household than is truly needed to find a decent, safe affordable housing unit means fewer total households can be assisted. It is through these payment standards that the balance is established.

The approach the Department has taken in setting the payment standards is by evaluating the HUD released FMRs against HUD's Small Area FMRs (SAFMRs), where available. SAFMRs were

created by HUD, in response to increasing demand for more localized measures of rents, and are published at the ZIP code level for all metro areas; not all areas served by TDHCA have published SAFMRs. HUD agrees that PHAs can use the SAFMRs as a guide to setting their payment standards, so long as the payment standards still remain within the basic range (90%-110%) of the HUD published FMRs. By using the SAFMRs as a benchmark, clients are provided with access to a broader range of neighborhoods, thus allowing them the choice to move into areas with more employment, transportation and educational opportunities. HUD also considers the impact that the use of Small Area FMRs may have when payment standards can be reduced (to below 100% of the FMR) to prevent undue subsidy in lower-rent neighborhoods.

The Department has authority in 34 counties where it is required to set the payment standard. Staff has compared the counties in its jurisdiction to SAFMRs, when available, to generate recommended payment standards. Additionally, HUD requires that PHAs managing programs in the Dallas, TX HUD Metropolitan Fair Market Rent Area (FMR Area), which the Department does, utilize its published SAFMR instead of FMRs. HUD also allows PHAs managing programs in the San Antonio-New Braunfels, TX FMR Area and Fort Worth-Arlington, TX FMR Area to adopt SAFMR for these areas, and the Department is proposing to do so.

It should be noted that some ZIP codes cross county lines; HUD generates one SAFMR for that ZIP code, but because the FMRs for each county may vary, the resulting payment standard may be different in one part of the ZIP code than in another, based on the following analysis being applied.

For 2020, staff recommends establishing the payment standard as follows:

- For ZIP codes in which the FMR falls below the SAFMR by more than 10%, staff adjusted the payment standard up to 105% of FMR. These standards are identified in red in the table in Exhibit A.

- For ZIP codes in which the FMR falls above the SAFMR by more than 10%, staff adjusted the payment standard down to 95% of FMR. These standards are identified in green in the table in Exhibit A.

- For ZIP codes in which the FMR falls between 90% to 110% of the SAFMR, staff set the payment standard at 97% of the FMR. These areas are identified in white in the table in Exhibit A.

- For ZIP codes in which no SAFMR is available by HUD, the HUD FMR was utilized at 100% of FMR. These areas are identified in gray in the table in Exhibit A.

- For counties within HUD's Dallas Metro FMR Area, Fort Worth-Arlington FMR Area or the San Antonio-New Braunfels Metro FMR Area, the Small Area FMRs are used at 100% of the SAFMR. These are identified in blue in the table in Exhibit A.

- For one ZIP code in Galveston County (77518), 108% of the SAFMR was used because data from the Department's current voucher holders indicates that the SAFMRs were

significantly lower than the average rent. These are identified in orange in the table in Exhibit A.

- For one ZIP code in Galveston County (77539), 110% of the SAFMR was used because data from the Department's current voucher holders indicates that the SAFMRs were significantly lower than the average rent. These are identified in purple in the table in in Exhibit A.

- For one ZIP code in Galveston County (77573), 106% of the SAFMR was used because data from the Department's current voucher holders indicates that the SAFMRs were significantly lower than the average rent. These are identified in olive in the table in Exhibit A.

- For one ZIP code in Kendall County (78013), 102% of the SAFMR was used because data from the Department's current voucher holders indicates that the SAFMRs were significantly lower than the average rent. These are identified in mauve in the table in Exhibit A.

These new payment standards will become effective on January 1, 2020, and will be applied at the first annual reexamination following the effective date of the increase in the payment standard. This will affect the tenant upon a subsequent change to the Housing Assistance Payment (HAP) contract such as relocating to a new unit or a change in the family's household composition. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15% for each extra bedroom to the four-bedroom FMR. If a zip code is not reflected in the attached list, but is within the Department's jurisdiction, the payment standard will be 97% of the FMR established for the county in which the property resides, unless the zip code is in one of the counties in the San Antonio-New Braunfels, TX FMR Area or the Fort Worth-Arlington, TX FMR Area. In those exceptions, the payment standard will be 100% of the FMR in accordance with HUD requirements for these Metropolitan Statistical Areas, as indicated above. Household and property owners are being given notice at the date of this posting, approximately 30 days prior to the change.

Staff recommends adopting these Payment Standards because they allow current tenants continued affordability in the units they have selected and help new tenants find decent, safe, sanitary, and affordable units. In the case of the three ZIP codes in Galveston County, staff believes that the current posted FMRs are reflective of the reality on the ground in these areas. By utilizing a Payment Standard between 106% to 110% of the FMR in these three ZIP codes, staff estimates that the number of households for whom the current payment standard fails to cover the contract rent will be significantly reduced. Additionally, this change in the Payment Standard of these three ZIP codes will reduce the average deficit between the current proposed Payment Standard and the contract rent from more than $189 to $34. The attached table in Exhibit A details the Department's recommended 2020 Payment Standards.

For areas outside of these 34 counties, served by the Department's Project Access program, the Department will adopt the payment standards in use by the applicable PHA for its Housing Choice Voucher program, unless that payment standard falls outside the range the Department is permitted by HUD to adopt, in which case the Department will adopt the numerical standard

that is closest to the amount utilized by the applicable PHA. If there is no applicable PHA in the area, the Department will use 100% of the FMR, or 100% of the SAFMR (if in an area required by HUD to use the SAFMR).

The Department's Project-Based VASH vouchers, currently only operated at Freedom's Path at Kerrville, will utilize 100% of the FMR for Kerr County.

These Payment Standards are proposed based on HUD's publication of FMRs and SAFMRs in the Federal Register on August 30, 2019. If any 2020 FMR or SAFMR changes are subsequently adopted by HUD, the Department will use HUD's revised FMR or SAFMR, but will leave the payment standard rate as that adopted in this board action. If needed, a utility allowance will be established.

Legend
0 = Gray = Zip Codes with no SAFMR available. 100% FMR
1 = Red = FMR < 90% SAFMR. 105% FMR
2 = Green = FMR > 110% SAFMR. 95% FMR
3 = White = SAFMR between 90% and 110% FMR. 97% FMR
4 = Blue = San Antonio, Dallas, Fort Worth MSA. 100% SAFMR
5 = Orange = Galveston 77518, 108% of FMR
6 = Purple = Galveston 77539, 110% of FMR (Rounded down to stay within basic range)
7 = Olive = Galveston 77573, 106% of FMR
8 = Mauve = Kendall 78013, 102% of SAFMR

Zip Codes Spanning Multiple Counties Highlighted in Yellow

Atascosa

HUD FMR		565	683	845	1053	1283
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Atascosa	78005	510	610	770	980	1170
Atascosa	78008	570	690	850	1060	1290
Atascosa	78011	540	650	810	1010	1230
Atascosa	78012	660	790	980	1220	1490
Atascosa	78026	670	810	1000	1250	1520
Atascosa	78050	610	730	900	1120	1370
Atascosa	78052	480	570	720	940	1130
Atascosa	78064	640	770	950	1180	1440
Atascosa	78065	510	590	770	980	1140
Atascosa	78069	490	590	730	940	1130
Atascosa	78073	530	650	800	1040	1270
Atascosa	78113	650	780	970	1250	1540
Atascosa	78114	630	770	950	1240	1530
Atascosa	78118	570	690	850	1060	1290
Atascosa	78264	700	840	1040	1350	1670
Atascosa	78021	565	683	845	1053	1283
Atascosa	78002	590	720	890	1160	1430
Austin						
HUD FMR		722	793	961	1198	1687
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Austin	77418	700	769	932	1162	1636
Austin	77426	700	769	932	1162	1636
Austin	77452	722	793	961	1198	1687
Austin	77473	758	833	1009	1258	1771
Austin	77474	700	769	932	1162	1636
Austin	77485	700	769	932	1258	1636

Austin	77833	700	769	932	1162	1636
Austin	77835	700	769	932	1162	1636
Austin	78931	700	769	932	1162	1636
Austin	78933	700	769	932	1162	1636
Austin	78940	700	753	932	1162	1636
Austin	78944	700	769	932	1162	1636
Austin	78950	700	769	1009	1258	1771
Austin	78954	700	769	932	1162	1636
Bandera						
HUD FMR		702	851	1051	1372	1691
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Bandera	78003	680	820	1020	1330	1640
Bandera	78010	650	790	970	1270	1560
Bandera	78023	960	1160	1440	1870	2310
Bandera	78055	640	780	960	1250	1540
Bandera	78063	640	780	960	1250	1540
Bandera	78884	480	580	720	940	1160
Bandera	78885	650	790	970	1270	1560
Bandera	78883	650	790	970	1270	1560
Bosque						
HUD FMR		529	542	714	890	1010
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Bosque	76043	555	569	750	935	1061
Bosque	76457	529	542	714	890	1010
Bosque	76633	555	569	750	935	1061
Bosque	76634	555	569	750	935	1061
Bosque	76637	529	542	714	890	1010
Bosque	76649	529	542	714	890	1010
Bosque	76652	529	542	714	890	1010
Bosque	76665	529	542	714	890	1010
Bosque	76671	529	542	714	890	1010
Bosque	76689	513	526	693	935	1061
Bosque	76690	555	569	750	935	1061
Bosque	76528	513	526	693	935	1061
Caldwell						
HUD FMR		988	1134	1356	1763	2128
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Caldwell	78610	958	1100	1315	1710	2064
Caldwell	78616	939	1077	1288	1675	2022
Caldwell	78622	939	1077	1288	1675	2022

Caldwell	78632	939	1077	1288	1675	2022
Caldwell	78640	1037	1191	1424	1851	2234
Caldwell	78644	939	1077	1288	1675	2022
Caldwell	78648	939	1077	1288	1675	2022
Caldwell	78655	939	1077	1288	1675	2022
Caldwell	78656	939	1077	1288	1675	2022
Caldwell	78661	939	1077	1288	1675	2022
Caldwell	78662	939	1077	1288	1675	2022
Caldwell	78666	939	1077	1288	1675	2022
Caldwell	78953	939	1077	1288	1675	2022
Caldwell	78959	939	1077	1288	1675	2022
Chambers						
HUD FMR		826	908	1096	1485	1878
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Chambers	77514	785	863	1063	1440	1822
Chambers	77521	785	863	1063	1440	1822
Chambers	77523	801	881	1063	1440	1822
Chambers	77535	785	863	1063	1440	1822
Chambers	77560	785	863	1063	1440	1822
Chambers	77575	785	863	1063	1440	1822
Chambers	77580	801	881	1063	1440	1822
Chambers	77597	785	863	1063	1440	1822
Chambers	77661	785	863	1063	1440	1822
Chambers	77665	785	863	1063	1440	1822
Colorado						
HUD FMR		529	542	714	1030	1145
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Colorado	77412	529	542	714	1030	1145
Colorado	77434	529	542	714	1030	1145
Colorado	77435	555	569	750	1082	1202
Colorado	77442	529	542	714	1030	1145
Colorado	77460	529	542	714	1030	1145
Colorado	77470	529	542	714	1030	1145
Colorado	77474	555	569	750	1082	1202
Colorado	77475	529	542	714	1030	1145
Colorado	78933	555	569	750	1082	1202
Colorado	78934	529	542	714	1030	1145
Colorado	78935	529	542	714	1030	1145
Colorado	78940	555	569	750	999	1202
Colorado	78943	529	542	714	1030	1145

Colorado	78950	555	569	750	1082	1202
Colorado	78951	529	542	714	1030	1145
Colorado	78956	529	542	714	1030	1145
Colorado	78962	529	542	714	1030	1145
Colorado	77964	529	542	714	1030	1145
Comal						
HUD FMR		702	851	1051	1372	1691
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Comal	78006	820	990	1230	1540	2140
Comal	78015	1070	1300	1600	2060	2670
Comal	78070	930	1130	1400	1830	2250
Comal	78108	1050	1280	1580	2060	2540
Comal	78130	760	920	1140	1490	1830
Comal	78131	790	960	1180	1540	1900
Comal	78132	750	910	1120	1460	1800
Comal	78133	730	880	1090	1420	1750
Comal	78135	702	851	1051	1372	1691
Comal	78154	850	1030	1270	1660	2040
Comal	78163	850	1030	1270	1660	2040
Comal	78266	1050	1280	1580	2060	2540
Comal	78606	590	720	880	1150	1440
Comal	78623	840	990	1210	1580	1930
Comal	78666	800	920	1110	1440	1740
Comal	78676	1010	1160	1390	1810	2180
Comanche						
HUD FMR		529	627	714	1030	1074
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Comanche	76432	529	627	714	1030	1074
Comanche	76436	529	627	714	1030	1074
Comanche	76442	529	627	714	1030	1074
Comanche	76444	529	627	714	1030	1074
Comanche	76445	529	627	714	1030	1074
Comanche	76446	529	627	714	1030	1074
Comanche	76452	529	627	714	1030	1074
Comanche	76454	529	627	714	1030	1074
Comanche	76455	529	627	714	1030	1074
Comanche	76468	529	627	714	1030	1074
Comanche	76474	529	627	714	1030	1074
Comanche	76890	529	627	714	1030	1074
Comanche	76471	529	627	714	1030	1074
Crockett						

HUD FMR		529	570	714	948	1074
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Crockett	76943	529	570	714	948	1074
Denton						
HUD FMR		957	1093	1314	1727	2262
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Denton	75007	1050	1200	1440	1890	2480
Denton	75009	1030	1180	1420	1870	2440
Denton	75010	1160	1320	1590	2090	2740
Denton	75011	950	1080	1300	1710	2230
Denton	75019	1180	1350	1620	2130	2790
Denton	75022	1430	1640	1970	2590	3390
Denton	75024	1440	1640	1970	2590	3390
Denton	75027	1010	1150	1380	1810	2380
Denton	75028	1440	1640	1970	2590	3390
Denton	75029	1010	1150	1380	1810	2380
Denton	75033	1030	1180	1410	1860	2430
Denton	75034	1270	1450	1740	2290	2990
Denton	75035	1440	1640	1970	2590	3390
Denton	75036	1010	1150	1380	1810	2380
Denton	75056	1220	1390	1670	2190	2870
Denton	75057	1060	1210	1460	1920	2510
Denton	75065	1030	1170	1410	1850	2430
Denton	75067	1070	1220	1470	1930	2530
Denton	75068	1410	1610	1940	2550	3340
Denton	75077	1200	1370	1650	2170	2840
Denton	75078	1230	1410	1690	2220	2910
Denton	75093	1310	1500	1800	2370	3100
Denton	75287	1090	1240	1490	1960	2560
Denton	76052	1250	1400	1720	2320	2910
Denton	76078	1050	1090	1250	1570	1800
Denton	76092	1140	1290	1580	2110	2690
Denton	76177	1160	1310	1610	2170	2730
Denton	76201	900	1020	1230	1620	2120
Denton	76202	1010	1150	1380	1810	2380
Denton	76203	957	1093	1314	1727	2262
Denton	76204	1010	1150	1380	1810	2380
Denton	76205	970	1110	1330	1750	2290
Denton	76206	1010	1150	1380	1810	2380
Denton	76207	1010	1160	1390	1830	2390
Denton	76208	1010	1160	1390	1830	2390

Denton	76209	850	970	1170	1540	2010
Denton	76210	1170	1330	1600	2100	2750
Denton	76226	1440	1640	1970	2590	3390
Denton	76227	1440	1640	1970	2590	3390
Denton	76234	940	970	1100	1380	1550
Denton	76247	1170	1340	1610	2120	2770
Denton	76249	1110	1270	1530	2010	2630
Denton	76258	970	1110	1340	1760	2300
Denton	76259	1020	1160	1400	1830	2400
Denton	76262	1050	1190	1440	1910	2470
Denton	76266	1030	1180	1420	1870	2440
Denton	76272	1010	1150	1380	1810	2380
Ellis						
HUD FMR		957	1093	1314	1727	2262
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Ellis	75101	790	910	1090	1430	1880
Ellis	75104	1180	1350	1620	2130	2790
Ellis	75119	820	940	1130	1490	1940
Ellis	75125	890	1020	1220	1600	2100
Ellis	75146	900	1020	1230	1620	2120
Ellis	75152	890	1020	1220	1600	2100
Ellis	75154	1020	1160	1400	1840	2410
Ellis	75165	890	1020	1220	1600	2100
Ellis	75167	1340	1530	1840	2420	3170
Ellis	75168	910	1040	1250	1640	2150
Ellis	76041	890	1010	1210	1600	2090
Ellis	76050	690	780	960	1300	1630
Ellis	76055	910	1040	1250	1640	2150
Ellis	76063	1060	1190	1470	1990	2500
Ellis	76064	740	840	1010	1330	1740
Ellis	76065	1030	1170	1410	1850	2430
Ellis	76084	750	840	1040	1400	1770
Ellis	76623	740	860	1050	1400	1810
Ellis	76626	910	1040	1250	1640	2150
Ellis	76641	910	1040	1250	1640	2150
Ellis	76651	670	770	920	1210	1580
Ellis	76670	850	970	1160	1520	2000
Erath						
HUD FMR		650	654	790	1066	1070
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR

Erath	76401	650	654	790	1066	1070
Erath	76402	650	654	790	1066	1070
Erath	76433	631	687	830	1119	1124
Erath	76436	650	654	790	1066	1070
Erath	76444	650	654	790	1066	1070
Erath	76445	650	654	790	1066	1070
Erath	76446	650	654	790	1066	1070
Erath	76453	650	654	790	1066	1070
Erath	76457	650	654	790	1066	1070
Erath	76461	650	654	790	1066	1070
Erath	76462	683	687	830	1119	1124
Erath	76463	650	654	790	1066	1070
Erath	76465	650	654	790	1066	1070
Erath	76649	650	654	790	1066	1070
Falls						
HUD FMR		517	542	714	916	1101
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Falls	76519	501	526	693	962	1156
Falls	76524	543	569	750	962	1156
Falls	76570	543	569	750	962	1156
Falls	76579	543	526	693	962	1156
Falls	76629	543	569	750	962	1156
Falls	76630	543	569	750	962	1156
Falls	76632	543	569	750	962	1156
Falls	76653	543	569	750	962	1156
Falls	76655	543	569	750	962	1156
Falls	76656	501	526	693	962	1156
Falls	76661	501	526	693	889	1068
Falls	76664	543	569	750	962	1156
Falls	76680	501	526	693	889	1068
Falls	76682	543	569	750	962	1156
Falls	76685	543	569	750	962	1156
Falls	76706	543	569	750	962	1156
Fort Bend						
HUD FMR		826	908	1096	1485	1878
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Fort Bend	77031	785	863	1063	1440	1822
Fort Bend	77053	867	953	1151	1559	1972
Fort Bend	77082	867	953	1151	1559	1972
Fort Bend	77083	801	881	1063	1440	1822
Fort Bend	77085	801	881	1063	1440	1822
Fort Bend	77099	801	881	1063	1440	1822

Fort Bend	77406	867	953	1151	1559	1972
Fort Bend	77407	867	953	1151	1559	1972
Fort Bend	77417	785	881	1063	1440	1822
Fort Bend	77420	867	953	1151	1559	1972
Fort Bend	77423	785	863	1063	1440	1822
Fort Bend	77430	801	881	1063	1440	1822
Fort Bend	77435	801	881	1063	1440	1822
Fort Bend	77441	785	863	1063	1440	1822
Fort Bend	77444	801	881	1063	1440	1822
Fort Bend	77450	867	953	1151	1559	1972
Fort Bend	77451	867	953	1151	1559	1972
Fort Bend	77459	867	953	1151	1559	1972
Fort Bend	77461	785	863	1063	1440	1822
Fort Bend	77464	867	953	1151	1559	1972
Fort Bend	77469	801	881	1063	1440	1822
Fort Bend	77471	801	881	1063	1440	1822
Fort Bend	77476	867	953	1151	1559	1972
Fort Bend	77477	867	953	1151	1559	1972
Fort Bend	77478	867	953	1151	1559	1972
Fort Bend	77479	867	953	1151	1559	1972
Fort Bend	77481	867	953	1151	1559	1972
Fort Bend	77485	785	863	1063	1440	1822
Fort Bend	77487	867	953	1151	1559	1972
Fort Bend	77489	867	953	1151	1559	1972
Fort Bend	77493	867	953	1151	1559	1972
Fort Bend	77494	867	953	1151	1559	1972
Fort Bend	77496	867	953	1151	1559	1972
Fort Bend	77497	867	953	1151	1559	1972
Fort Bend	77498	867	953	1151	1559	1972
Fort Bend	77545	867	953	1151	1559	1972
Fort Bend	77583	785	881	1063	1440	1822
Fort Bend	77584	867	953	1151	1559	1972
Freestone						
HUD FMR		529	556	714	1030	1254
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Freestone	75831	529	556	714	1030	1254
Freestone	75838	529	556	714	1030	1254
Freestone	75840	529	556	714	1030	1254
Freestone	75848	529	556	714	1030	1254
Freestone	75855	529	556	714	1030	1254
Freestone	75859	529	556	714	1030	1254
Freestone	75860	529	556	714	1030	1254

Freestone	76667	529	556	714	1030	1254
Freestone	76693	529	556	714	1030	1254
Frio						
HUD FMR		537	627	714	952	1107
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Frio	78005	521	608	693	923	1074
Frio	78016	521	608	693	923	1162
Frio	78017	537	627	714	952	1107
Frio	78057	521	608	750	1000	1162
Frio	78061	537	627	714	952	1107
Galveston						
HUD FMR		826	908	1096	1485	1878
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Galveston	77510	801	881	1063	1440	1822
Galveston	77511	785	881	1063	1440	1822
Galveston	77517	801	881	1063	1440	1822
Galveston	77518	892	981	1184	1604	2028
Galveston	77539	908	998	1205	1633	2065
Galveston	77546	867	953	1151	1559	1972
Galveston	77549	801	881	1063	1440	1822
Galveston	77550	801	881	1063	1440	1822
Galveston	77551	801	881	1063	1440	1822
Galveston	77552	801	881	1063	1440	1822
Galveston	77553	801	881	1063	1440	1822
Galveston	77554	801	881	1063	1440	1822
Galveston	77555	826	908	1096	1485	1878
Galveston	77563	801	881	1063	1440	1822
Galveston	77565	867	953	1151	1559	1972
Galveston	77568	785	863	1063	1440	1822
Galveston	77573	876	962	1162	1574	1991
Galveston	77574	801	881	1063	1440	1822
Galveston	77581	801	953	1063	1440	1822
Galveston	77590	785	863	1063	1440	1822
Galveston	77591	785	881	1063	1440	1822
Galveston	77623	785	863	1063	1440	1822
Galveston	77650	801	881	1063	1440	1822
Gillespie						
HUD FMR		693	710	935	1349	1428
Payment Standard						

County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Gillespie	76856	693	710	935	1349	1428
Gillespie	78028	693	710	935	1349	1428
Gillespie	78058	693	710	935	1349	1428
Gillespie	78618	693	710	935	1349	1428
Gillespie	78624	672	746	982	1309	1499
Gillespie	78631	693	710	935	1349	1428
Gillespie	78671	693	710	935	1349	1428
Gillespie	78675	693	710	935	1349	1428
Grimes						
HUD FMR		529	542	714	981	1074
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Grimes	77316	555	569	750	1030	1128
Grimes	77356	555	569	750	1030	1128
Grimes	77363	555	569	750	1030	1128
Grimes	77484	555	569	750	1030	1128
Grimes	77830	529	542	714	981	1074
Grimes	77831	529	542	714	981	1074
Grimes	77861	529	542	714	981	1074
Grimes	77868	555	569	750	1030	1128
Grimes	77872	529	542	714	981	1074
Grimes	77873	555	569	750	1030	1128
Grimes	77875	529	542	714	981	1074
Grimes	77876	529	542	714	981	1074
Guadalupe						
HUD FMR		702	851	1051	1372	1691
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Guadalupe	78108	1050	1280	1580	2060	2540
Guadalupe	78115	750	910	1120	1460	1800
Guadalupe	78121	770	940	1160	1510	1870
Guadalupe	78123	570	700	860	1120	1380
Guadalupe	78124	650	790	980	1280	1580
Guadalupe	78130	760	920	1140	1490	1830
Guadalupe	78132	750	910	1120	1460	1800
Guadalupe	78140	560	680	840	1100	1350
Guadalupe	78154	850	1030	1270	1660	2040
Guadalupe	78155	630	760	940	1230	1510
Guadalupe	78156	750	910	1120	1460	1800
Guadalupe	78638	650	760	930	1210	1470
Guadalupe	78648	590	720	890	1190	1430

Guadalupe	78655	730	850	1020	1330	1620
Guadalupe	78666	800	920	1110	1440	1740
Guadalupe	78670	650	790	970	1270	1560
Johnson						
HUD FMR		838	945	1165	1579	1980
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	76009	810	910	1120	1520	1900
Johnson	76028	900	1010	1250	1690	2120
Johnson	76031	720	810	1000	1360	1700
Johnson	76033	760	850	1050	1420	1780
Johnson	76035	980	1120	1360	1810	2270
Johnson	76036	960	1090	1340	1820	2280
Johnson	76044	880	990	1220	1650	2070
Johnson	76049	830	960	1140	1450	1810
Johnson	76050	690	780	960	1300	1630
Johnson	76058	750	840	1040	1410	1770
Johnson	76059	760	850	1050	1420	1780
Johnson	76061	860	960	1190	1610	2020
Johnson	76063	1060	1190	1470	1990	2500
Johnson	76070	710	800	970	1330	1640
Johnson	76084	750	840	1040	1400	1770
Johnson	76093	770	870	1070	1450	1820
Johnson	76097	810	920	1130	1530	1920
Karnes						
HUD FMR		511	595	784	977	1179
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Karnes	78062	511	595	784	977	1179
Karnes	78111	511	595	784	977	1179
Karnes	78113	537	625	823	1026	1238
Karnes	78116	511	595	784	977	1179
Karnes	78117	511	595	784	977	1179
Karnes	78118	537	625	760	948	1144
Karnes	78119	537	625	760	1026	1144
Karnes	78144	511	595	784	977	1179
Karnes	78151	511	595	784	977	1179
Kendall						
HUD FMR		819	991	1224	1525	2149
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Kendall	78004	860	1040	1290	1630	2180

Kendall	78006	820	990	1230	1540	2140
Kendall	78013	734	908	1122	1408	1969
Kendall	78015	1070	1300	1600	2060	2670
Kendall	78027	760	920	1140	1470	1930
Kendall	78070	930	1130	1400	1830	2250
Kendall	78074	820	990	1220	1520	2140
Kendall	78606	590	720	880	1150	1440
Kendall	78624	720	890	1100	1380	1930
Kerr						
HUD FMR		681	701	798	1151	1236
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Kerr	76849	681	701	798	1151	1236
Kerr	78003	661	736	838	1209	1298
Kerr	78010	661	736	838	1116	1298
Kerr	78013	661	736	838	1209	1298
Kerr	78024	681	701	798	1151	1236
Kerr	78025	681	701	798	1151	1236
Kerr	78028	681	701	798	1151	1236
Kerr	78029	681	701	798	1151	1236
Kerr	78055	661	736	838	1116	1298
Kerr	78058	681	701	798	1151	1236
Kerr	78063	661	736	838	1116	1298
Kerr	78624	661	736	838	1209	1298
Kerr	78631	681	701	798	1151	1236
Lee						
HUD FMR		604	725	827	1091	1244
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Lee	76578	634	761	868	1146	1306
Lee	77853	604	725	827	1091	1244
Lee	78621	634	761	868	1146	1306
Lee	78650	634	761	868	1146	1306
Lee	78659	634	761	868	1146	1306
Lee	78942	634	761	868	1146	1306
Lee	78946	604	725	827	1091	1244
Lee	78947	604	725	827	1091	1244
Lee	78948	604	725	827	1091	1244
Lee	78945	634	761	868	1146	1306
Llano						
HUD FMR		609	623	821	1023	1235
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR

Llano	76831	609	623	821	1023	1235
Llano	76885	609	623	821	1023	1235
Llano	78607	609	623	821	1023	1235
Llano	78609	609	623	821	1023	1235
Llano	78611	609	623	821	1023	1235
Llano	78624	639	654	862	1074	1297
Llano	78639	609	623	821	1023	1235
Llano	78643	609	623	821	1023	1235
Llano	78657	609	623	821	1023	1235
Llano	78672	609	623	821	1023	1235
McLennan						
HUD FMR		649	692	900	1216	1393
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
McLennan	76524	630	671	873	1180	1351
McLennan	76557	630	671	873	1180	1351
McLennan	76561	617	657	855	1155	1323
McLennan	76621	630	671	873	1180	1351
McLennan	76622	630	671	873	1180	1351
McLennan	76624	630	671	873	1180	1351
McLennan	76630	630	671	873	1180	1351
McLennan	76633	681	727	945	1277	1463
McLennan	76638	681	727	945	1277	1463
McLennan	76640	630	671	873	1180	1351
McLennan	76643	681	727	945	1277	1463
McLennan	76654	630	671	873	1180	1351
McLennan	76655	681	727	945	1277	1463
McLennan	76657	630	671	873	1180	1351
McLennan	76664	630	671	873	1180	1351
McLennan	76673	630	671	873	1180	1351
McLennan	76682	630	671	873	1180	1351
McLennan	76684	649	692	900	1216	1393
McLennan	76689	617	657	855	1155	1323
McLennan	76691	617	657	855	1155	1323
McLennan	76701	630	671	873	1180	1351
McLennan	76702	630	671	873	1180	1351
McLennan	76703	630	671	873	1180	1351
McLennan	76704	617	657	855	1155	1323
McLennan	76705	617	657	855	1155	1323
McLennan	76706	630	671	873	1180	1351
McLennan	76707	630	671	873	1180	1351
McLennan	76708	630	671	873	1180	1351
McLennan	76710	630	671	873	1180	1351

McLennan	76711	630	671	873	1180	1351
McLennan	76712	681	727	945	1277	1463
McLennan	76714	630	671	873	1180	1351
McLennan	76716	630	671	873	1180	1351
McLennan	76797	649	692	900	1216	1393
McLennan	76798	630	671	873	1180	1351
McLennan	76799	649	692	900	1216	1393
McMullen						
HUD FMR		549	592	741	984	1114
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
McMullen	78007	549	592	741	984	1114
McMullen	78026	576	622	778	1033	1170
McMullen	78072	549	592	741	984	1114
McMullen	78071	549	592	741	984	1114
Medina						
HUD FMR		545	618	814	1073	1312
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Medina	78003	680	820	1020	1330	1640
Medina	78009	580	660	870	1150	1400
Medina	78016	510	580	770	1050	1260
Medina	78023	960	1160	1440	1870	2310
Medina	78039	480	570	720	950	1160
Medina	78052	480	570	720	940	1130
Medina	78056	710	840	1060	1380	1700
Medina	78057	540	620	810	1070	1310
Medina	78059	480	550	730	990	1190
Medina	78066	760	900	1140	1490	1830
Medina	78253	1020	1240	1530	2000	2460
Medina	78254	930	1130	1400	1830	2250
Medina	78850	540	620	810	1070	1310
Medina	78861	580	650	860	1130	1390
Medina	78884	480	580	720	940	1160
Medina	78886	540	620	810	1070	1310
Waller						
HUD FMR		826	908	1096	1485	1878
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Waller	77355	801	881	1063	1440	1822
Waller	77363	785	863	1063	1440	1822
Waller	77423	785	863	1063	1440	1822

Waller	77445	785	863	1063	1440	1822
Waller	77446	801	881	1063	1440	1822
Waller	77447	867	953	1151	1559	1972
Waller	77466	801	881	1063	1440	1822
Waller	77484	785	863	1063	1440	1822
Waller	77493	867	953	1151	1559	1972
Waller	77494	867	953	1151	1559	1972
Waller	77868	785	863	1063	1440	1822
Wharton						
HUD FMR		612	614	717	933	1259
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Wharton	77420	643	645	753	980	1322
Wharton	77432	612	614	717	933	1259
Wharton	77434	612	614	717	933	1259
Wharton	77435	643	645	753	980	1322
Wharton	77436	612	614	717	933	1259
Wharton	77437	612	614	717	933	1259
Wharton	77443	612	614	717	933	1259
Wharton	77448	612	614	717	933	1259
Wharton	77453	612	614	717	933	1259
Wharton	77454	612	614	717	933	1259
Wharton	77455	612	614	717	933	1259
Wharton	77467	612	614	717	933	1259
Wharton	77485	643	645	753	980	1322
Wharton	77488	612	614	717	933	1259
Wilson						
HUD FMR		702	851	1051	1372	1691
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Wilson	78064	640	770	950	1180	1440
Wilson	78101	730	880	1090	1420	1750
Wilson	78112	650	790	970	1270	1560
Wilson	78113	650	780	970	1250	1540
Wilson	78114	630	770	950	1240	1530
Wilson	78117	702	851	1051	1372	1691
Wilson	78121	770	940	1160	1510	1870
Wilson	78140	560	680	840	1100	1350
Wilson	78143	670	810	1000	1300	1610
Wilson	78147	570	700	860	1120	1380
Wilson	78152	600	730	900	1170	1450
Wilson	78160	700	850	1050	1370	1690
Wilson	78161	730	900	1110	1440	1780

Wilson	78223	620	750	930	1210	1500
Wise						
HUD FMR		902	929	1057	1317	1482
Payment Standard						
County	Zip Code	0 BR	1 BR	2 BR	3 BR	4 BR
Wise	76020	770	870	1070	1450	1810
Wise	76023	940	970	1100	1380	1560
Wise	76052	1250	1400	1720	2320	2910
Wise	76071	970	1000	1150	1430	1630
Wise	76073	870	900	1020	1270	1430
Wise	76078	1050	1090	1250	1570	1800
Wise	76082	800	890	1090	1460	1810
Wise	76225	850	870	990	1230	1390
Wise	76234	940	970	1100	1380	1550
Wise	76246	902	929	1057	1317	1482
Wise	76247	1170	1340	1610	2120	2770
Wise	76249	1110	1270	1530	2010	2630
Wise	76259	1020	1160	1400	1830	2400
Wise	76267	902	929	1057	1317	1482
Wise	76270	720	780	920	1180	1380
Wise	76426	840	860	980	1220	1370
Wise	76431	850	880	1000	1250	1400
Wise	76458	900	930	1060	1320	1490
Wise	76487	820	900	1090	1460	1790
Wise	76239	902	929	1057	1317	1482

1f

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family General Set-Aside Notice of Funding Availability and publication of the NOFA in the *Texas Register.*

RECOMMENDED ACTION

WHEREAS, the Board of the Texas Department of Housing and Community Affairs (TDHCA or the Department) has previously authorized the submission of 2019 Consolidated Plan One-Year Action Plan (OYAP), which identified funding percentages and amounts for each of its HOME Investment Partnerships Program (HOME) single family activities;

WHEREAS, the U.S. Department of Housing and Urban Development's (HUD) has approved the OYAP and is releasing the State of Texas 2019 allocation of funds to TDHCA for the HOME Program; and

WHEREAS, in compliance with the OYAP the Department now wishes to release a Notice of Funding Availability (NOFA) for HOME Program Single Family General Set-Aside activities in the amount of $16,991,183;

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 post on the Department's website and to publish a notification in the *Texas Register*, a 2019 HOME Single Family General Set-Aside NOFA for funding in the amount of approximately $16,991,183, to be released into the Reservation System, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

BACKGROUND

HUD's State of Texas 2019 allocation to TDHCA for the HOME Program is approximately $31,556,262, and the grant agreement was received on July 12, 2019. TDHCA has programmed these funds for various uses in accordance with the HUD-approved 2019 Consolidated Plan One-Year Action Plan (OYAP). Staff is proposing to release a HOME Single Family General Set-Aside NOFA that includes $10,793,630 in funds for Homeowner Rehabilitation Assistance (HRA), $5,398,616 in funds for Tenant-Based Rental Assistance (TBRA), and $798,937 in funds for Homebuyer Assistance (HBA). A total of $16,991,183 of the 2019

HOME allocation will be made available to single family HOME Program Reservation System Administrators for these HOME Single Family General Set-Aside activities.

These set-aside funds are subject to the Regional Allocation Formula, and will be set-aside by region, subregion, and activity for a period of time as detailed in the NOFA. Any funds not reserved after June 16, 2020 at 5:00 p.m. Austin local time may be reprogrammed in a manner that is consistent with the OYAP.

The availability and use of these funds are subject to state and federal regulations including, but not limited to Texas Administrative Code in Title 10 Part 1, Chapter 1 Administration, Chapter 2, Enforcement, Chapter 20, Single Family Umbrella Rule, Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, and Chapter 23, the Single Family HOME Program, as amended (HOME Program Rule), and the federal regulation governing the HOME Program at 24 CFR Part 92, as amended (HOME Final Rule).

The 2019 HOME Single Family Programs General Set-Aside Reservation System NOFA was developed in accordance with the Single Family Umbrella and HOME Program Rules, and the HOME Final Rule. Administrators will access the funds available under this NOFA either through existing reservation agreements or by applying for a reservation system participation agreement. Applications for reservation system participation agreements are accepted on an ongoing basis. Approval for participation in the Reservation System is not a guarantee of funding availability.

HOME Investment Partnerships Program ("HOME")
CFDA# 14.239

2019 HOME Investment Partnerships Program Single Family General Set-Aside Notice of Funding Availability

1) Summary.

a) The Texas Department of Housing and Community Affairs (TDHCA or the Department) announces a NOFA of approximately $16,991,183 in HOME funds for single family housing programs under the general set-aside utilizing a reservation system. These funds will be made available to HOME Reservation System Participants after a Reservation System Participation (RSP) Agreement has been ratified.

b) The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of application review or contract execution (as applicable), Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program, , (State HOME Rules); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to, 24 CFR Part 58 for environmental requirements, 2 CFR Part 200 for Uniform Administrative Requirements, 24 CFR §135.38 for Section 3 requirements, 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules), and for units of government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

c) Capitalized terms in this NOFA have the meanings defined herein, or as defined in State HOME Rules or the Federal HOME Rules.

d) If changes to the RSP are required during the RSP term due to required changes in Federal or State law, the Department may initiate an amendment process to ensure compliance.

2) Source of Funds. Funds totaling $16,991,183 are made available for single family activities through the Department's 2019 annual HOME allocation from the U.S. Department of Housing and Urban Development (HUD). The Department, in its sole discretion, may also release unallocated HOME

funds, deobligated funds, Program Income, and funds reallocated from undersubscribed set-asides, as allowable and available, under this NOFA. The Department, in its sole discretion, also reserves the right to cancel or modify the amount available in this NOFA.

3) Eligible Activity Types. The following activity types are eligible uses of general Set-Aside HOME funds under this NOFA:

a) **Homeowner Rehabilitation Assistance (HRA)**. HRA provides funds for the rehabilitation, reconstruction, or new construction of a single family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 - 23.32.

b) **Tenant-Based Rental Assistance (TBRA)**. TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.

c) **Homebuyer Assistance (HBA)**. HBA provides down payment and closing cost assistance, as well as possible rehabilitation assistance for accessibility modifications for eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 - 23.42.

4) Limitation on Funds.

a) Funds will not be eligible for use in a Participating Jurisdiction (PJ).

b) Funding under this NOFA may be made available through the Reservation System to HOME Administrators with active RSP Agreements. Applications to request an RSP Agreement are accepted on an on-going basis. Applicants requesting an RSP Agreement must submit a completed application, required documentation, and associated application materials as detailed in the Application Submission Procedures Manual (ASPM).

c) Each applicant that is granted HOME funds may also be eligible to receive funding for Administrative costs. Funds for Administrative costs cannot exceed 4% of the total project funds committed under the Reservation System.

5) Regional Allocation Formula. In accordance with Tex. Gov't Code §2306.111(d), these funds are subject to the Regional Allocation Formula ("RAF"). Refer to Table 1: Regional Allocation for Homeowner Rehabilitation Assistance (HRA); Table 2: Regional Allocation for Tenant-Based Rental Assistance (TBRA); and Table 3: Regional Allocation for Homebuyer Assistance (HBA), which will also be published on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm.

Table 1: Regional Allocation for Homeowner Rehabilitation Assistance (HRA)			
Region	**Urban Subregion**	**Rural Subregion**	**Total Available in Region**
1	$ 110,434	$ 487,038	$ 597,472
2	$ 99,835	$ 405,162	$ 504,997
3	$ 1,611,846	$ 265,392	$ 1,877,238
4	$ 320,301	$ 709,153	$ 1,029,454
5	$ 179,116	$ 470,866	$ 649,982
6	$ 353,306	$ 228,684	$ 581,990
7	$ 836,309	$ 159,627	$ 995,936
8	$ 358,887	$ 354,785	$ 713,672
9	$ 289,604	$ 253,253	$ 542,857
10	$ 252,530	$ 366,615	$ 619,145
11	$ 278,977	$ 459,920	$ 738,897
12	$ 208,136	$ 419,570	$ 627,706
13	$ 231,661	$ 1,082,623	$ 1,314,284
Total	**$ 5,130,942**	**$ 5,662,688**	**$ 10,793,630**

Table 2: Regional Allocation for Tenant-Based Rental Assistance (TBRA)			
Region	**Urban Subregion**	**Rural Subregion**	**Total Available in Region**
1	$ 55,236	$ 243,600	$ 298,836
2	$ 49,934	$ 202,649	$ 252,583
3	$ 806,192	$ 132,740	$ 938,932
4	$ 160,204	$ 354,695	$ 514,899
5	$ 89,588	$ 235,511	$ 325,099
6	$ 176,712	$ 114,380	$ 291,092
7	$ 418,294	$ 79,840	$ 498,134
8	$ 179,503	$ 177,452	$ 356,955
9	$ 144,850	$ 126,669	$ 271,519
10	$ 126,307	$ 183,369	$ 309,676
11	$ 139,535	$ 230,037	$ 369,572
12	$ 104,103	$ 209,855	$ 313,958
13	$ 115,869	$ 541,492	$ 657,361
Total	**$ 2,566,327**	**$ 2,832,288**	**$ 5,398,616**

Table 3: Regional Allocation for Homebuyer Assistance (HBA)			
Region	**Urban Subregion**	**Rural Subregion**	**Total Available in Region**
1	$ 8,174	$ 36,050	$ 44,224
2	$ 7,390	$ 29,990	$ 37,380
3	$ 119,308	$ 19,644	$ 138,952
4	$ 23,709	$ 52,491	$ 76,200

Table 3: Regional Allocation for Homebuyer Assistance (HBA)			
Region	**Urban Subregion**	**Rural Subregion**	**Total Available in Region**
5	$ 13,258	$ 34,853	$ 48,111
6	$ 26,151	$ 16,927	$ 43,078
7	$ 61,903	$ 11,815	$ 73,718
8	$ 26,565	$ 26,261	$ 52,826
9	$ 21,436	$ 18,746	$ 40,182
10	$ 18,692	$ 27,137	$ 45,829
11	$ 20,650	$ 34,043	$ 54,693
12	$ 15,406	$ 31,056	$ 46,462
13	$ 17,147	$ 80,135	$ 97,282
Total	**$ 379,789**	**$ 419,148**	**$ 798,937**

6) Allocation of Funds.

a) Approximately $16,991,183 in funds are reserved for HOME Single-Family General Set-Aside activities through the HOME Reservation System, in accordance with section 4 of this NOFA and subject to the RAF in accordance with section 5 of this NOFA.

b) Funds will be available under each activity by Uniform State Service Region by sub-region (Rural and Urban) beginning on **Tuesday, December 3, 2019, at the time specified for each activity as described below,** until **Monday, January 6, 2020 at 5:00 p.m. Austin local time**.
   i) Funds will be made available for HRA beginning at 10:00 a.m. Austin local time
   ii) Funds will be made available for TBRA beginning at 10:30 a.m. Austin local time
   iii) Funds will be made available for HBA beginning at 11:00 a.m. Austin local time

c) Remaining funds available within each subregion will be combined and made available by region and activity beginning on **Tuesday, January 7, 2020, at the time specified for each activity as described below**, until **Monday, February 10, 2020 at 5:00 p.m. Austin local time.**
   i) Funds will be made available for HRA beginning at 10:00 a.m. Austin local time
   ii) Funds will be made available for TBRA beginning at 10:30 a.m. Austin local time
   iii) Funds will be made available for HBA beginning at 11:00 a.m. Austin local time

d) Remaining funds available within each region will be combined and made available by activity, in any Uniform State Service Region, beginning on **Tuesday, February 11, 2020, at the time specified for each activity as described below,** until **Wednesday, April 15, 2020 at 5:00 p.m. Austin local time**.
   i) Funds will be made available for HRA beginning at 10:00 a.m. Austin local time
   ii) Funds will be made available for TBRA beginning at 10:30 a.m. Austin local time
   iii) Funds will be made available for HBA beginning at 11:00 a.m. Austin local time

e) On **Thursday, April 16, 2020, at 10:00 a.m. Austin local time,** any funds which have not been requested under 6(c) of this NOFA will be made available in the Reservation System for any General Set-Aside Activity in any Uniform State Service Region. Funds not reserved on or before

Tuesday, June 16, 2020 at 5:00 p.m. may be reprogrammed for use to other HOME activities.

f) Except as limited in this NOFA or by statute, the Department may reprogram funds at any time to the Reservation System, or to administer directly.

g) An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion. Subsequent changes to the timeline or method of release will be published on the Department's website. However, failure to do so will not invalidate reservations that are otherwise made in accordance with this NOFA.

h) Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.

7) Eligible and Ineligible Applicants.

a) Eligible Applicants include Units of General Local Government, Nonprofit Organizations, Public Housing Authorities, Local Mental Health Authorities, and Councils of Government.

b) Applicants are required to familiarize themselves with the Department's certification and debarment policies prior to application submission.

8) Application Submission.

a) The Department will accept applications for the Reservation System on an ongoing basis. **Applications for the Reservation System are to be submitted as an upload to the Department's FTP server in the format requirements detailed in the RSP ASPM.**

b) Applicants must submit a completed Application, required documentation, and associated application materials, as described in this NOFA and as detailed in the RSP ASPM. All scanned copies must be scanned in accordance with the guidance provided in the RSP ASPM.

c) All Application materials including manuals, this NOFA, program guidelines, and applicable HOME rules are available on the Department's website at http://www.tdhca.state.tx.us/home-division/applications.htm. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on Application forms published online at the above reference site provided by the Department which cannot be altered or modified, and must be in final form before they are submitted to the Department.

d) Pursuant to Tex. Gov't Code §2306.147, Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $30 per Application. Payment must be in the form of a check, cashier's check or money order. **Do not send cash.**

e) The Department will waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must request a waiver of the grant application fee in a board resolution authorizing the submittal of the application to the Department, and must include with the application proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

f) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations, and contact the HOME and Homelessness Programs Division for guidance and assistance.

9) Application Selection Process

a) Administrative deficiencies noted during the review of an Application shall be subject to the administrative deficiency process outlined in 10 TAC §23.24.

b) All Applicants will be subject to a Previous Participation Review by the Department as outlined in 10 TAC Chapter 1, Subchapter C.

c) Audit Requirements. All Applicants are subject to the requirements of 10 TAC §1.403 concerning Single Audits.

d) Pursuant to Tex. Gov't Code §2306.1112, the Executive Award and Review Advisory Committee will make recommendations to the Board regarding funding and allocation decisions.

10) Dispute Resolution/Appeal.

a) In accordance with Tex. Gov't Code §2306.082 and 10 TAC §1.17, it is the Department's policy to encourage the use of appropriate alternative dispute resolution ("ADR") procedures under the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by 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 Rule on ADR at 10 TAC §1.17.

b) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

For questions regarding this NOFA, please contact Raul Salazar, HOME Production Coordinator for the HOME and Homelessness Programs Division, at (512) 475-2975 or via email at HOME@tdhca.state.tx.us.

1g

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding an increase in the first lien loan amount for Casa de Manana (HTC #19051/ HOME Contract 1002924)

RECOMMENDED ACTION

WHEREAS, Casa de Manana received an allocation of 9% Housing Tax Credits (HTC) and an award of $2,500,000 in HOME Funds under the General set-aside of the 2019-1 Multifamily Direct Loan Notice of Funding Availability at the Board meeting of July 25, 2019;

WHEREAS, the Applicant has provided updated financing documentation and a final development cost schedule with supporting documentation in anticipation of closing on all financing within the next 20 days;

WHEREAS, the documentation provided reflects an increase in the first lien loan amount from $3,150,000 to $3,710,000 and a decrease in the interest rate on the first lien loan from 6.5% to 4.74%, resulting in a decrease in debt service ahead of the Department's HOME loan from approximately $228,000 to $217,359;

WHEREAS, the Real Estate Analysis (REA) Division has evaluated the increase to the first lien loan and repayment amount in accordance with 10 TAC §13.8(b) and does not recommend any changes to the HOME Loan since there is minimal risk to mitigate as a result of a significant decrease in the debt service ahead of the Department's HOME loan;

WHEREAS, the increase in first lien loan proceeds is achievable due to increased rental income as a result of the new Housing Assistance Payment (HAP) contract which reflects higher rental subsidy and a 176 basis point decrease to the interest rate;

WHEREAS, 10 TAC §13.8(b) of the Multifamily Direct Loan Rule states that "increases in the principal or payment amount of any superior loans after the initial Underwriting Report must be approved by the Board;" and

WHEREAS, staff recommends approving the increase to the first lien loan amount;

NOW, therefore, it is hereby

RESOLVED, that the Board hereby approves Casa de Manana's request to increase the first lien loan amount.

BACKGROUND

Casa de Manana received a $1,600,000 9% HTC allocation and $2,500,000 HOME award on July 25, 2019, for the demolition and reconstruction of a 99-unit Development serving a General population. Total development costs at the time were anticipated to be $21,801,967 with permanent debt from Wells Fargo anticipated to be $3,150,000, with the HOME loan award structured as a hard repayable second lien loan, with a 2.5% interest rate, 30-year amortization, and 16-year term.

In October 2019, in anticipation of closing the HOME loan, the Applicant submitted a revised budget and revised financing documentation, which reflected a $614,258 net increase (2.8%) in total costs and roughly a $240,000 increase in equity proceeds since July 2019 as a result of equity pricing increasing from $0.92 to $0.93. The remaining $374,258 in increased costs is being absorbed by the $560,000 increase in the first lien loan from Wells Fargo, which is now $3,710,000. The excess $185,742 is being used to reduce deferred developer fee.

While the principal amount of the first lien loan has increased, the debt service ahead of the Department's HOME loan has decreased from $228,370 to $217,359, with the debt coverage ratio on both the Wells Fargo loan and the HOME loan increasing from 1.26 to 1.32. As a result, staff is comfortable allowing the increased principal amount of the first lien loan, with REA staff having concluded that no risk mitigation is necessary.

Real Estate Analysis Division
October 11, 2019

Addendum to Underwriting Report

TDHCA Application #: **19051** Program(s): **9% HTC/MDL**

Casa de Manana

Address/Location: 4702 Old Brownsville Road

City: Corpus Christi County: Nueces Zip: 78405

	APPLICATION HISTORY
Report Date	**PURPOSE**
10/11/19	**Loan Closing Memo**
07/11/19	Original Underwriting Report

ALLOCATION

	Previous Allocation				RECOMMENDATION				
TDHCA Program	**Amount**	**Rate**	**Amort**	**Term**	**Amount**	**Rate**	**Amort**	**Term**	**Lien**
MF Direct Loan Const. to Perm. (Repayable)	$2,500,000	2.50%	30	16	**$2,500,000**	**2.50%**	**30**	**16**	**2**
LIHTC (0% Credit)	$1,600,000				**$1,600,000**				

* Multifamily Direct Loan Terms:

* The term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS STATUS

1 Receipt and acceptance before Direct Loan Closing

a: Substantially final construction contract with Schedule of Values.

Status: Satisfied, however not executed.

b: Updated term sheets with substantially final terms from all lenders

Status: Satisfied with a greater principal and a lower interest rate.

c: Substantially final draft of limited partnership agreement.

Status: Satisfied, however not executed.

d: Senior loan documents and partnership documents must contain provisions that any stabilization resizing on senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.

Status: Satisfied.

e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

Status: Satisfied.

f: Updated application exhibits (Rent Schedule, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources)

Status: Satisfied.

g: Board approval of increased 1st lien loan amount in accordance with 10 TAC §13.8(b).

2 Receipt and acceptance by Commitment:

a: Firm commitment for $350,000 loan from the City of Corpus Christi's HOME Investment Partnership Program clearly stating all terms and conditions.

Status: Satisfied. Applicant provided an approval letter from the City of Corpus Christi confirming the submitted loan terms.

3 Receipt and acceptance by Carryover:

a: An FHA and an ADA accessibility specialist shall review and certify compliance of the existing clubhouse with the Department's rules as reflected in 10 TAC Chapter 1 Subchapter B, including but not limited to compliance with the Fair Housing Act Construction Standards as reflected in the Fair Housing Act Design Manual, and the 2010 ADA Standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671.

4 Receipt and acceptance by 10% test:

a: Engineer certification that Storm Water Management Plan (Drainage Study) was completed, and certification of any additional cost resulting from requirements of the Study.

5 Receipt and acceptance by Cost Certification:

a: Architect certification that all noise assessment recommendations were implemented and the

b: 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.

6 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:

a: Certification that testing for asbestos was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures 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.

ANALYSIS

Development received an award of $1,600,000 in 9% Housing Tax Credits and $2,500,000 in Multifamily Direct Loan (MDL) funds. Applicant has submitted the final budget for review to close on the Direct Loan.

Operating Pro Forma

Applicant received a new HAP contract in August 2019 with an average 2.3% increase in rents.

Substantial update to Property Insurance estimate resulting from a quote received by applicant that reflects wind coverage in Corpus Christi. Quote is used on both sides of the Pro Forma.

Development Cost

TDHCA estimate of development costs has been derived from the Applicant's construction contract with Galaxy Builders. Total costs have increased $614,258 (2.8%), which the applicant explains is the result of more complete and current estimates from the builder.

Costs remain within 5% of TDHCA current and prior underwriting.

Sources of Funds

To cover the increased cost, the Wells Fargo senior debt increased from $3.15M to $3.71M. With the interest rate reduced from 6.50% to 4.74%, debt service decreased from $228K to $217K. This increase in Principal requires Board approval.

While payment on the Corpus Christi HOME loan is subject to available cash flow, the Underwriter includes it as fully amortizing. The long-term pro forma shows sufficient cash flow to repay this loan within 6 years. The Underwriter assumes it will be considered bona fide debt, so the federal funds have not been deducted from eligible basis.

The Applicant includes debt service on the $650K Seller Note in their calculation of debt coverage. Pursuant to §11.204(7)(C) this source is considered an Owner Contribution and therefore the Underwriter includes it with Deferred Developer Fee for feasibility purposes.

Conclusion

With the increased HAP Rent and decreased senior debt service, the combined debt coverage ratio on the Wells Fargo mortgage, the TDHCA Direct Loan, and the Corpus Christi HOME Loan is 1.32 times.

No change is recommended to the previous allocation of $1,600,000 annual tax credits.

Underwriter:	*Greg Stoll*
Manager of Real Estate Analysis:	*Thomas Cavanagh*
Director of Real Estate Analysis:	*Brent Stewart*

UNIT MIX/RENT SCHEDULE

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

LOCATION DATA	
CITY:	Corpus Christi
COUNTY:	Nueces
Area Median Income	$64,400
PROGRAM REGION:	10

UNIT DISTRIBUTION							
# Beds	**# Units**	**% Total**	**Assisted**	**MDL**	**Income**	**# Units**	**% Total**
Eff	-	0.0%	0	0	20%	-	0.0%
1	25	25.3%	25	4	30%	11	11.1%
2	20	20.2%	20	3	40%	-	0.0%
3	39	39.4%	39	5	50%	20	20.2%
4	15	15.2%	15	2	60%	68	68.7%
5	-	0.0%	0	0	70%	-	0.0%
					80%	-	0.0%
					MR	-	0.0%
TOTAL	**99**	**100.0%**	**99**	**14**	**TOTAL**	**99**	**100.0%**

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.42%
APP % Construction	9.00%
Average Unit Size	1,062 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		TDHCA Direct Loan Program		Corpus Christi HOME		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	**Gross Rent**	**Type**	**Gross Rent**	**Type**	**Gross Rent**	**Type**	**Gross Rent**	**# Units**	**# Beds**	**# Baths**	**NRA**	**Gross Rent**	**Utility Allow**	**Max Net Program Rent**	**Delta to Max**	**Rent psf**	**Net Rent per Unit**	**Total Monthly Rent**	**Total Monthly Rent**	**Rent per Unit**	**Rent psf**	**Delta to Max**	**Underwritten**		**Mrkt Analyst**
TC 30%	$362	0%				HAP	$812	3	1	1	765	$812	$42	$770	$0	$1.01	$770	**$2,310**	**$2,310**	$770	$1.01	$0	$854	$1.12	$854
TC 50%	$604	LH/50%	$604			HAP	$812	1	1	1	765	$812	$42	$770	$0	$1.01	$770	**$770**	**$770**	$770	$1.01	$0	$854	$1.12	$854
TC 50%	$604	0%				HAP	$812	4	1	1	765	$812	$42	$770	$0	$1.01	$770	**$3,080**	**$3,080**	$770	$1.01	$0	$854	$1.12	$854
TC 60%	$725	HH/60%	$765			HAP	$812	3	1	1	765	$812	$42	$770	$0	$1.01	$770	**$2,310**	**$2,310**	$770	$1.01	$0	$854	$1.12	$854
TC 60%	$725	0%		HH/60%	$765	HAP	$812	2	1	1	765	$812	$42	$770	$0	$1.01	$770	**$1,540**	**$1,540**	$770	$1.01	$0	$854	$1.12	$854
TC 60%	$725	0%				HAP	$812	12	1	1	765	$812	$42	$770	$0	$1.01	$770	**$9,240**	**$9,240**	$770	$1.01	$0	$854	$1.12	$854
TC 30%	$435	0%				HAP	$963	2	2	2	983	$963	$43	$920	$0	$0.94	$920	**$1,840**	**$1,840**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 50%	$725	LH/50%	$725			HAP	$963	1	2	2	983	$963	$43	$920	$0	$0.94	$920	**$920**	**$920**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 50%	$725	0%		LH/50%	$725	HAP	$963	1	2	2	983	$963	$43	$920	$0	$0.94	$920	**$920**	**$920**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 50%	$725	0%				HAP	$963	2	2	2	983	$963	$43	$920	$0	$0.94	$920	**$1,840**	**$1,840**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 60%	$870	HH/60%	$921			HAP	$963	2	2	2	983	$963	$43	$920	$0	$0.94	$920	**$1,840**	**$1,840**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 60%	$870	0%		HH/60%	$921	HAP	$963	1	2	2	983	$963	$43	$920	$0	$0.94	$920	**$920**	**$920**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 60%	$870	0%				HAP	$963	11	2	2	983	$963	$43	$920	$0	$0.94	$920	**$10,120**	**$10,120**	$920	$0.94	$0	$1,099	$1.12	$1,099
TC 30%	$502	0%				HAP	$1,054	4	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$3,952**	**$3,952**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 50%	$837	LH/50%	$837			HAP	$1,054	1	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$988**	**$988**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 50%	$837	0%		LH/50%	$837	HAP	$1,054	1	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$988**	**$988**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 50%	$837	0%				HAP	$1,054	6	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$5,928**	**$5,928**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	HH/60%	$1,054			HAP	$1,054	4	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$3,952**	**$3,952**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	0%		HH/60%	$1,054	HAP	$1,054	3	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$2,964**	**$2,964**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	0%				HAP	$1,054	20	3	2	1,192	$1,054	$66	$988	$0	$0.83	$988	**$19,760**	**$19,760**	$988	$0.83	$0	$1,456	$1.22	$1,456
TC 30%	$561	0%				HAP	$1,240	2	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$2,316**	**$2,316**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TC 50%	$935	LH/50%	$935			HAP	$1,240	1	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$1,158**	**$1,158**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TC 50%	$935	0%				HAP	$1,240	2	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$2,316**	**$2,316**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	HH/60%	$1,156			HAP	$1,240	1	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$1,158**	**$1,158**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	0%		HH/60%	$1,156	HAP	$1,240	1	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$1,158**	**$1,158**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	0%				HAP	$1,240	8	4	2	1,325	$1,240	$82	$1,158	$0	$0.87	$1,158	**$9,264**	**$9,264**	$1,158	$0.87	$0	$1,615	$1.22	$1,615
TOTALS/AVERAGES:								**99**			**105,148**				**$0**	**$0.89**	**$945**	**$93,552**	**$93,552**	**$945**	**$0.89**	**$0**	**$1,256**	**$1.18**	**$1,256**

ANNUAL POTENTIAL GROSS RENT:	**$1,122,624**	**$1,122,624**	

STABILIZED PRO FORMA

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

	STABILIZED FIRST YEAR PRO FORMA																
	COMPARABLES				APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database		Local Comps		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	$
POTENTIAL GROSS RENT						$0.89	$945	$1,122,624	$1,093,296	$1,093,296	$1,122,624	$945	$0.89		0.0%	$0
Laundry, vending, and tenant fees							$13.33	$15,840	15,840							
Total Secondary Income							$13.33			15,840	$15,840	$13.33			0.0%	$0
POTENTIAL GROSS INCOME								$1,138,464	$1,109,136	$1,109,136	$1,138,464				0.0%	$0
Vacancy & Collection Loss							5.0% PGI	(56,923)	(55,457)	(55,457)	(56,923)	5.0% PGI			0.0%	-
EFFECTIVE GROSS INCOME								$1,081,541	$1,053,679	$1,053,679	$1,081,541				0.0%	$0
General & Administrative	$47,564	$480/Unit	$36,745	$371	3.31%	$0.34	$361	$35,750	$35,750	$36,745	$36,745	$371	$0.35	3.40%	-2.7%	(995)
Management	$46,427	4.0% EGI	$45,656	$461	4.94%	$0.51	$540	$53,440	$53,000	$52,684	$54,077	$546	$0.51	5.00%	-1.2%	(637)
Payroll & Payroll Tax	$116,613	$1,178/Unit	$131,157	$1,325	13.41%	$1.38	$1,465	$145,000	$145,000	$131,157	$131,157	$1,325	$1.25	12.13%	10.6%	13,843
Repairs & Maintenance	$77,588	$784/Unit	$76,325	$771	6.01%	$0.62	$657	$65,000	$65,000	$59,400	$59,400	$600	$0.56	5.49%	9.4%	5,600
Electric/Gas	$34,587	$349/Unit	$32,022	$323	2.77%	$0.29	$303	$30,000	$30,000	$34,587	$34,587	$349	$0.33	3.20%	-13.3%	(4,587)
Water, Sewer, & Trash	$84,072	$849/Unit	$80,908	$817	8.04%	$0.83	$879	$87,000	$87,000	$84,072	$84,072	$849	$0.80	7.77%	3.5%	2,928
Property Insurance	$52,368	$0.50 /sf	$56,050	$566	7.73%	$0.79	$844	$83,583	$65,000	$56,050	$83,583	$844	$0.79	7.73%	0.0%	-
Property Tax (@ 50%) 2.7889	$49,106	$496/Unit	$89,716	$906	5.31%	$0.55	$580	$57,445	$55,000	$57,876	$57,760	$583	$0.55	5.34%	-0.5%	(315)
Reserve for Replacements	$41,884	$423/Unit	$28,490	$288	2.29%	$0.24	$250	$24,750	$24,750	$24,750	$24,750	$250	$0.24	2.29%	0.0%	-
Supportive Services			$7,296	$74	2.22%	$0.23	$242	$24,000	$24,000	$24,000	$24,000	$242	$0.23	2.22%	0.0%	-
TDHCA Compliance fees ($40/HTC unit)			$3,323	$34	0.37%	$0.04	$40	$3,960	$3,960	$3,960	$3,960	$40	$0.04	0.37%	0.0%	-
TDHCA Direct Loan Compliance ($34/MDL unit)				$0	0.04%	$0.00	$5	$476	$0	$476	$476	$5	$0.00	0.04%	0.0%	-
Security				$0	1.39%	$0.14	$152	$15,000	$15,000	$15,000	$15,000	$152	$0.14	1.39%	0.0%	-
TOTAL EXPENSES					**57.83%**	**$5.95**	**$6,317**	**$ 625,404**	$603,460	$580,757	**$609,567**	**$6,157**	**$5.80**	**56.36%**	**2.6%**	**$ 15,837**
NET OPERATING INCOME ("NOI")					**42.17%**	**$4.34**	**$4,607**	**$456,137**	$450,219	$472,922	**$471,974**	**$4,767**	**$4.49**	**43.64%**	**-3.4%**	**$ (15,837)**
CONTROLLABLE EXPENSES							$3,664/Unit					$3,495/Unit				

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

DEBT / GRANT SOURCES

		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
		Cumulative DCR							Prior Underwriting							Cumulative	
DEBT (Must Pay)	**Fee**	**UW**	**App**	**Pmt**	**Rate**	**Amort**	**Term**	**Principal**	Applicant	TDHCA	**Principal**	**Term**	**Amort**	**Rate**	**Pmt**	**DCR**	**LTC**
Wells Fargo	0.00%	2.17	2.10	217,359	4.74%	35	16	$3,710,000	$3,150,000	$3,150,000	$3,710,000	16	35	4.74%	$217,359	2.10	16.6%
TDHCA		1.41	1.36	$118,536	2.50%	30	16	$2,500,000	$2,500,000	$2,500,000	$2,500,000	16	30	2.50%	$118,536	1.36	11.2%
Corpus Christi HOME		1.36	1.32	$10,620	1.00%	40	40	$350,000	$350,000	$350,000	$350,000	40	40	1.00%	$10,620	1.32	1.6%
CASH FLOW DEBT / GRANTS																	
TG 303, Inc.		1.29	1.25	$19,273	1.00%	40	40	$650,000	$650,000	$0	$0	40	40	1.00%		1.32	0.0%
Galaxy Builders-Donated Materials (& Labor)		1.29	1.25		0.00%	0	0	$125,000	$125,000	$125,000	$125,000	0	0	0.00%		1.32	0.6%
City of Corpus Christi		1.29	1.25		0.00%	0	0	$0	$500	$500	$0	0	0	0.00%		1.32	0.0%
				$365,788	**TOTAL DEBT / GRANT SOURCES**			**$7,335,000**	$6,775,500	$6,125,500	**$6,685,000**			**TOTAL DEBT SERVICE**	**$346,515**	**1.32**	29.8%
NET CASH FLOW		$106,186	$90,349								**APPLICANT**	**NET OPERATING INCOME**		**$456,137**	**$109,621**	**NET CASH FLOW**	

EQUITY SOURCES

	APPLICANT'S PROPOSED EQUITY STRUCTURE							AS UNDERWRITTEN EQUITY STRUCTURE						
						Prior Underwriting								
EQUITY / DEFERRED FEES	**DESCRIPTION**	**% Cost**	**Annual Credit**	**Credit Price**	**Amount**	Applicant	TDHCA	**Amount**	**Credit Price**	**Annual Credit**	**% Cost**	**Annual Credits per Unit**	**Allocation Method**	
Wells Fargo	LIHTC Equity	66.7%	$1,600,000	0.93	$14,958,504	$14,718,528	$14,718,528	$14,958,504	$0.93	$1,600,000	66.7%	$16,162	Applicant Request	
Deferred Developer Fee	Deferred Developer Fees	1.1%	(10% Deferred)		$247,720	$307,939	$957,939	$122,720	(5% Deferred)		0.5%	**Total Developer Fee:**		**$2,440,000**
TG 303, Inc. - Seller Loan		0.0%						$650,000			2.9%			
Additional (Excess) Funds Req'd		0.0%					$0	$0			0.0%			
TOTAL EQUITY SOURCES		67.8%			$15,206,224	$15,026,467	$15,676,467	$15,731,224			70.2%			
TOTAL CAPITALIZATION					**$22,541,224**	$21,801,967	$21,801,967	**$22,416,224**				**15-Yr Cash Flow after Deferred Fee:**		**$1,171,015**

DEVELOPMENT COST / ITEMIZED BASIS

	APPLICANT COST / BASIS ITEMS							TDHCA COST / BASIS ITEMS					COST VARIANCE	
	Eligible Basis					Prior Underwriting					Eligible Basis			
	Acquisition	**New Const. Rehab**	**Total Costs**			Applicant	TDHCA	**Total Costs**			**New Const. Rehab**	**Acquisition**	%	$
Land Acquisition			$10,859 / Unit	$1,075,000		$1,075,000	$1,075,000	$1,075,000	$10,859 / Unit				0.0%	$0
Building Acquisition	$0		$ / Unit	$0		$0	$0	$0	$ / Unit			$0	0.0%	$0
Site Work		$1,755,965	$27,193 / Unit	$2,692,080		$2,465,000	$2,465,000	$2,717,106	$27,446 / Unit		$1,755,965		-0.9%	($25,026)
Site Amenities		$462,203	$4,669 / Unit	$462,203		$573,520	$573,520	$344,103	$3,476 / Unit		$462,203		34.3%	$118,100
Building Cost		$7,970,895	$82.05 /sf	$87,142/Unit	$8,627,089	$8,590,077	$8,270,700	$8,767,960	$88,565/Unit	$83.39 /sf	$8,767,960		-1.6%	($140,871)
Contingency		$780,888	7.66%	6.63%	$780,888	$681,430	$681,430	$780,888	6.60%	7.11%	$780,888		0.0%	$0
Contractor Fees		$1,397,007	12.73%	12.13%	$1,524,391	$1,709,404	$1,678,691	$1,524,391	12.09%	11.87%	$1,397,007		0.0%	$0
Soft Costs	0	$1,794,000	$32,162 / Unit	$3,184,000		$2,747,000	$2,747,000	$3,184,000	$32,162 / Unit		$1,794,000	$0	0.0%	$0
Financing	0	$781,378	$10,677 / Unit	$1,057,011		$1,004,620	$1,004,620	$1,057,011	$10,677 / Unit		$781,378	$0	0.0%	$0
Developer Fee	$0	$2,206,887	14.77%	14.76%	$2,440,000	$2,440,000	$2,403,833	$2,440,000	14.71%	14.02%	$2,206,887	$0	0.0%	$0
Reserves			7 Months	$573,562		$515,916	$515,916	$515,916	6 Months				11.2%	$57,646
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)	**$0**	**$17,149,223**	$226,427 / Unit	**$22,416,224**		$21,801,967	$21,415,711	**$22,406,375**	$226,327 / Unit		**$17,946,288**	**$0**	**0.0%**	**$9,849**
Acquisition Cost	$0			$0		$0								
Contingency		$0		$0		$0								
Contractor's Fee		$0		$0		$0								
Financing Cost		$0												
Developer Fee	$0	$0		$0		$0								
Reserves				$0		$0								
ADJUSTED BASIS / COST	**$0**	**$17,149,223**	$226,427/unit	**$22,416,224**		$21,801,967	$21,415,711	**$22,406,375**	$226,327/unit		**$17,946,288**	**$0**	**0.0%**	**$9,849**

TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate): **$22,416,224**

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	$0	$17,149,223	$0	$17,946,288
Deduction of Federal Grants	$0	$0	$0	$0
TOTAL ELIGIBLE BASIS	$0	$17,149,223	$0	$17,946,288
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	$0	$22,293,990	$0	$23,330,174
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	$0	$22,293,990	$0	$23,330,174
Applicable Percentage	3.42%	9.00%	3.42%	9.00%
ANNUAL CREDIT ON BASIS	$0	$2,006,459	$0	$2,099,716
CREDITS ON QUALIFIED BASIS	$2,006,459		$2,099,716	

	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
			Credit Price $0.9349	Variance to Request	
Method	Annual Credits	Proceeds	Credit Allocation	Credits	Proceeds
Eligible Basis	$2,006,459	$18,758,516	----	----	----
Needed to Fill Gap	$1,613,126	$15,081,224	----	----	----
Applicant Request	$1,600,000	$14,958,504	**$1,600,000**	**$0**	**$0**

Long-Term Pro Forma

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	$1,081,541	$1,103,172	$1,125,235	$1,147,740	$1,170,695	$1,292,541	$1,427,070	$1,575,601	$1,739,591	$1,920,648	$2,120,551	$2,341,260
TOTAL EXPENSES	3.00%	$625,404	$643,632	$662,396	$681,711	$701,596	$810,149	$935,660	$1,080,794	$1,248,640	$1,442,772	$1,667,330	$1,927,109
NET OPERATING INCOME ("NOI")		**$456,137**	**$459,540**	**$462,839**	**$466,028**	**$469,099**	**$482,392**	**$491,410**	**$494,806**	**$490,951**	**$477,877**	**$453,221**	**$414,150**
EXPENSE/INCOME RATIO		57.8%	58.3%	58.9%	59.4%	59.9%	62.7%	65.6%	68.6%	71.8%	75.1%	78.6%	82.3%
MUST -PAY DEBT SERVICE													
Wells Fargo		$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359	$217,359
TDHCA		$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536	$118,536
Corpus Christi HOME		$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620	$10,620
TOTAL DEBT SERVICE		$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515	$346,515
DEBT COVERAGE RATIO		1.32	1.33	1.34	1.34	1.35	1.39	1.42	1.43	1.42	1.38	1.31	1.20
ANNUAL CASH FLOW		**$109,621**	**$113,024**	**$116,324**	**$119,513**	**$122,583**	**$135,877**	**$144,895**	**$148,291**	**$144,435**	**$131,361**	**$106,706**	**$67,635**
Deferred Developer Fee Balance		$663,099	$550,074	$433,750	$314,237	$191,654	$0	$0	$0	$0	$0	$0	$0
CUMULATIVE NET CASH FLOW		$0	$0	$0	$0	$0	$462,616	$1,171,015	$1,908,229	$2,641,384	$3,328,466	$3,916,468	$4,339,183

19051 Casa de Manana - Application Summary

REAL ESTATE ANALYSIS DIVISION
July 11, 2019

PROPERTY IDENTIFICATION	
Application #	19051
Development	Casa de Manana
City / County	Corpus Christi / Nueces
Region/Area	10 / Urban
Population	General
Set-Aside	At-Risk
Activity	Reconstruction (Built in 1973)

RECOMMENDATION

TDHCA Program	Request	Recommended			
LIHTC (9% Credit)	$1,600,000	$1,600,000	$16,162/Unit		$0.92
	Amount	Rate	Amort	Term	Lien
MF Direct Loan Const. to Perm. (Repayable)	$2,500,000	2.50%	30	16	2

KEY PRINCIPAL / SPONSOR

Lamont C. Taylor (Chair for TG 303, Inc.) & Board Member of Prospera Housing and Community Svcs.

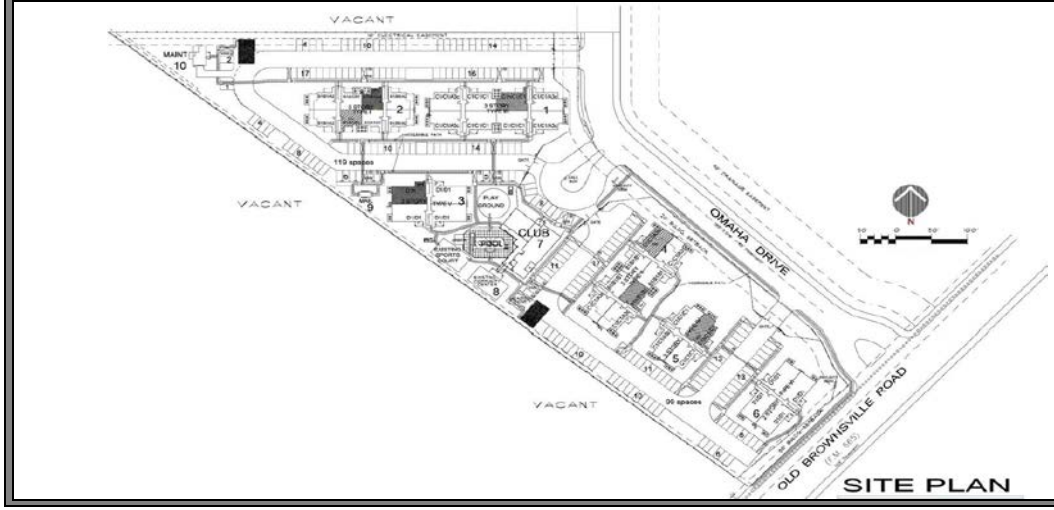
John Valls (Vice Chair for TG 303, Inc.)

Gilbert M. Piette (Exec Director for TG 303, Inc.)

Related Parties	Contractor - No	Seller - Yes

TYPICAL BUILDING ELEVATION/PHOTO

SITE PLAN



UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	25	25%
2	20	20%
3	39	39%
4	15	15%
TOTAL	99	100%

INCOME DISTRIBUTION

Income	# Units	% Total
30%	11	11%
40%	-	0%
50%	20	20%
60%	68	69%
MR	-	
TOTAL	99	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten			Applicant's Pro Forma	
Debt Coverage	1.26		Expense Ratio	57.3%
Breakeven Occ.	86.6%		Breakeven Rent	$838
Average Rent	$920		B/E Rent Margin	$82
Property Taxes	$556/unit		Exemption/PILOT	50%
Total Expense	$6,096/unit		Controllable	$3,664/unit

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)				2.0%
Highest Unit Capture Rate	6%	3 BR/50%		35
Dominant Unit Cap. Rate	6%	3 BR/50%		35
Premiums (↑60% Rents)		N/A		N/A
Rent Assisted Units		99	100% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten	Applicant's Costs		
Avg. Unit Size	1,062 SF	Density	15.2/acre
Acquisition		$11K/unit	$1,075K
Building Cost	$81.70/SF	$87K/unit	$8,590K
Hard Cost		$124K/unit	$12,310K
Total Cost		$220K/unit	$21,802K
Developer Fee	$2,440K	(39% Deferred)	Paid Year: 10
Contractor Fee	$1,709K	30% Boost	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Wells Fargo	16/35	6.50%	$3,150,000	1.97
TDHCA	16/30	2.50%	$2,500,000	1.30
Corpus Christi HOME	40/40	1.00%	$350,000	1.26
TOTAL DEBT (Must Pay)			$6,000,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
Galaxy Builders-Donated Materia	0/0	0.00%	$125,000	1.26
City of Corpus Christi	0/0	0.00%	$500	1.26
CASH FLOW DEBT / GRANTS			$125,500	

EQUITY / DEFERRED FEES	
Source	Amount
Wells Fargo	$14,718,528
Deferred Developer Fee	$957,939
TOTAL EQUITY SOURCES	$15,676,467
TOTAL DEBT SOURCES	$6,125,500
TOTAL CAPITALIZATION	$21,801,967

CONDITIONS

1 Receipt and acceptance before Direct Loan Closing
- a: Substantially final construction contract with Schedule of Values.
- b: Updated term sheets with substantially final terms from all lenders
- c: Substantially final draft of limited partnership agreement.
- d: Senior loan documents and partnership documents must contain provisions that any stabilization resizing on senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.
- e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
- f: Updated application exhibits (Rent Schedule, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources)

2 Receipt and acceptance by Commitment:
- a: Firm commitment for $350,000 loan from the City of Corpus Christi's HOME Investment Partnership Program clearly stating all terms and conditions.

3 Receipt and acceptance by Carryover:
- a: An FHA and an ADA accessibility specialist shall review and certify compliance of the existing clubhouse with the Department's rules as reflected in 10 TAC Chapter 1 Subchapter B, including but not limited to compliance with the Fair Housing Act Construction Standards as reflected in the Fair Housing Act Design Manual, and the 2010 ADA Standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671.

4 Receipt and acceptance by 10% test:
- a: Engineer certification that Storm Water Management Plan (Drainage Study) was completed, and certification of any additional cost resulting from requirements of the Study.

5 Receipt and acceptance by Cost Certification:
- a: Certification from Appraisal District that the property qualifies for property tax exemption.
- b: 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.

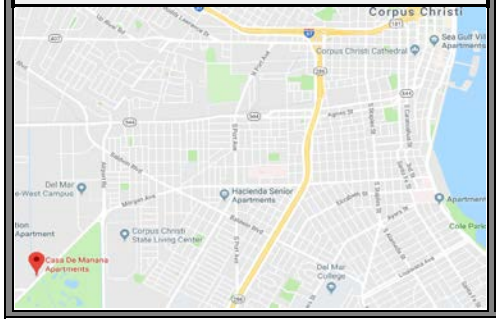
6 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
- a: Certification that testing for asbestos was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented.

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.

RISK PROFILE

STRENGTHS/MITIGATING FACTORS
▫ CHDO tax exemption
▫ Strong feasibility indicators (expense ratio, debt coverage, break-even margin)
▫ Applicant certified Ready to Proceed
▫ Developer experience - completing similar project in Corpus Christi
WEAKNESSES/RISKS
▫ Feasibility relies on tax exemption
▫ Potential cost increase resulting from Storm Water Management Plan

AREA MAP



AERIAL PHOTOGRAPH(s)

Real Estate Analysis Division
Underwriting Report
July 11, 2019

DEVELOPMENT IDENTIFICATION

TDHCA Application #: **19051** Program(s): **9% HTC/MDL**

Casa de Manana

Address/Location: 4702 Old Brownsville Road

City: Corpus Christi Nueces Zip: 78405

Population: General Program Set-Aside: At-Risk Area: Urban

Activity: Reconstruction Building Type: Garden (Up to 4-story) Region: 10

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

	REQUEST				RECOMMENDATION				
TDHCA Program	**Amount**	**Interest Rate**	**Amort**	**Term**	**Amount**	**Interest Rate**	**Amort**	**Term**	**Lien**
MF Direct Loan Const. to Perm. (Repayable)	$2,500,000	2.50%	30	30	**$2,500,000**	**2.50%**	**30**	**16**	**2**
LIHTC (9% Credit)	$1,600,000				**$1,600,000**				

* Multifamily Direct Loan Terms:

* Pursuant to 10 TAC §13.8(a), the term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS

1 Receipt and acceptance before Direct Loan Closing

a: Substantially final construction contract with Schedule of Values.

b: Updated term sheets with substantially final terms from all lenders

c: Substantially final draft of limited partnership agreement.

d: Senior loan documents and partnership documents must contain provisions that any stabilization resizing on senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.

e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

f: Updated application exhibits (Rent Schedule, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources)

2 Receipt and acceptance by Commitment:

a: Firm commitment for $350,000 loan from the City of Corpus Christi's HOME Investment Partnership Program clearly stating all terms and conditions.

3 Receipt and acceptance by Carryover:

a: An FHA and an ADA accessibility specialist shall review and certify compliance of the existing clubhouse with the Department's rules as reflected in 10 TAC Chapter 1 Subchapter B, including but not limited to compliance with the Fair Housing Act Construction Standards as reflected in the Fair Housing Act Design Manual, and the 2010 ADA Standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671.

4 Receipt and acceptance by 10% test:

a: Engineer certification that Storm Water Management Plan (Drainage Study) was completed, and certification of any additional cost resulting from requirements of the Study.

5 Receipt and acceptance by Cost Certification:

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

b: 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.

6 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:

a: Certification that testing for asbestos was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures 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.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	11
50% of AMI	50% of AMI	20
60% of AMI	60% of AMI	68

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
50% of AMFI	Low HOME	4
60% of AMFI	High HOME	10

DEVELOPMENT SUMMARY

Casa de Manana Apartments will be a reconstruction of a 46 year old affordable multifamily apartment community located at 4702 Old Brownsville Road, Corpus Christi, Nueces County Texas. It consists of 99 units of which 99 units are Project-Based Section 8. It is located off of Loop 358, close to stores, eateries, golf course and services; there is a Regional Transportation Authority bus stop at the property.

Originally built in 1973, in 2001 they received a TDHCA HOME Loan of $999,000 to perform some upgrades and in 2014 received a Community Development Block Grant from the City of Corpus Christi to build a community room. The community room will remain in place and will be part of the new Casa de Manana Apartments. Due to the age of the project, a reconstruction is the answer to making the units energy efficient and to provide the needed ADA requirements. Casa de Manana will have the same unit mix and will continue with their HAP contract.

The application received 5 points under the Readiness to Proceed provision in the rules because Nueces County is a disaster county as declared by the Federal Emergency Management Agency ("FEMA"). Applicant must close on all financing and have an executed construction contract by November 29, 2019. Their permanent lender & equity provider, Wells Fargo, has stated that they would be prepared to close in that time frame.

Relocation Plan

The applicant's Relocation Plan is a necessary step to ensure no displacement of existing tenants in good standing. All residents have received non-displacement notices and had opportunities to attend on-site meetings regarding this reconstruction. The applicant expects to relocate approximately 60 units based on their experience with Section 8 reconstruction projects, and has budgeted appropriate costs for temporary relocation.

To accomplish reduction in occupancy to 60 units, the applicant has discontinued leasing vacant units and anticiplates additional voluntary move-outs, and also will offer the opportunity for residents to move into one of seven other properties (499 Section 8 units) managed by Prospera Property Management in Corpus Christi. The applicant will provide all moving and other eligible expenses associated with current residents leaving and returning to Casa de Manana.

The applicant also expects to be eligible for project-based Section 8 Pass Through to hedge against the possibility that occupancy may not reduce to match their forecasts. This would be used only when a resident is being housed where there is no other Section 8 subsidy being provided to them.

RISK PROFILE

	STRENGTHS/MITIGATING FACTORS
▫	CHDO tax exemption
▫	Strong feasibility indicators (expense ratio, debt coverage, break-even margin)
▫	Applicant certified Ready to Proceed
▫	Developer experience - completing similar project in Corpus Christi
▫	
▫	

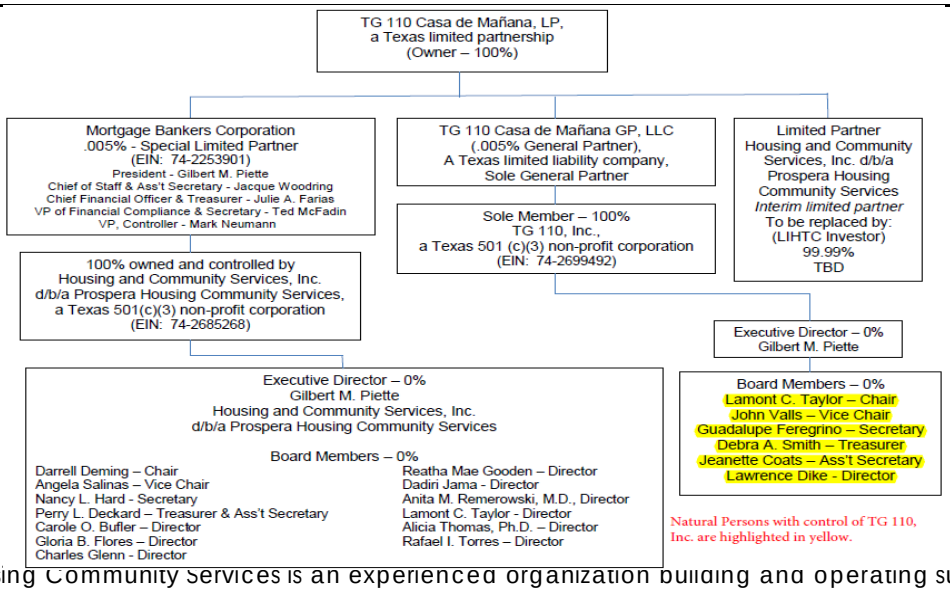
	WEAKNESSES/RISKS
▫	Feasibility relies on tax exemption
▫	Potential cost increase resulting from Storm Water Management Plan
▫	
▫	
▫	
▫	

DEVELOPMENT TEAM

PRIMARY CONTACTS

Name:	Cindy Marquez	Name:	Bradford McMurray
Phone:	(210) 821-4300	Phone:	(210) 821-4300
Relationship:		Relationship:	VP of Property Development

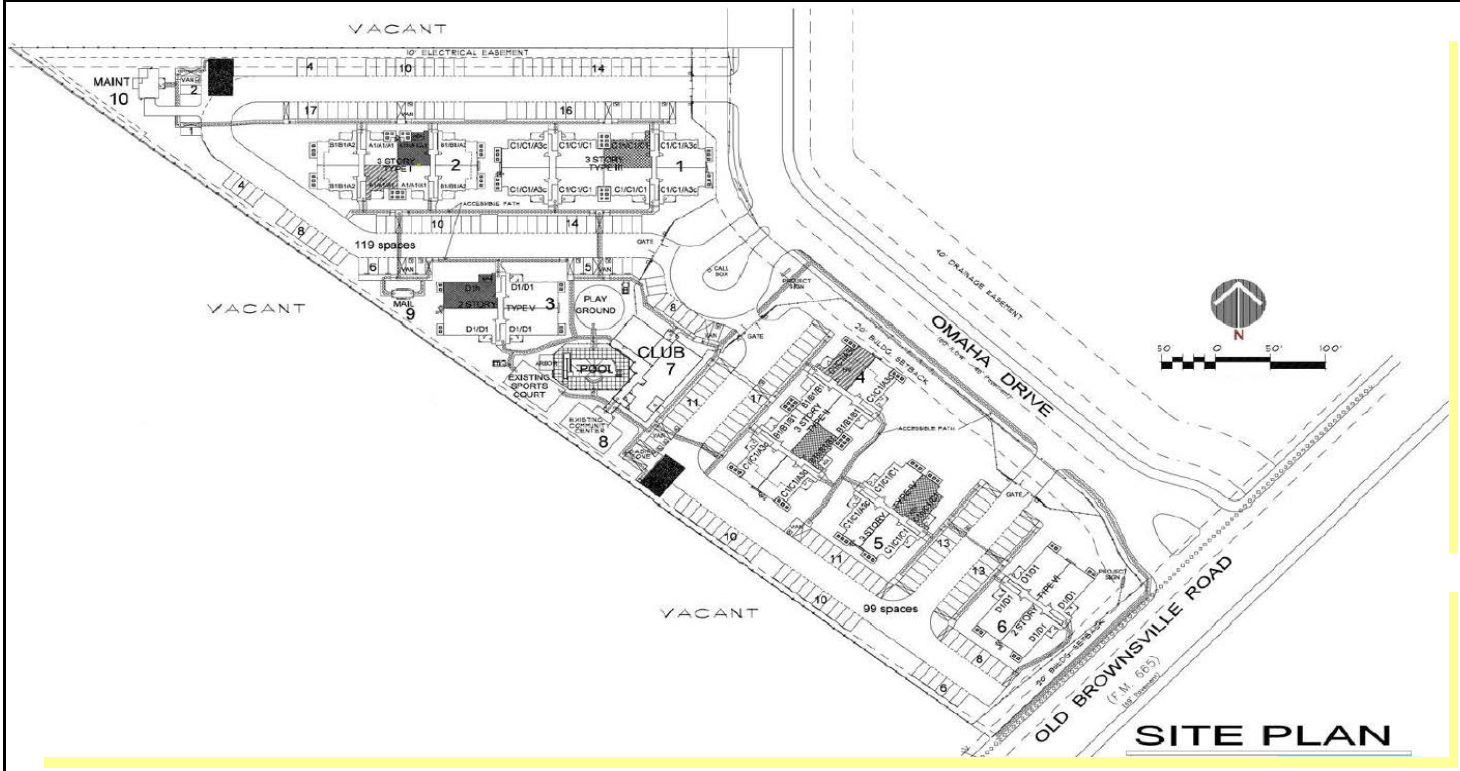
OWNERSHIP STRUCTURE



- PROSPERA Housing Community Services is an experienced organization building and operating supportive housing in South Texas. They've been empowering families for 25 years by providing safe, high-quality, affordable housing and supportive services.

DEVELOPMENT SUMMARY

SITE PLAN



Comments:

Numerous site amenites and more efficient parking in revised site plan.

BUILDING ELEVATION

EAST / WEST ELEVATION BUILDING TYPE II

Comments:
5% Siding, 83% Stucco, 12% Stone

BUILDING CONFIGURATION

Building Type	Type I	Type II	Type III	Type IV	Type V	Type VI							Total Buildings
Floors/Stories	3	3	3	3	2	2							
Number of Bldgs	1	1	1	1	1	1							6
Units per Bldg	24	24	24	12	7	8							
Total Units	24	24	24	12	7	8							99

Avg. Unit Size (SF)	**1,062 sf**	**Total NRA (SF)**	**105,148**	**Common Area (SF)**	**3,722**

SITE AND ACQUISITION

Site Acreage: Development Site: 6.50 acres Density: 15.2 units/acre

Site Control: 6.5 **Site Plan:** 6.5 **Appraisal:** 6.5 **ESA:** 6.5

Control Type: Contract for Sale Contract Expiration: 4/3/2020

Development Site: 6.50 acres Cost: $1,075,000 $10,859 per unit

Seller: TG 303, Inc.

Buyer: TG 110 Casa de Manana, LP

Related-Party Seller/Identity of Interest: Yes

Comments:

As an Identity of Interest transaction, the transfer price for underwriting purposes is limited to the Seller's original acquisition value. The book value of the land is $842K, and the Applicant used a $246K CDBG grant in 2014 to construct a community center that will remain as part of the project. So the Applicant's total investment in the property is $1,088,253.

The original Purchase Agreement stated a price of $750,000. The agreement was amended adjusting the sales price to $1,075,000 ($425,000 plus a $650,000 Seller Loan).

Applicant expects to retire an outstanding TDHCA HOME Loan Balance of approx $127K from the cash sales proceeds provided from non-federal funds.

This parcel originally consisted of 8.0 acres, until 1.5 acres including Omaha Street and the drainage easement were dedicated to the City of Corpus Christi by way of a dedication plat in 1972.

APPRAISED VALUE

Appraiser:	Appraisals Unlimited			Date:	1/8/2019
Land as Vacant:	6.5 acres	$1,560,000		Per Unit:	$15,758
Total Development: (as-is)		**$1,560,000**		Per Unit:	**$15,758**

GENERAL INFORMATION

Flood Zone:	C	Scattered Site?	No
Zoning:	RM-1	Within 100-yr floodplain?	No
Re-Zoning Required?	No	Utilities at Site?	Yes
Year Constructed:	1973	Title Issues?	No

Surrounding Uses:

Northeast: 40' ravine, then High Density Residential (Senior)
South: Small businesses and single family residential
East: Former airport converted to 225 acre public golf course
West & Northwest: vacant land with a Future Land Use of Medium Density Single Family Residential.

Other Observations:

The feasibility study reports it is uncertain whether the adjacent drainage channel is sized for the proposed development, and that a city ordinance will require a Storm Water Quality Management Plan to determine the amount of increased storm water runoff from the proposed project.

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider:	Astex Environmental Services	Date:	2/26/2019

Recognized Environmental Conditions (RECs) and Other Concerns:

- Black Floor Mastic throughout the entire complex, and all 12" Floor Tile in apartments complex tested positive for Asbestos and must be replaced.
- Property is adjacent to an existing high pressure liquid petroleum pipeline in the Right of Way, but not addressed in the ESA. The Pipelines and Informed Planning Alliance (PIPPA) has issued a letter stating that any new development must be at least 10 feet from the underground pipeline, and the applicant's Civil Engineer attests that the Utility Line will not adversely impact the proposed development.

Comments:

As a new construction development, Lead in the Water of existing plumbing is not a concern.

MARKET ANALYSIS

Provider: Apartment MarketData, LLC Date: 2/20/2019

Contact: Darrell Jack Phone: 210-530-0040

Primary Market Area (PMA): 29 sq. miles 3 mile equivalent radius

Central Corpus Christi, encompassing nearly 29 square miles primarily south of I-37 and west of Hwy 286.

ELIGIBLE HOUSEHOLDS BY INCOME								
Nueces County Income Limits								
HH Size		1	2	3	4	5	6	7+
30% AMGI	Min	$1	$1	$1	$1	$1	$1	$1
	Max	$13,530	$15,480	$17,400	$19,320	$20,880	$22,440	$25,530
50% AMGI	Min	$1	$1	$1	$1	$1	$1	$1
	Max	$22,550	$25,800	$29,000	$32,200	$34,800	$37,400	$42,550

AFFORDABLE HOUSING INVENTORY

Competitive Supply (Proposed, Under Construction, and Unstabilized)

File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
	None					

Other Affordable Developments in PMA since 2015

	None				

Stabilized Affordable Developments in PMA (pre-2015)	Total Units	1,230
	Total Developments	9

Proposed, Under Construction, and Unstabilized Competitive Supply:

The only local new development is an Elderly Reconstruction (19332 Avanti at South Bluff) outside of the PMA.

OVERALL DEMAND ANALYSIS	Market Analyst		Underwriter	
	HTC	Assisted	HTC	Assisted
Total Households in the Primary Market Area	17,131		17,131	
Potential Demand from the Primary Market Area	5,142		4,573	
10% External Demand	514		457	
Potential Demand from Other Sources	0		0	
GROSS DEMAND	5,656		5,031	
Subject Affordable Units	99		99	
Unstabilized Competitive Units	0		0	
RELEVANT SUPPLY	99		99	
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE	**1.8%**		**2.0%**	

Population: General **Market Area:** Urban **Maximum Gross Capture Rate:** 10%

UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND

* N/A due to all units qualifying from $1 up.

Demand Analysis:

Capture rate limits do not apply to existing affordable housing that is at least 50% occupied and that provides a leasing preference to existing tenants. The Subject property is covered by a Housing Assistance Program contract, meaning that all households below the maximum income level are eligible and incomes are limited to 50% AMI and below.

Market Analyst is using 60% 8 person maximum income, whereas Underwriter is utilizing 50% 8 person maximum income due to the HAP contract.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE

	Market Analyst					Underwriter				
Unit Type	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%	889	89	3	0	0.3%	460	46	3	0	1%
1 BR/50%	392	39	5	0	1%	861	86	22	0	2%
1 BR/60%	163	16	17	0	9%					
2 BR/30%	778	78	2	0	0.2%	275	27	2	0	1%
2 BR/50%	376	38	4	0	1%	875	87	18	0	2%
2 BR/60%	321	32	14	0	4%					
3 BR/30%	258	26	4	0	1%	138	14	4	0	3%
3 BR/50%	136	14	8	0	5%	491	49	35	0	6%
3 BR/60%	196	20	27	0	13%					
4 BR/30%	151	15	2	0	1%	35	4	2	0	5%
4 BR/50%	130	13	3	0	2%	328	33	13	0	4%
4 BR/60%	180	18	10	0	5%					

Market Analyst Comments:

We assess that the submarket could immediately absorb 534 units without falling below a stabilized occupancy of 93%. (p. 58)

The primary renter profile will have an income from $1 to $51,060, which represents 74.0% of all renter households in the area. (p. 64)

Underwriter Comments:

As a 100% Section 8 property, most residents are expected to exercise their right to return.

Revisions to Market Study:	1

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	$450,219	Avg. Rent:	$920	Expense Ratio:	57.3%
Debt Service:	$357,527	B/E Rent:	$838	Controllable Expenses:	$3,664
Net Cash Flow:	$92,693	UW Occupancy:	95.0%	Property Taxes/Unit:	$556
Aggregate DCR:	1.26	B/E Occupancy:	86.6%	Program Rent Year:	2018

All units are supported by a Section 8 HAP Contract. Underwritten HAP rents are on average $336 below market.

Allowance for loss to vacancy and collection is 5.00% as permitted in REA rules for developments with 100% rental assistance.

Feasibility dependent on CHDO tax exemption. Without the exemption, debt coverage falls to 1.07 and would require the deferral of additional developer fee.

Current contract rents are substantially below (30%) market rents, and 40% below HUD Fair Market Rents. The HAP contract expires November 2020. Typically, the underwriter would expect an applicant to request a rent increase upon renewal of the contract up to the market rents.

The underwritten pro forma based on the existing rents shows 1.26 times debt coverage on must-pay debt. If the higher market rents were used, the DCR would increase to 2.19 times. At a 2.19 times DCR, the higher market rents would support more debt than currently being underwritten (up to $3,100,000 increase). With higher debt, less tax credits would be needed and the credit allocation would be limited. The Underwriter discussed the Applicant's intention of applying for rent increases upon contract renewal, and the nonprofit applicant affirmatively stated that they will not be applying for the higher rents that the market study supports. Based on this affirmation, the Underwriter is using the lower rents.

If at a later time approval for higher rents are received from HUD, the amount of the tax credit award could be adjusted downward based on a higher debt assumption regardless of whether higher debt is actually used. Because of the large variance between the current and market rents, the DCR applied at cost certification will be based on a 1.35 times maximum DCR if substantially higher rents are achieved.

Related-Party Property Management Company: 0

Revisions to Rent Schedule:	0

Revisions to Annual Operating Expenses:	0

DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	$165,385/ac	$10,859/unit	**$1,075,000**	Contractor Fee	**$1,709,404**
Off-site + Site Work		$30,692/unit	**$3,038,520**	Soft Cost + Financing	**$3,751,620**
Building Cost	$81.70/sf	$86,768/unit	**$8,590,077**	Developer Fee	**$2,440,000**
Contingency	5.86%	$6,883/unit	**$681,430**	Reserves	**$515,916**
Total Development Cost	$220,222/unit	**$21,801,967**		**Rehabilitation Cost**	**N/A**

Qualified for 30% Basis Boost?	Non-Qualified Elderly not in QCT covered by Revitalization Plan [9% only]

Acquisition:

Identity of Interest transfer to an applicant partnership. Transfer price is approximately equal to the Seller's previous investment in the property.

Site Work:

Eligible Costs evenly spread across grading, paving, & on-site utilities. Applicant provided Cost Certification as well as local examples from their own Corpus Christi portfolio, all comparable to this application.

Building Cost:

Numerous roofing articulations with steep pitch add a small premium to the roofing cost.

Ornate Stone and Fiber-Cement siding.

Long plumbing runs to service washer/dryer on the balconies.

Applicant's projected building cost ($81.70 psf / $87K per unit) is 13% higher than Underwriter's estimate based on Marshall & Swift average cost model with adjustments for local conditions on the coast. The project is essentially the same design as 17258 Village at Henderson currently under construction by the Applicant a few miles away in Corpus Christi. For underwriting analysis purposes, Underwriter uses the cost per square foot from Henderson as the basis to estimate the cost for the subject.

Contingency:

Total contingency is less than 6%; the rules allow up to 7%.

Reserves:

Lender requires a minimum of $100,000 Rent Up Reserve plus 6 months ($415,916) in Operating Reserves.

Comments:

Community building recently added in 2015 and will not receive major improvements.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
$21,801,967	**$18,184,897**	**$2,127,633**

Related-Party Contractor: No

Related-Party Cost Estimator: No

Revisions to Development Cost Schedule:	0

UNDERWRITTEN CAPITALIZATION

INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
TDHCA	F Direct Loan Const. to Perm. (Repayabl	$2,500,000	0.00%	11%
Wells Fargo	Conventional Loan	$11,500,000	4.78%	53%
Corpus Christi HOME	Loan	$350,000	1.00%	2%
Wells Fargo	HTC	$3,679,632	$0.92	17%
Deferred Developer Fee	Fee	$3,122,335		14%
		$21,801,967	**Total Sources**	

PERMANENT SOURCES

	PROPOSED				UNDERWRITTEN				
Debt Source	**Amount**	**Interest Rate**	**Amort**	**Term**	**Amount**	**Interest Rate**	**Amort**	**Term**	**LTC**
Wells Fargo	$3,150,000	6.50%	35	16	$3,150,000	6.50%	35	16	14%
TDHCA	$2,500,000	2.50%	30	16	$2,500,000	2.50%	30	16	11%
Corpus Christi HOME	$350,000	1.00%	40	40	$350,000	1.00%	40	40	2%
TG 303, Inc.	$650,000	1.00%	40	40	$0				0%
Galaxy Builders - MDL Match	$125,000				$125,000				1%
City of Corpus Christi	$500				$500				0%
Total	**$6,775,500**				**$6,125,500**				

Comments:

Wells Fargo letter states the senior loan is underwritten at 6.50%; actual rate will be indexed to the 10-year Treasury. As underwritten, the rate could fall 94bps to 5.56% before debt coverage would exceed the maximum 1.35, requiring a minor debt adjustment to be offset by reduced deferred developer fee.

Applicant requested 35-year amortization on the TDHCA Direct Loan to match the senior debt. TDHCA Rules limit the amortization to 30 years. The term of the Direct Loan must match the senior debt (within 6 months).

Applicant has applied to the City of Corpus Christi for a $350K HOME loan at 1.00% interest for 40 years. The City has acknowledged the application; A final decision with regard to the award of such funding will occur no later than August 31, 2019.

Applicant's sources also include a Seller Note for $650K as part of the acquisition cost for the property. Pursuant to §11.204(7)(C) this source is considered an Owner Contribution and therefore will be added to the Deferred Developer Fee for feasibility purposes.

	PROPOSED			UNDERWRITTEN			
Equity & Deferred Fees	**Amount**	**Rate**	**% Def**	**Amount**	**Rate**	**% TC**	**% Def**
Wells Fargo	$14,718,528	$0.92		$14,718,528	$0.92	68%	
Deferred Developer Fee	$307,939		13%	$957,939		4%	40%
Total	**$15,026,467**			**$15,676,467**			
				$21,801,967	**Total Sources**		

Credit Price Sensitivity based on current capital structure	
$0.980	Maximum Credit Price before the Development is oversourced and allocation is limited
$0.873	Minimum Credit Price below which the Development would be characterized as infeasible

Revisions to Sources Schedule:	0

CONCLUSIONS

Gap Analysis:	
Total Development Cost	$21,801,967
Permanent Sources (debt + non-HTC equity)	$6,125,500
Gap in Permanent Financing	$15,676,467

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	$19,572,266	$2,127,633
Needed to Balance Sources & Uses	$15,676,467	$1,704,134
Requested by Applicant	$14,718,528	$1,600,000

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	**$14,718,528**	**$1,600,000**

	Amount	Interest Rate	Amort	Term	Lien
TDHCA Multifamily Direct Loan	**$2,500,000**	**2.50%**	**30**	**16**	**2**

Deferred Developer Fee	**$957,939**	**(40% deferred)**
Repayable in	**10 years**	

Comments:

Eligible basis would support more than the $2,000,000 credit limit for the At-Risk Set-Aside. Applicant limited the credit request to $1,600,000 for scoring purposes. The additional credits could have provided $3.7M of additional equity.

If the Direct Loan funds are not awarded, debt coverage would increase to 1.88 and the Underwriter would assume an increase of $1,320,000 in the primary debt. This would require deferral of 89% of the developer fee. The development would be considered infeasible due to insufficient cash flow to repay the deferred fee.

Underwriter: *Greg Stoll*

Manager of Real Estate Analysis: *Thomas Cavanagh*

Director of Real Estate Analysis: *Brent Stewart*

UNIT MIX/RENT SCHEDULE

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

LOCATION DATA	
CITY:	Corpus Christi
COUNTY:	Nueces
Area Median Income	$64,400
PROGRAM REGION:	10

UNIT DISTRIBUTION							
# Beds	**# Units**	**% Total**	**Assisted**	**MDL**	**Income**	**# Units**	**% Total**
Eff	-	0.0%	0	0	20%	-	0.0%
1	25	25.3%	25	4	30%	11	11.1%
2	20	20.2%	20	3	40%	-	0.0%
3	39	39.4%	39	5	50%	20	20.2%
4	15	15.2%	15	2	60%	68	68.7%
5	-	0.0%	0	0	70%	-	0.0%
					80%	-	0.0%
					MR	-	0.0%
TOTAL	**99**	**100.0%**	**99**	**14**	**TOTAL**	**99**	**100.0%**

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.42%
APP % Construction	9.00%
Average Unit Size	1,062 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		TDHCA Direct Loan Program		Corpus Christi HOME		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	**Gross Rent**	**Type**	**Gross Rent**	**Type**	**Gross Rent**	**Type**	**Gross Rent**	**# Units**	**# Beds**	**# Baths**	**NRA**	**Gross Rent**	**Utility Allow**	**Max Net Program Rent**	**Delta to Max**	**Rent psf**	**Net Rent per Unit**	**Total Monthly Rent**	**Total Monthly Rent**	**Rent per Unit**	**Rent psf**	**Delta to Max**	**Underwritten**		**Mrkt Analyst**
TC 30%	$362	0%				HAP	$791	3	1	1	765	$791	$41	$750	$0	$0.98	$750	**$2,250**	**$2,250**	$750	$0.98	$0	$854	$1.12	$854
TC 50%	$604	LH/50%	$604			HAP	$791	1	1	1	765	$791	$41	$750	$0	$0.98	$750	**$750**	**$750**	$750	$0.98	$0	$854	$1.12	$854
TC 50%	$604	0%				HAP	$791	4	1	1	765	$791	$41	$750	$0	$0.98	$750	**$3,000**	**$3,000**	$750	$0.98	$0	$854	$1.12	$854
TC 60%	$725	HH/60%	$765			HAP	$791	3	1	1	765	$791	$41	$750	$0	$0.98	$750	**$2,250**	**$2,250**	$750	$0.98	$0	$854	$1.12	$854
TC 60%	$725	0%		HH/60%	$765	HAP	$791	2	1	1	765	$791	$41	$750	$0	$0.98	$750	**$1,500**	**$1,500**	$750	$0.98	$0	$854	$1.12	$854
TC 60%	$725	0%				HAP	$791	12	1	1	765	$791	$41	$750	$0	$0.98	$750	**$9,000**	**$9,000**	$750	$0.98	$0	$854	$1.12	$854
TC 30%	$435	0%				HAP	$944	2	2	2	983	$944	$48	$896	$0	$0.91	$896	**$1,792**	**$1,792**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 50%	$725	LH/50%	$725			HAP	$944	1	2	2	983	$944	$48	$896	$0	$0.91	$896	**$896**	**$896**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 50%	$725	0%		LH/50%	$725	HAP	$944	1	2	2	983	$944	$48	$896	$0	$0.91	$896	**$896**	**$896**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 50%	$725	0%				HAP	$944	2	2	2	983	$944	$48	$896	$0	$0.91	$896	**$1,792**	**$1,792**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 60%	$870	HH/60%	$921			HAP	$944	2	2	2	983	$944	$48	$896	$0	$0.91	$896	**$1,792**	**$1,792**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 60%	$870	0%		HH/60%	$921	HAP	$944	1	2	2	983	$944	$48	$896	$0	$0.91	$896	**$896**	**$896**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 60%	$870	0%				HAP	$944	11	2	2	983	$944	$48	$896	$0	$0.91	$896	**$9,856**	**$9,856**	$896	$0.91	$0	$1,099	$1.12	$1,099
TC 30%	$502	0%				HAP	$1,036	4	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$3,848**	**$3,848**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 50%	$837	LH/50%	$837			HAP	$1,036	1	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$962**	**$962**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 50%	$837	0%		LH/50%	$837	HAP	$1,036	1	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$962**	**$962**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 50%	$837	0%				HAP	$1,036	6	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$5,772**	**$5,772**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	HH/60%	$1,054			HAP	$1,036	4	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$3,848**	**$3,848**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	0%		HH/60%	$1,054	HAP	$1,036	3	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$2,886**	**$2,886**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 60%	$1,005	0%				HAP	$1,036	20	3	2	1,192	$1,036	$74	$962	$0	$0.81	$962	**$19,240**	**$19,240**	$962	$0.81	$0	$1,456	$1.22	$1,456
TC 30%	$561	0%				HAP	$1,207	2	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$2,256**	**$2,256**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TC 50%	$935	LH/50%	$935			HAP	$1,207	1	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$1,128**	**$1,128**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TC 50%	$935	0%				HAP	$1,207	2	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$2,256**	**$2,256**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	HH/60%	$1,156			HAP	$1,207	1	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$1,128**	**$1,128**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	0%		HH/60%	$1,156	HAP	$1,207	1	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$1,128**	**$1,128**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TC 60%	$1,122	0%				HAP	$1,207	8	4	2	1,325	$1,207	$79	$1,128	$0	$0.85	$1,128	**$9,024**	**$9,024**	$1,128	$0.85	$0	$1,615	$1.22	$1,615
TOTALS/AVERAGES:								**99**			**105,148**				**$0**	**$0.87**	**$920**	**$91,108**	**$91,108**	**$920**	**$0.87**	**$0**	**$1,256**	**$1.18**	**$1,256**

ANNUAL POTENTIAL GROSS RENT:	**$1,093,296**	**$1,093,296**	

STABILIZED PRO FORMA

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

	STABILIZED FIRST YEAR PRO FORMA													
	COMPARABLES				APPLICANT				TDHCA				VARIANCE	
	Database		Local Comps		% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	$
POTENTIAL GROSS RENT						$0.87	$920	$1,093,296	$1,093,296	$920	$0.87		0.0%	$0
Laundry, vending, and tenant fees							$13.33	$15,840						
Total Secondary Income							$13.33		$15,840	$13.33			0.0%	$0
POTENTIAL GROSS INCOME								$1,109,136	$1,109,136				0.0%	$0
Vacancy & Collection Loss							5.0% PGI	(55,457)	(55,457)	5.0% PGI			0.0%	-
EFFECTIVE GROSS INCOME								$1,053,679	$1,053,679				0.0%	$0
General & Administrative	$47,564	$480/Unit	$36,745	$371	3.39%	$0.34	$361	$35,750	$36,745	$371	$0.35	3.49%	-2.7%	(995)
Management	$46,427	4.0% EGI	$45,656	$461	5.03%	$0.50	$535	$53,000	$52,684	$532	$0.50	5.00%	0.6%	316
Payroll & Payroll Tax	$116,613	$1,178/Unit	$131,157	$1,325	13.76%	$1.38	$1,465	$145,000	$131,157	$1,325	$1.25	12.45%	10.6%	13,843
Repairs & Maintenance	$77,588	$784/Unit	$76,325	$771	6.17%	$0.62	$657	$65,000	$59,400	$600	$0.56	5.64%	9.4%	5,600
Electric/Gas	$34,587	$349/Unit	$32,022	$323	2.85%	$0.29	$303	$30,000	$34,587	$349	$0.33	3.28%	-13.3%	(4,587)
Water, Sewer, & Trash	$84,072	$849/Unit	$80,908	$817	8.26%	$0.83	$879	$87,000	$84,072	$849	$0.80	7.98%	3.5%	2,928
Property Insurance	$52,368	$0.50 /sf	$56,050	$566	6.17%	$0.62	$657	$65,000	$56,050	$566	$0.53	5.32%	16.0%	8,950
Property Tax (@ 50%) 2.7889	$49,106	$496/Unit	$89,716	$906	5.22%	$0.52	$556	$55,000	$57,876	$585	$0.55	5.49%	-5.0%	(2,876)
Reserve for Replacements	$41,884	$423/Unit	$28,490	$288	2.35%	$0.24	$250	$24,750	$24,750	$250	$0.24	2.35%	0.0%	-
Supportive Services			$7,296	$74	2.28%	$0.23	$242	$24,000	$24,000	$242	$0.23	2.28%	0.0%	-
TDHCA Compliance fees ($40/HTC unit)			$3,323	$34	0.38%	$0.04	$40	$3,960	$3,960	$40	$0.04	0.38%	0.0%	-
TDHCA Direct Loan Compliance ($34/MDL unit)				$0	0.00%	$0.00	$0	$0	$476	$5	$0.00	0.05%	-100.0%	(476)
Security				$0	1.42%	$0.14	$152	$15,000	$15,000	$152	$0.14	1.42%	0.0%	-
TOTAL EXPENSES					**57.27%**	**$5.74**	**$6,096**	**$ 603,460**	**$580,757**	**$5,866**	**$5.52**	**55.12%**	**3.9%**	**$ 22,703**
NET OPERATING INCOME ("NOI")					**42.73%**	**$4.28**	**$4,548**	**$450,219**	**$472,922**	**$4,777**	**$4.50**	**44.88%**	**-4.8%**	**$ (22,703)**
CONTROLLABLE EXPENSES							$3,664/Unit			$3,495/Unit				
								1.26	1.32					

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

DEBT / GRANT SOURCES

		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE							AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
		Cumulative DCR												Cumulative	
DEBT (Must Pay)	**Fee**	**UW**	**App**	**Pmt**	**Rate**	**Amort**	**Term**	**Principal**	**Principal**	**Term**	**Amort**	**Rate**	**Pmt**	**DCR**	**LTC**
Wells Fargo		2.07	1.97	228,371	6.50%	35	16	$3,150,000	$3,150,000	16	35	6.50%	$228,370	1.97	14.4%
TDHCA		1.41	1.34	$107,249	2.50%	30	16	$2,500,000	$2,500,000	16	30	2.50%	$118,536	1.30	11.5%
Corpus Christi HOME		1.37	1.30	$10,620	1.00%	40	40	$350,000	$350,000	40	40	1.00%	$10,620	1.26	1.6%
CASH FLOW DEBT / GRANTS															
TG 303, Inc.		1.29	1.23	$19,273	1.00%	40	40	$650,000	$0	40	40	1.00%		1.26	0.0%
Galaxy Builders-Donated Materials (& Labor)		1.29	1.23		0.00%	0	0	$125,000	$125,000	0	0	0.00%		1.26	0.6%
City of Corpus Christi		1.29	1.23		0.00%	0	0	$500	$500	0	0	0.00%		1.26	0.0%
				$365,513	**TOTAL DEBT / GRANT SOURCES**			**$6,775,500**	**$6,125,500**			**TOTAL DEBT SERVICE**	**$357,527**	**1.26**	28.1%

NET CASH FLOW		$107,409	$84,706						**APPLICANT**	**NET OPERATING INCOME**		**$450,219**	**$92,693**	**NET CASH FLOW**	

EQUITY SOURCES

	APPLICANT'S PROPOSED EQUITY STRUCTURE					AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	**DESCRIPTION**	**% Cost**	**Annual Credit**	**Credit Price**	**Amount**	**Amount**	**Credit Price**	**Annual Credit**	**% Cost**	**Annual Credits per Unit**	**Allocation Method**
Wells Fargo	LIHTC Equity	67.5%	$1,600,000	0.92	$14,718,528	$14,718,528	$0.92	$1,600,000	67.5%	$16,162	Applicant Request
Deferred Developer Fee	Deferred Developer Fees	1.4%	(13% Deferred)		$307,939	$957,939	(39% Deferred)		4.4%	**Total Developer Fee:**	**$2,440,000**
Additional (Excess) Funds Req'd		0.0%				$0			0.0%		
TOTAL EQUITY SOURCES		68.9%			$15,026,467	$15,676,467			71.9%		

TOTAL CAPITALIZATION								**$21,801,967**	**$21,801,967**			**15-Yr Cash Flow after Deferred Fee:**		**$746,368**	

DEVELOPMENT COST / ITEMIZED BASIS

	APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS				COST VARIANCE	
	Eligible Basis							Eligible Basis			
	Acquisition	**New Const. Rehab**	**Total Costs**			**Total Costs**		**New Const. Rehab**	**Acquisition**	%	$
Land Acquisition			$10,859 / Unit	$1,075,000		$1,075,000	$10,859 / Unit			0.0%	$0
Building Acquisition	$0		$ / Unit	$0		$0	$ / Unit		$0	0.0%	$0
Site Work		$1,950,000	$24,899 / Unit	$2,465,000		$2,465,000	$24,899 / Unit	$1,950,000		0.0%	$0
Site Amenities		$573,520	$5,793 / Unit	$573,520		$573,520	$5,793 / Unit	$573,520		0.0%	$0
Building Cost		$8,590,077	$81.70 /sf	$86,768/Unit	$8,590,077	$8,270,700	$83,542/Unit	$78.66 /sf	$8,270,700	3.9%	$319,377
Contingency		$655,680	5.90%	5.86%	$681,430	$681,430	6.03%	6.07%	$655,680	0.0%	$0
Contractor Fees		$1,633,700	13.88%	13.89%	$1,709,404	$1,678,691	14.00%	14.00%	$1,602,986	1.8%	$30,712
Soft Costs	0	$1,707,000		$27,747 / Unit	$2,747,000	$2,747,000	$27,747 / Unit		$1,707,000	$0	0.0%	$0
Financing	0	$724,920		$10,148 / Unit	$1,004,620	$1,004,620	$10,148 / Unit		$724,920	$0	0.0%	$0
Developer Fee	$0	$2,350,000	14.84%	14.90%	$2,440,000	$2,403,833	15.00%	15.00%	$2,322,721	$0	1.5%	$36,167
Reserves				6 Months	$515,916	$515,916	7 Months				0.0%	$0
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)	**$0**	**$18,184,897**		$220,222 / Unit	**$21,801,967**	**$21,415,711**	$216,320 / Unit		**$17,807,528**	**$0**	**1.8%**	**$386,255**
Acquisition Cost	$0				$0							
Contingency		$0			$0							
Contractor's Fee		$0			$0							
Financing Cost		$0										
Developer Fee	$0	$0			$0							
Reserves					$0							
ADJUSTED BASIS / COST	**$0**	**$18,184,897**		$220,222/unit	**$21,801,967**	**$21,415,711**	$216,320/unit		**$17,807,528**	**$0**	**1.8%**	**$386,255**

TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):	**$21,801,967**

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

CREDIT CALCULATION ON QUALIFIED BASIS

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	$0	$18,184,897	$0	$17,807,528
Deduction of Federal Grants	$0	$0	$0	$0
TOTAL ELIGIBLE BASIS	$0	$18,184,897	$0	$17,807,528
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	$0	$23,640,366	$0	$23,149,786
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	$0	$23,640,366	$0	$23,149,786
Applicable Percentage	3.42%	9.00%	3.42%	9.00%
ANNUAL CREDIT ON BASIS	$0	$2,127,633	$0	$2,083,481
CREDITS ON QUALIFIED BASIS	$2,127,633		$2,083,481	

	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
			Credit Price $0.9199	Variance to Request	
Method	Annual Credits	Proceeds	Credit Allocation	Credits	Proceeds
Eligible Basis	$2,127,633	$19,572,266	----	----	----
Needed to Fill Gap	$1,704,134	$15,676,467	----	----	----
Applicant Request	$1,600,000	$14,718,528	**$1,600,000**	**$0**	**$0**

BUILDING COST ESTIMATE

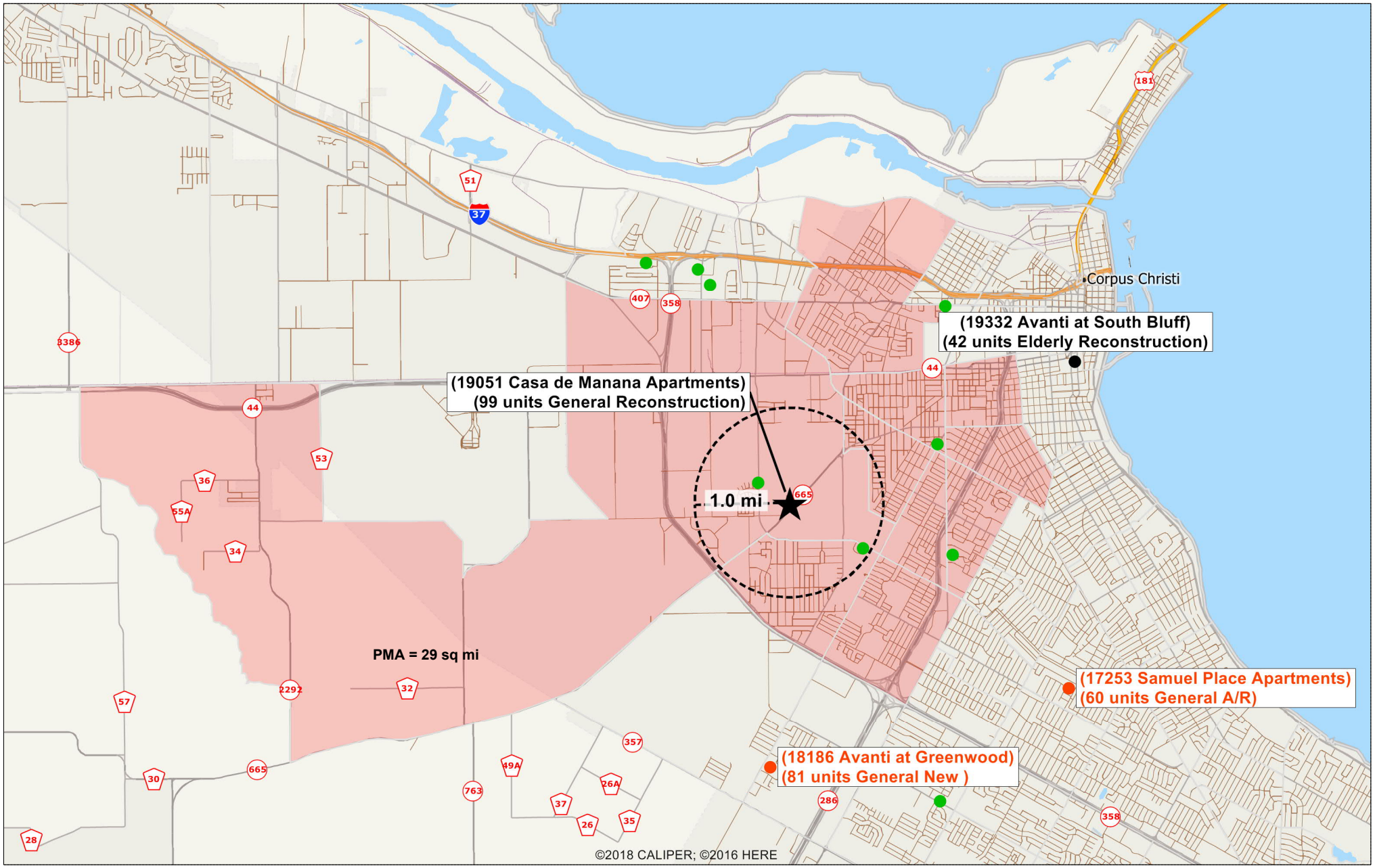
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost: Garden (Up to 4-story)		105,148 SF	$65.27	6,862,957
Adjustments				
Exterior Wall Finish	1.29%		0.84	$88,511
Wind	5.15%		3.36	353,297
9-Ft. Ceilings	3.16%		2.06	216,953
Roof Adjustment(s)			2.08	219,000
Subfloor			(0.28)	(29,700)
Floor Cover			3.06	321,332
Breezeways	$29.18	9,967	2.77	290,846
Balconies	$29.30	10,646	2.97	311,974
Plumbing Fixtures	$1,020	237	2.30	241,740
Rough-ins	$500	297	1.41	148,500
Built-In Appliances	$1,730	99	1.63	171,270
Exterior Stairs	$2,280	18	0.39	41,040
Heating/Cooling			2.21	232,377
Storage Space	$29.18	3,704	1.03	108,086
Carports	$12.25	0	0.00	0
Garages		0	0.00	0
Common/Support Area	$93.80	4,012	3.58	376,332
Elevators		0	0.00	0
Other:			0.00	0
Fire Sprinklers	$2.59	122,831	3.03	318,132
SUBTOTAL			**97.70**	**10,272,647**
Current Cost Multiplier	1.01		0.98	102,726
Local Multiplier	0.86		(13.68)	(1,438,171)
TOTAL BUILDING COSTS			**85.00**	**$8,937,202**
Plans, specs, survey, bldg permits	3.30%		(2.80)	($294,928)
Contractor's OH & Profit	11.50%		(9.77)	(1,027,778)
NET BUILDING COSTS		$76,914/unit	$72.42/sf	$7,614,497

Long-Term Pro Forma

Casa de Manana, Corpus Christi, 9% HTC/MDL #19051

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	$1,053,679	$1,074,753	$1,096,248	$1,118,173	$1,140,536	$1,259,244	$1,390,307	$1,535,012	$1,694,777	$1,871,171	$2,065,924	$2,280,947
General & Administrative		$35,750	$36,823	$37,927	$39,065	$40,237	$46,646	$54,075	$62,688	$72,672	$84,247	$97,666	$113,221
Management	5%	$53,000	$54,060.00	$55,141	$56,244	$57,369	$63,340	$69,932	$77,211	$85,247	$94,119.77	$103,916	$114,731
Payroll & Payroll Tax		$145,000	$149,350	$153,831	$158,445	$163,199	$189,192	$219,326	$254,258	$294,755	$341,702	$396,126	$459,219
Repairs & Maintenance		$65,000	$66,950	$68,959	$71,027	$73,158	$84,810	$98,318	$113,978	$132,132	$153,177	$177,574	$205,857
Electric/Gas		$30,000	$30,900	$31,827	$32,782	$33,765	$39,143	$45,378	$52,605	$60,984	$70,697	$81,957	$95,011
Water, Sewer, & Trash		$87,000	$89,610	$92,298	$95,067	$97,919	$113,515	$131,595	$152,555	$176,853	$205,021	$237,676	$275,531
Property Insurance		$65,000	$66,950	$68,959	$71,027	$73,158	$84,810	$98,318	$113,978	$132,132	$153,177	$177,574	$205,857
Property Tax		$55,000	$56,650	$58,350	$60,100	$61,903	$71,763	$83,192	$96,443	$111,804	$129,611	$150,255	$174,186
Reserve for Replacements		$24,750	$25,493	$26,257	$27,045	$27,856	$32,293	$37,437	$43,399	$50,312	$58,325	$67,615	$78,384
Supportive Services		$24,000	$24,720	$25,462	$26,225	$27,012	$31,315	$36,302	$42,084	$48,787	$56,558	$65,566	$76,009
TDHCA Compliance fees ($40/HTC unit)		$3,960	$4,079	$4,201	$4,327	$4,457	$5,167	$5,990	$6,944	$8,050	$9,332	$10,818	$12,541
Security		$15,000	$15,450	$15,914	$16,391	$16,883	$19,572	$22,689	$26,303	$30,492	$35,348	$40,979	$47,505
TOTAL EXPENSES	3.00%	$603,460	$621,034	$639,124	$657,747	$676,916	$781,565	$902,553	$1,042,446	$1,204,219	$1,391,315	$1,607,720	$1,858,053
NET OPERATING INCOME ("NOI")		**$450,219**	**$453,719**	**$457,124**	**$460,426**	**$463,620**	**$477,679**	**$487,755**	**$492,566**	**$490,558**	**$479,856**	**$458,203**	**$422,893**
EXPENSE/INCOME RATIO		57.3%	57.8%	58.3%	58.8%	59.4%	62.1%	64.9%	67.9%	71.1%	74.4%	77.8%	81.5%
Wells Fargo													
balance	6.50%	$3,150,000	$3,125,663	$3,099,696	$3,071,991	$3,042,429	$2,862,137	$2,612,827	$2,268,076	$1,791,348	$1,132,120	$220,529	$0
annual debt service	35	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370	$228,370
annual Fees	0.00%	0	0	0	0	0	0	0	0	0	0	$0	$0
MUST -PAY DEBT SERVICE													
TOTAL DEBT SERVICE		$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527	$357,527
DEBT COVERAGE RATIO		1.26	1.27	1.28	1.29	1.30	1.34	1.36	1.38	1.37	1.34	1.28	1.18
ANNUAL CASH FLOW		**$92,693**	**$96,192**	**$99,597**	**$102,900**	**$106,093**	**$120,152**	**$130,228**	**$135,039**	**$133,031**	**$122,329**	**$100,677**	**$65,367**
Deferred Developer Fee Balance		$865,246	$769,053	$669,456	$566,557	$460,463	$0	$0	$0	$0	$0	$0	$0
CUMULATIVE NET CASH FLOW		$0	$0	$0	$0	$0	$113,547	$746,368	$1,414,337	$2,086,586	$2,723,535	$3,275,108	$3,678,630

19051 Casa de Manana PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

1h

BOARD ACTION REQUEST

EXECUTIVE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their 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, oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed, while under separate action being proposed as new sections within Chapter 10;

WHEREAS, references to 10 TAC §10.610 were made in two rules, that will now warrant revision to ensure accurate references are reflected in these rules, and this action proposes amendments to 10 TAC §8.7 Tenant Selection and Screening and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and

WHEREAS, upon Board approval the proposed amendments will be released for public comment in the Texas Register from November 22, 2019, to December 23, 2019, and returned to the Board for final approval;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendments to 10 TAC §8.7(g) Tenant Selection and Screening, and to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements 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 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

Oversight of the affirmative marketing requirements and the written policies and procedures (often called tenant selection criteria), and their associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed, while under separate action are being proposed as new sections within Chapter 10. To ensure accurate referential integrity the Department also must amend two other rules noted above to update references.

Attachment [1]: Preamble, including required analysis, for a proposed amendment to 10 TAC §8.7, Tenant Selection and Screening.

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §8.7(g), Tenant Selection and Screening. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be 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.

1. Mr. Bobby Wilkinson, Executive Director, 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 correcting a citation in the rule.

2. The proposed amendment 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 workload 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.

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.
The Department has evaluated this proposed amendment and determined that the proposed amendment 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 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 proposed amendment as to its possible effects on local economies and has determined that for the first five years the proposed amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed amendment is in effect, enforcing or administering the amendment 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 November 22, 2019, to December 23, 2019, to receive input on the proposed amended 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 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 23, 2019.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't 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.

§8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.
(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.
(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.
(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:
(1) H 2012-06, Enterprise Income Verification (EIV) System;
(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;
(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;
(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;
(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or
(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.
(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:
(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.
(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.
(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.
(f) Tenant Certifications, Reporting and Compliance.
(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.
(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.
(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.802~~610~~ (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired and/or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the

available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by

TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act

(40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and

displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

Attachment [2]: Preamble, including required analysis, for a proposed amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements. The purpose of this amendment is to correct a citation referenced in the rule.

Tex. Gov't Code §2001.0045(b) does apply to the amendment being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this rule action, therefore no costs or impacts warrant a need to be 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.

1. Mr. ~~Robert~~ Bobby Wilkinson, Executive Director, 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 correcting a citation in the rule.

2. The proposed amendment 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 workload 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.

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.
The Department has evaluated this proposed amendment and determined that the proposed amendment 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 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 proposed amendment as to its possible effects on local economies and has determined that for the first five years the proposed amendment would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

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

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed amendment is in effect, enforcing or administering the amendment 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 November 22, 2019, to December 23, 2019, to receive input on the proposed amended 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 or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 23, 2019.

STATUTORY AUTHORITY. The proposed amendment is made pursuant to Tex. Gov't 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.

§23.61, Tenant-Based Rental Assistance (TBRA) General Requirements
(a) The Household must participate in a self-sufficiency program.
(b) The amount of assistance will be determined using the Housing Choice Voucher method.
(c) Households certifying to zero income must also complete a questionnaire which includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.
(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's gross monthly income.
(e) Activity funds are limited to:
(1) rental subsidy: Each rental subsidy term is limited to no more than twenty-four (24) months. Total lifetime assistance to a Household may not exceed thirty-six (36) months cumulatively, except that a maximum of twenty-four (24) additional months of assistance, for a total of sixty (60) months cumulatively may be approved if:
(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and
(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and
(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and
(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.
(2) security deposit: no more than the amount equal to two (2) month's rent for the unit.
(3) utility deposit in conjunction with a TBRA rental subsidy.
(f) The payment standard is determined at the date of assistance. The payment standard utilized by the Administrator must be:
(1) for metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;
(2) for nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;
(3) for a HOME assisted unit, the current applicable HOME rent; or
(4) the Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in §1.204 of this title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional 1 percent of Direct Activity Costs if Match is provided in an amount equal to 5 percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to 4 percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to $1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to 8 percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one (1) month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with §10.802~~610~~ of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in §10.802~~610~~ of this Title)) will govern.

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three (3) calendar days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate

documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

2a

TDHCA Outreach Activities, October-November

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
Training	Income Determination Training	Oct. 9	San Antonio	Compliance
Training	HTC Compliance Training (with TAA)	Oct. 10	San Antonio	Compliance
Meeting	HHSCC Quarterly Meeting	Oct. 16	Austin	Housing Resource Center
Seminar	Wage and Hour Training Seminar for Agriculture Employers	Oct. 16	McAllen	Migrant Labor Housing Facilities
Presentation	Addressing Mental Health Through Affordable Housing; Healthier Texas Summit	Oct. 17	Austin	Section 811 PRA Program
Roundtable	Compliance, Affirmative Marketing, and Written Policies and Procedures Rules	Oct. 21	Austin	Compliance, Fair Housing
Conference	National Council of State Housing Agencies Annual Conference	Oct. 19-22	Boston, MA	Multiple areas
Webinar	Fair Housing in the ESG Program Webinar	Oct. 23	N/A	HOME and Homeless Program, Fair Housing
Training	Income Determination Training	Oct. 29	Irving	Compliance
Public Hearing	The Reserves at San Marcos	Nov. 4	San Marcos	Multifamily Finance

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Asset Management

- Posted Board material amendments for presentation, discussion, and possible action regarding a material Amendment to the Housing Tax Credit Land Use Restriction

Agreement for Homes of Persimmons (#98170), Meadows Place Senior Village (#03245), Caney Run Estates (#03527)
- Posted Cost Certification Application
- Posted updated Amendment Request Cover Sheet
- Added Draft 2020 Asset Management Rules presented at the TDHCA October Board meeting

Bootstrap Loan Program
- Posted updated Nonprofit Owner-Builder Housing Providers list

Colonia Self Help Center
- Posted updated Project Completion Report

Communications:
- Replaced homepage article with Texans' donations finance first homelessness grants provided to cities
- Posted web button for reduced rate MCC offering

Compliance
- Posted updated Onsite Monitoring Form
- Added Request to provide emergency housing-Imelda form
- Added Notice of Property Damage from Imelda
- Posted updated 2017 Final Construction Inspection Request

HOME and Homeless:
- Posted funding availability under HOME Program Homebuyer Assistance with New Construction or Rehabilitation (HANC)
- Posted updated HOME Program Intake Application (Spanish version)
- Posted updated FY 2019 ESG Monthly Reporting Guide, FY 2019 ESG Supplemental Monthly Report
- Posted updated 2020 HHSP Monthly Performance Guide, 2020 HHSP Performance and Expenditure Worksheet Supplement
- Posted 2019 ESG Implementation Webinars (TDHCA and ESG Overview, ESG Contract Highlights, ESG Documentation, Homeless Definition and Recordkeeping, At-Risk of Homelessness Definition and Recordkeeping, ESG Reporting) and supportive materials
- Updated Rent and Income Limits (HUD Exchange website link)
- Added Verification of Disability form in Spanish

Housing Resource Center
- Posted 2018 TICH Pathways Home Annual Report
- Posted updated TICH Council Members, Advisory Member, and Staff Support (Oct. 2019)

Multifamily:
- Posted updated Multifamily Direct Loan Closing Due Diligence Checklist
- Posted 3rd Party Reports for 4% HTC Program (Appraisals, Environmental Site Assessments, Market Studies, Property Condition Assessments, Site Design Feasibility Reports)
- Posted 2020 Notice to Submit 4% HTC Lottery Application under Application Submission Calendar
- Posted updated 2019 4% HTC Bond Status Log (Oct. 18)
- Posted 2020 Multifamily Uniform Application Supporting Information (DRAFT Site Demographic Characteristics Report 2020)

- Posted updated Amended 2019-1 Multifamily Direct Loan Annual NOFA and 2019-1 Multifamily Direct Loan NOFA Application Log
- Posted updated 2019 9% HTC Award List and Waiting List (Oct. 10)

Public Comment

- Posted period for public comment open for Post Award and Asset Management Requirements
- Posted period for public comment open for DRAFT 2020 Multifamily Direct Loan Rule (10 TAC Chapter 13) Blackline version

Purchasing

- Posted Request for Proposal UPCS Inspection
- Updated list of No-Bid contracts as required by state

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
		MRB	Mortgage Revenue Bond Program
CFD	Contract for Deed Program	NHTF	National Housing Trust Fund
CFDC	Contract for Deed Conversion Assistance Grants	NOFA	Notice of Funding Availability
		NSP	Neighborhood Stabilization Program
CHDO	Community Housing Development Organization	OIG	Office of Inspector General
		QAP	Qualified Allocation Plan
CMTS	Compliance Monitoring and Tracking System	QCP	Quantifiable Community Participation
		REA	Real Estate Analysis
CSBG	Community Services Block Grant Program	RFA	Request for Applications
		RFO	Request for Offer
ESG	Emergency Solutions Grants Program	RFP	Request for Proposals
FAQ	Frequently Asked Questions	RFQ	Request for Qualifications
HBA	Homebuyer Assistance Program	ROFR	Right of First Refusal
HHSCC	Housing and Health Services Coordination Council	SLIHP	State of Texas Low Income Housing Plan
HHSP	Homeless Housing and Services Program	TA	Technical Assistance
		TBRA	Tenant Based Rental Assistance Program
HRA	Homeowner Rehabilitation Assistance Program	TICH	Texas Interagency Council for the Homeless
HRC	Housing Resource Center		
HTC	Housing Tax Credit	TSHEP	Texas Statewide Homebuyer Education Program
HTF	Housing Trust Fund		
HUD	U.S. Department of Housing and Urban Development	TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
IFB	Invitation for Bid	WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM

FINANCIAL ADMINISTRATION DIVISION

NOVEMBER 7, 2019

Report on the Department's 4th 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 $1,284,881,156, of which $1,246,928,314 is not subject to the PFIA. This report addresses the remaining $37,952,842 (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 U.S. Government Securities. A repurchase agreement is the daily purchase of a security with an agreement to repurchase that security at a specific price and date, which in this case was September 3, 2019, (due to the Labor Day weekend) with an effective interest rate of 2.08%. These investments safeguard principal while maintaining liquidity. The overnight repurchase agreements, subject to the PFIA, earned $211,502.57 in interest during the quarter.

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 State 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.

- The **Ending Homelessness Trust Fund** account maintains funds from donations collected from individuals through the Texas Department of Motor Vehicles in connection with the Department's Ending Homelessness Program. The authority for the collection of these donations is outlined in House Bill 4102, 85th Texas Legislature Session, Regular Session. These donations are collected for the purpose of providing grants to counties and municipalities to combat homelessness.

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 4th Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by $1,555,075 (see page 1) for an ending balance of $37,952,842. The change is described below by fund groups.

General Fund: The General Fund decreased by $327,685. This consists primarily of $555,614 received in multifamily bond fees and $135, 825 in MCC Fees, offset by disbursements including $1,055,489 to fund the operating budget.

The State Housing Trust Fund: The Housing Trust Fund decreased by $490,923. This consists primarily of $1,571,011 received in loan repayments offset by disbursements including $2,055,974 for loans, grants, and escrow payments.

Compliance: Compliance funds decreased by $335,924. This consists primarily of $1,476,585 received in compliance fees and $130,977 in investment interest earnings, offset by disbursements of $1,920,859 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds decreased by $442,734. This consists primarily of $769,788 received in fees related to tax credit activities, offset by disbursements of $1,279,698 transferred to fund the operating budget.

Ending Homelessness Fund: Ending Homelessness funds increased by $42,191. This consists primarily of donations and interest earnings on current investment balances.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION

PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING AUGUST 31, 2019

Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending August 31, 2019

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 05/31/19	Beginning Market Value 05/31/19	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value 08/31/19	Ending Market Value 08/31/19	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	713,004.12	713,004.12	14,205.68				727,209.80	727,209.80	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	33,768.95	33,768.95		(840.68)			32,928.27	32,928.27	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	1,224,083.99	1,224,083.99	119,370.35				1,343,454.34	1,343,454.34	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	1,269,828.67	1,269,828.67		(605,442.93)			664,385.74	664,385.74	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	1,008,236.60	1,008,236.60	135,822.86				1,144,059.46	1,144,059.46	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	642,888.62	642,888.62	3,434.47				646,323.09	646,323.09	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	249,982.94	249,982.94	1,386.44				251,369.38	251,369.38	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	790,317.85	790,317.85	4,518.33				794,836.18	794,836.18	-	0.00
Repo Agmt	General Fund	2.08	08/30/19	09/03/19	139.23	139.23		(139.21)			0.02	0.02	-	0.00
	General Fund Total				5,932,250.97	5,932,250.97	278,738.13	(606,422.82)	0.00	0.00	5,604,566.28	5,604,566.28	0.00	0.00
Repo Agmt	General Revenue Appn	2.08	08/30/19	09/03/19	71,472.02	71,472.02	15,328.01				86,800.03	86,800.03	-	0.00
Repo Agmt	General Revenue Appn	2.08	08/30/19	09/03/19	543,897.25	543,897.25	640,593.07				1,184,490.32	1,184,490.32	-	0.00
Repo Agmt	General Revenue Appn	2.08	08/30/19	09/03/19	545,152.56	545,152.56	625,405.47				1,170,558.03	1,170,558.03	-	0.00
Repo Agmt	General Revenue Appn	2.08	08/30/19	09/03/19	106,744.41	106,744.41	31,512.23				138,256.64	138,256.64	-	0.00
Repo Agmt	General Revenue Appn	2.08	08/30/19	09/03/19	245,537.30	245,537.30					245,537.30	245,537.30	-	0.00
Repo Agmt	Housing Trust Fund-GR	2.08	08/30/19	09/03/19	22,122.98	22,122.98		(22,000.00)			122.98	122.98	-	0.00
Repo Agmt	Housing Trust Fund-GR	2.08	08/30/19	09/03/19	2,140,396.32	2,140,396.32		(835,178.09)			1,305,218.23	1,305,218.23	-	0.00
Repo Agmt	Housing Trust Fund-GR	2.08	08/30/19	09/03/19	1,618,332.42	1,618,332.42					1,618,332.42	1,618,332.42	-	0.00
Repo Agmt	Boostrap -GR	2.08	08/30/19	09/03/19	933,936.35	933,936.35		(440,000.00)			493,936.35	493,936.35	-	0.00
Repo Agmt	Boostrap -GR	2.08	08/30/19	09/03/19	2,264,931.42	2,264,931.42		(686,400.00)			1,578,531.42	1,578,531.42	-	0.00
Repo Agmt	Housing Trust Fund	2.08	08/30/19	09/03/19	156,955.86	156,955.86	40,307.42				197,263.28	197,263.28	-	0.00
Repo Agmt	Housing Trust Fund	2.08	08/30/19	09/03/19	5,479.95	5,479.95	1,942.40				7,422.35	7,422.35	-	0.00
Repo Agmt	Housing Trust Fund	2.08	08/30/19	09/03/19	259,730.63	259,730.63	137,566.47				397,297.10	397,297.10	-	0.00
	Housing Trust Fund Total				8,914,689.47	8,914,689.47	1,492,655.07	(1,983,578.09)	0.00	0.00	8,423,766.45	8,423,766.45	0.00	0.00
Repo Agmt	Multi Family	2.08	08/30/19	09/03/19	1,020,216.68	1,020,216.68	51,732.49				1,071,949.17	1,071,949.17	-	0.00
Repo Agmt	Multi Family	2.08	08/30/19	09/03/19	1,095,738.02	1,095,738.02		(62,898.06)			1,032,839.96	1,032,839.96	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.08	08/30/19	09/03/19	9,115,531.54	9,115,531.54		(324,759.00)			8,790,772.54	8,790,772.54	-	0.00
	Compliance Total				11,231,486.24	11,231,486.24	51,732.49	(387,657.06)	0.00	0.00	10,895,561.67	10,895,561.67	0.00	0.00
Repo Agmt	Asset Management	2.08	08/30/19	09/03/19	1,425,946.21	1,425,946.21	69,078.79				1,495,025.00	1,495,025.00	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.08	08/30/19	09/03/19	1,688,591.21	1,688,591.21		(53,294.52)			1,635,296.69	1,635,296.69	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.08	08/30/19	09/03/19	9,683,415.32	9,683,415.32		(448,865.59)			9,234,549.73	9,234,549.73	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.08	08/30/19	09/03/19	429,685.81	429,685.81		(9,652.85)			420,032.96	420,032.96	-	0.00
	Housing Initiatives Total				13,227,638.55	13,227,638.55	69,078.79	(511,812.96)	0.00	0.00	12,784,904.38	12,784,904.38	0.00	0.00
Repo Agmt	Homelessness-HB4102	2.08	08/30/19	09/03/19	201,852.30	201,852.30	42,191.25				244,043.55	244,043.55		0.00
	Ending Homelessness Trust Fund Total				201,852.30	201,852.30	42,191.25	0.00	0.00	0.00	244,043.55	244,043.55	0.00	0.00
	Total Non-Indenture Related Investment Summary				39,507,917.53	39,507,917.53	1,934,395.73	(3,489,470.93)	0.00	0.00	37,952,842.33	37,952,842.33	0.00	0.00

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Quarter Ending August 31, 2019

	Investment Type	FAIR VALUE (MARKET) @ 05/31/19	CARRYING VALUE @ 05/31/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/19	FAIR VALUE (MARKET) @ 08/31/19	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 08/31/19	RECOGNIZED GAIN
NON-INDENTURE RELATED:												
General Fund	Repurchase Agreements	5,932,250.97	5,932,250.97	278,738.13	(606,422.82)	-	-	5,604,566.28	5,604,566.28	-	647.64	-
Housing Trust Fund	Repurchase Agreements	8,914,689.47	8,914,689.47	1,492,655.07	(1,983,578.09)	-	-	8,423,766.45	8,423,766.45	-	973.67	-
Compliance	Repurchase Agreements	11,231,486.24	11,231,486.24	51,732.49	(387,657.06)	-	-	10,895,561.67	10,895,561.67	-	1,259.04	-
Ending Homelessness Trust Fund	Repurchase Agreements	201,852.30	201,852.30	42,191.25	-	-	-	244,043.55	244,043.55	-	35.25	-
Housing Initiatives	Repurchase Agreements	13,227,638.55	13,227,638.55	69,078.79	(511,812.96)	-	-	12,784,904.38	12,784,904.38	-	1,477.57	-
NON-INDENTURE RELATED TOTAL		**39,507,917.53**	**39,507,917.53**	**1,934,395.73**	**(3,489,470.93)**	**0.00**	**0.00**	**37,952,842.33**	**37,952,842.33**	**0.00**	**4,393.17**	**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 9, 2019
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

Date: 10/28/19
David Cervantes
Director of Administration

Date: 10/28/19
Monica Galuski
Director of Bond Finance/Chief Investment Officer

2c

BOARD REPORT ITEM

FINANCIAL ADMINISTRATION DIVISION

NOVEMBER 7, 2019

Report on the Department's Interim Balance Sheet/Statement of Net Position for the period ended August 31, 2019.

Below is an unaudited, condensed Statement of Net Position along with a description of the major categories of this statement. The governmental funds activities are funded primarily from federal funds and General Revenue appropriations. The Department's business type activities have primarily arisen through the issuance of taxable and tax-exempt bonds whose proceeds are used primarily to fund housing activities.

Texas Department of Housing and Community Affairs
Government Wide
Condensed Statement of Net Position
As of August 31, 2019

	Governmental Activities	Business-Type Activities	Total
Assets			
Current Assets:			
Cash & Cash Equivalents	$ 47,267,464	$ 146,566,376	$ 193,833,840
Investments	-	250,407,131	250,407,131
Federal Receivable	17,138	-	17,138
Legistlative Appropriations	16,772,815	-	16,772,815
Interest Receivable	118,848	7,565,909	7,684,757
Loan and Contracts	22,820,597	143,429,674	166,250,271
Other Current Assets	47,575	9,575,110	9,622,685
Non-current Assets:			
Investments	-	974,004,235	974,004,235
Loans and Contracts	439,621,545	956,190,319	1,395,811,864
Capital Assets	87,084	99,047	186,131
Other Non-Current Assets	-	42,960	42,960
Total Assets	526,753,066	2,487,880,761	3,014,633,827
DEFERRED OUTFLOWS OF RESOURCES	6,226,231	12,554,692	18,780,923
Liabilities			
Current			
Accounts/Payroll Payables	26,342,479	1,619,924	27,962,403
Interest Payable	-	12,314,723	12,314,723
Unearned Revenue	13,247	6,743,858	6,757,105
Bonds Payable	-	16,536,683	16,536,683
Notes and Loans Payable	-	223,965	223,965
Short-Term Debt	-	134,330,280	134,330,280
Net OPEB Liability	110,515	110,515	221,030
Other Current Liabilities	1,129,425	1,603,626	2,733,051
Non-current			
Net Pension Liability	28,910,839	30,784,686	59,695,525
Net OPEB Liability	21,669,626	21,669,626	43,339,252
Bonds Payable	-	1,711,919,800	1,711,919,800
Notes and Loans Payable	-	108,242,300	108,242,300
Derivative Hedging Instrument	-	5,599,045	5,599,045
Other Non-current Liabilities	446,920	138,145,966	138,592,886
Total Liabilities	78,623,051	2,189,844,997	2,268,468,048
DEFERRED INFLOWS OF RESOURCES	6,014,794	5,592,732	11,607,526
Net Position			
Invested in Capital Assets	87,084	99,047	186,131
Restricted	499,829,399	274,787,799	774,617,198
Unrestricted	(51,575,031)	30,110,878	(21,464,153)
Total Net Position	$ 448,341,452	$ 304,997,724	$ 753,339,176

Texas Department of Housing and Community Affairs

Major Categories of the Statement of Net Position

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.
Investments		Investments stated at fair value. Primarily in the form of Mortgage Backed Securities (MBSs) and Guaranteed Investment Contracts (GICs) due to mature in one year or less.
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 made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP, National Housing Trust Fund (NHTF) and NSP activities due to mature within one year.	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, National Housing Trust Fund (NHTF) 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 Texas 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 and Other Post-Employment Benefits (OPEB) are reported as deferred outflows of resources.	The effect of changes in actuarial assumptions for pensions and OPEB 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.
Bonds Payable		Bonds payable reported at par less unamortized discount or plus unamortized premium due in one year or less.

Short-Term Debt		Represents funds due to Federal Home Loan Bank of Dallas for advances used to fund the purchase of program loans. Advances occur on a daily basis and are used to purchase mortgage loans. With each MBS settlement, the advances are repaid related to the mortgage loans underlying the related MBS.

Liabilities/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.	
Net OPEB Liability	The Department's proportionate share of the OPEB 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 and OPEB 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, NHTF and NSP.	Amounts restricted through bond covenants.
Unrestricted	Resources not considered restricted per accounting standards but spending authority remains under program related regulations, General Appropriations Act, Government Code and Board Action. $28.9M Pension Liability for Governmental Activities and $30.8M for Business-Type Activities impact unrestricted Net Position. In addition, $29.8M OPEB Liability for Governmental Activities and 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 June 1, 2019, through August 31, 2019.

	Governmental Activities	**Business-Type Activities**
Assets Current/Non-current:		
Cash & Cash Equivalents	• ***Grants Funded - $43.1M –*** (*Decrease Cash)* ▪ Emergency Solutions Grants Program (ESG) - $2.3M ▪ Community Services Block Grant (CSBG) - $8.3M ▪ Low Income Home Energy Assistance Program (LIHEAP) - $28.3M ▪ Department of Energy-Weatherization Assistance Program (DOE-WAP) - $1.0M ▪ Section 8 - $1.6M ▪ Section 811 - $660K ▪ Homeless Housing and Services Program (HHSP) - $944K	• ***Fees Received - $2.6M –*** *(Increase Cash & Cash Equivalents)* ▪ Multifamily Fees - $567.3K ▪ Tax Credit Fees - $597.6K ▪ Compliance Fees - $1.4M
Loans and Contracts	• ***Mortgages Funded – $7.1M –*** (*Increase)* ▪ Home Investment Partnership Program (HOME) - $1.4M ▪ Tax Credit Assistance Program (TCAP) - $843K ▪ National Housing Trust Fund (NHTF) - $2.1M ▪ Neighborhood Stabilization Program (NSP) - $2.8M • ***Mortgage Loan Repayments - $3.4M –*** (*Decrease)* ▪ HOME - $2.1M ▪ TCAP - $808K ▪ NSP - $462K	❖ ***Mortgages Funded - $438.8M*** – (*Increase)* ▪ Taxable Mortgage Program (TMP)- $421.1M ▪ Down Payment Assistance Program(DPAP) - $16.6M ▪ Texas Housing Trust Fund (Bootstrap) - $1.1M ❖ ***Mortgage Loan Repayments - $490.3M – (Decrease)*** ▪ DPAP - $1.6M ▪ TMP - $417.3M ▪ Multifamily Indentures - $70.7M ▪ Texas Housing Trust Fund (Bootstrap) - $660K

	Governmental Activities	Business-Type Activities
Liabilities Current/Non-current:		
Bonds Payable/ Notes Payable		• ***Single Family Revenue Bonds Issued – $208.3M –*** *(Increase)* ▪ $165.3M (Single Family Revenue Bonds 2019 Series A) ▪ $43.0M (3 new Multifamily Bonds) • ***Bonds Redeemed - $84.5M –*** (*Decrease)* ▪ Single Family Indenture - $3.2M ▪ Residential Mortgage Revenue Bonds Indenture - $4.0M ▪ Multifamily Indentures - $77.3M

2d

BOARD REPORT ITEM

BOND FINANCE DIVISION

NOVEMBER 7, 2019

Report on the Department's 4th 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 $173 million (see page 3), resulting in an end of quarter balance of $1,246,928,314. There was one new single family bond issue in the Single Family indenture this quarter in the amount of $165,325,000.

  The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	Beginning Quarter	Ending Quarter
Mortgage Backed Securities (MBS)	73%	71%
Guaranteed Investment Contracts/Investment Agreements	14%	17%
Repurchase Agreements	3%	4%
Treasury Backed Mutual Funds	3%	3%
Treasury Notes / Bonds	7%	6%

The decrease in MBS is due to the repayment of principal on the underlying mortgage loans. The increase in Guaranteed Investment Contracts is due to the issuance of single family bonds and the deposit of proceeds. The increase in Repurchase Agreements is from the deposit of principal and interest on the underlying mortgages. The decrease in Treasury Notes / Bonds is due to the redemption of multifamily bonds.

Portfolio activity for the quarter:

- The MBS purchases this quarter were approximately $109.6 million, due to the issuance of single family bonds and the investment of proceeds in MBS.
- The maturities in MBS were approximately $16.1 million, which represent loan repayments or payoffs.

The table below shows the trend in MBS activity.

	4th Qtr FY 18	1st Qtr FY 19	2nd Qtr FY 19	3rd Qtr FY 19	4th Qtr FY 19	Total
Purchases		$ 62,399,364	$ 120,432,081	$ 72,347,936	$ 109,650,734	$ 364,830,115
Sales			$ 17,579,637			$ 17,579,637
Maturities	$ 14,288,320	$ 14,306,899	$ 12,796,395	$ 13,691,518	$ 16,187,797	$ 71,270,929
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) increased $27.9 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 August 31, 2019, was 3.58%, down from 3.99% at the end of May 2019. 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 106.36% to 111.88%, 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 August 31, 2019

	FAIR VALUE (MARKET) @ 05/31/19	CARRYING VALUE @ 05/31/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/19	FAIR VALUE (MARKET) @ 08/31/19	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 08/31/19	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	507,889,513.06	485,991,674.06	188,866,357.25	(11,977,411.33)	(11,482,004.24)	5,004,344.93	656,402,960.67	682,848,788.67	4,547,989.00	1,685,317.02	-
RMRB	299,143,402.24	292,948,944.42	97,422,250.39	(97,746,761.54)	(4,355,197.10)	(5,004,344.93)	283,264,891.24	300,117,322.47	10,657,973.41	1,130,146.71	-
Taxable Mortgage Program	4,466,505.45	4,466,505.45	117,119.55	-	-	-	4,583,625.00	4,583,625.00	-	555,912.11	-
Multi Family	294,493,068.85	290,390,136.07	36,944,632.23	(24,307,335.75)	(350,595.51)	-	302,676,837.04	319,528,645.64	12,748,875.82	509,160.69	-
TOTAL	1,105,992,489.60	1,073,797,260.00	323,350,359.42	(134,031,508.62)	(16,187,796.85)	0.00	1,246,928,313.95	1,307,078,381.78	27,954,838.23	3,880,536.53	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 9, 2019
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

_____Executed Report Attached_____ _____
David Cervantes
Director of Administration

_____Executed Report Attached_____ _____
Monica Galuski
Director of Bond Finance/Chief Investment Officer

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOND FINANCE DIVISION
BOND TRUST INDENTURES
Supplemental Management Report
Quarter Ending August 31, 2019

	FAIR VALUE (MARKET) @ 05/31/19	CARRYING VALUE @ 05/31/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/19	FAIR VALUE (MARKET) @ 08/31/19	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 08/31/19	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	507,889,513.06	485,991,674.06	188,866,357.25	(11,977,411.33)	(11,482,004.24)	5,004,344.93	656,402,960.67	682,848,788.67	4,547,989.00	1,685,317.02	-
RMRB	299,143,402.24	292,948,944.42	97,422,250.39	(97,746,761.54)	(4,355,197.10)	(5,004,344.93)	283,264,891.24	300,117,322.47	10,657,973.41	1,130,146.71	-
Taxable Mortgage Program	4,466,505.45	4,466,505.45	117,119.55	-	-	-	4,583,625.00	4,583,625.00	-	555,912.11	-
Multi Family	294,493,068.85	290,390,136.07	36,944,632.23	(24,307,335.75)	(350,595.51)	-	302,676,837.04	319,528,645.64	12,748,875.82	509,160.69	-
TOTAL	1,105,992,489.60	1,073,797,260.00	323,350,359.42	(134,031,508.62)	(16,187,796.85)	0.00	1,246,928,313.95	1,307,078,381.78	27,954,838.23	3,880,536.53	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 9, 2019
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

Date: 10/28/19
David Cervantes
Director of Administration

Date: 10/28/19
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 August 31, 2019

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 05/31/19	CARRYING VALUE @ 05/31/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/19	FAIR VALUE (MARKET) @ 08/31/19	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	820,338,670.30	788,114,806.50	109,650,733.81	-	(16,187,796.85)	-	881,577,743.46	941,669,013.25	27,867,405.99	-
Guaranteed Inv Contracts	147,772,173.98	147,772,173.98	175,790,073.75	(110,885,393.66)	-	-	212,676,854.07	212,676,854.07	-	-
Investment Agreements	1,987,389.28	1,987,389.28	-	(1,562,017.89)	-	-	425,371.39	425,371.39	-	-
Treasury-Backed Mutual Funds	35,655,480.10	35,655,480.10	9,869,594.26	(12,042,101.29)	-	-	33,482,973.07	33,482,973.07	-	-
Repurchase Agreements	30,748,241.96	30,748,241.96	19,952,008.52	(1,516,208.62)	-	-	49,184,041.86	49,184,041.86	-	-
Treasury Notes / Bonds	69,490,533.98	69,519,168.18	8,087,949.08	(8,025,787.16)	-	-	69,581,330.10	69,640,128.14	87,432.24	-
TOTAL	1,105,992,489.60	1,073,797,260.00	323,350,359.42	(134,031,508.62)	(16,187,796.85)	0.00	1,246,928,313.95	1,307,078,381.78	27,954,838.23	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 9, 2019
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

_____Executed Report Attached_____ Date _____
David Cervantes
Director of Administration

_____Executed Report Attached_____ Date _____
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 August 31, 2019

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 05/31/19	CARRYING VALUE @ 05/31/19	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/19	FAIR VALUE (MARKET) @ 08/31/19	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	820,338,670.30	788,114,806.50	109,650,733.81	-	(16,187,796.85)	-	881,577,743.46	941,669,013.25	27,867,405.99	-
Guaranteed Inv Contracts	147,772,173.98	147,772,173.98	175,790,073.75	(110,885,393.66)	-	-	212,676,854.07	212,676,854.07	-	-
Investment Agreements	1,987,389.28	1,987,389.28	-	(1,562,017.89)	-	-	425,371.39	425,371.39	-	-
Treasury-Backed Mutual Funds	35,655,480.10	35,655,480.10	9,869,594.26	(12,042,101.29)	-	-	33,482,973.07	33,482,973.07	-	-
Repurchase Agreements	30,748,241.96	30,748,241.96	19,952,008.52	(1,516,208.62)	-	-	49,184,041.86	49,184,041.86	-	-
Treasury Notes / Bonds	69,490,533.98	69,519,168.18	8,087,949.08	(8,025,787.16)	-	-	69,581,330.10	69,640,128.14	87,432.24	-
TOTAL	**1,105,992,489.60**	**1,073,797,260.00**	**323,350,359.42**	**(134,031,508.62)**	**(16,187,796.85)**	**0.00**	**1,246,928,313.95**	**1,307,078,381.78**	**27,954,838.23**	**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 9, 2019
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

Date 10/28/19
David Cervantes
Director of Administration

Monica Galuski Date 10/28/19
Monica Galuski
Director of Bond Finance/Chief Investment Officer

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of August 31, 2019

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:				
PARITY ASSETS				
Cash	$ 191,194	$ 75,745	$ 7,340,479	$ 7,607,418
Investments[1]	$ 217,091,194	$ 29,438,944	$ 300,414,901	$ 546,945,039
Mortgage Backed Securities[1]	$ 438,438,060	$ 253,825,947	$ -	$ 692,264,007
Loans Receivable[2]	$ 19,292	$ -	$ 742,049,476	$ 742,068,768
Accrued Interest Receivable	$ 1,701,058	$ 1,130,210	$ 4,140,998	$ 6,972,266
TOTAL PARITY ASSETS	$ 657,440,798	$ 284,470,846	$ 1,053,945,854	$ 1,995,857,498
PARITY LIABILITIES				
Notes Payable	$ 12,000,000	$ 10,000,000	$ 86,486,199	$ 108,486,199
Bonds Payable[1]	$ 599,923,691	$ 252,625,000	$ 851,324,529	$ 1,703,873,220
Accrued Interest Payable	$ 6,214,465	$ 1,885,542	$ 4,214,716	$ 12,314,723
Other Non-Current Liabilities[3]		$ -	$ -	$ -
TOTAL PARITY LIABILITIES	$ 618,138,156	$ 264,510,542	$ 942,025,444	$ 1,824,674,142
PARITY DIFFERENCE	$ 39,302,642	$ 19,960,304	$ 111,920,410	$ 171,183,356
PARITY	**106.36%**	**107.55%**	**111.88%**	**109.38%**

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for Also, the CHMRB Bonds were redeemed in full in January 2019.

(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.

3

BOARD ACTION REQUEST

OCI, HTF, and NSP DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Maverick County and Starr County in accordance with Tex. Gov't Code §2306.582 through Community Development Block Grant Funding

RECOMMENDED ACTION

WHEREAS, the Department is required to establish Colonia Self-Help Centers (CSHCs) in Cameron/Willacy, El Paso, Hidalgo, Starr, and Webb counties;

WHEREAS, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties as authorized by Tex. Gov't Code §2306.582 to address the needs of colonias in these counties;

WHEREAS, in accordance with Tex. Gov't Code §2306.585(b) the Department is required to meet with the Colonia Resident Advisory Committee (C-RAC) at least 30 days prior to the Board's consideration of a CSHC award;

WHEREAS, on October 3, 2019, the Department met with the C-RAC to discuss funding proposals for Maverick County and Starr County, and the C-RAC recommended to award funds to these counties;

WHEREAS, this award will make available Community Development Block Grant (CDBG) funding to serve Maverick and Starr County colonias with the CSHC Program; and

WHEREAS, Starr County is still pending the completion and submission of a compliant Single Audit for Fiscal Year End September 30, 2018, to the Federal Audit Clearinghouse (FAC);

NOW, therefore, it is hereby

RESOLVED, that the Executive Director is hereby authorized to make an award of CDBG funding under the CSHC Program to Maverick County in the amount of $1,000,000 from Program Year 2018, and to Starr County in the amount of $700,000 from Program Year 2018 and deobligated funds from Program Years 2006 and 2011, as further described in Exhibits A and B, and contingent upon the resolution of the conditions described in the herein.

BACKGROUND

Colonia Self-Help Center Program

In 1995, the 74th Texas Legislature created the CSHC Program. The purpose of a CSHC is to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve or maintain a safe, suitable home in the designated colonia service area or in another area that the Department has determined is suitable. Pursuant to Tex. Gov't Code Chapter 2306 Subchapter Z, the Department established CSHCs in Cameron/Willacy, El Paso, Hidalgo, Starr, and Webb counties. Statute allows for CSHCs to be established in any other county if TDHCA deems it necessary and appropriate, and if the county is designated as an economically distressed area under Chapter 17 of the Water Code. In 2001, TDHCA established additional centers in Maverick and Val Verde counties.

The CSHCs are funded through a 2.5% set-aside (approximately $1.5 million per year) of the annual Texas Community Development Block Grant (TxCDBG) non-entitlement allocation to the State of Texas. The Texas Department of Agriculture (TDA) receives the allocation from the U.S. Department of Housing and Urban Development (HUD), and TDA and TDHCA together manage TxCDBG funds and implement the CSHC Program through a Memorandum of Understanding.

TDHCA's Colonia Resident Advisory Committee (C-RAC) review proposals from participating counties that include a Performance Statement and Budget for the activities to be implemented in five designated colonias in each county service area. The CSHC contracts have a term of four years per Tex. Gov't Code §2306.587, and a limit of $1,000,000 in accordance with 10 TAC §25.5.

On October 3, 2019, the C-RAC convened at the Webb County CSHC for presentations of proposals and scopes of work by Maverick County and Starr County. The C-RAC recommends to the Board that it award both Counties' proposals in full.

Additional Background on the Maverick County CSHC

Since 2015, the Department had contracted with the City of Eagle Pass to administer the prior Maverick County CSHC contract. The City of Eagle Pass was unable to expend the vast majority of their CSHC contract funding and could not implement all contracted services by the contract end date. To make every effort to ensure that colonia residents are being served, and to mitigate the possibility of TDHCA having to return CDBG funds to TDA and/or HUD, on May 23, 2019, the Board approved the rebidding of the CSHC for Maverick County, and the City of Eagle Pass was informed that the Department would be rebidding the CSHC. With Board authority, the Department then published a "Request for Administrator" for a qualified administrator to step forward to operate the Maverick County CSHC.

Maverick County responded to the Request and submitted a proposal, which received the highest average score of the two proposals received. In 2011, Maverick County had administered the CSHC contract prior to the City of Eagle Pass, but was unable to continue due to concerns from HUD and delinquent single audits. On October 2, 2019, TDHCA's Compliance Division did not identify any concerns or delinquencies in its Previous Participation Review. The Contract Term for this award is anticipated to be December 20, 2019, through December 19, 2023.

Additional Background on the Starr County CSHC

To date, Starr County is still pending the completion and submission of a compliant Single Audit for Fiscal Year End September 30, 2018, to the FAC. On October 28, 2019, TDHCA's Executive Award Review Advisory Committee (EARAC) met to discuss this compliance matter and recommended the conditional approval of a new CSHC contract with Starr County, in accordance with 10 TAC §1.303(e)(1). The timely submission of a Single Audit was also a concern for fiscal year 2017.

Starr County has represented that the current Single Audit has been delayed because the county has hired a new auditor, and that they expect it to be completed by the end of November. Starr County must submit their compliant Single Audit to the FAC as soon as possible, but in no instance later than February 7, 2020, and provide confirmation to the Department of their submission in order to execute any new CSHC Contract with the Department. Depending on the results of that Single Audit, the Department may impose additional conditions upon the Contract in accordance with 2 CFR §200.207.

The 4-year Contract Term for Starr County will start the later of December 20, 2019, or the date of submission of the Single Audit to the FAC

EXHIBIT A

COLONIA SHC AWARD DESCRIPTION

Subrecipient:	Maverick County
Contact:	The Honorable David Saucedo, Maverick County Judge
Colonias:	Chula Vista 1-5
	Lago Vista Subdivision
	Loma Bonita
	Loma Linda #1
	South Elm Creek #1

Maverick County proposes the following housing and community development activities to benefit an estimated 5,158 persons, of which 4,126 or 80% are of low- to moderate-income:

Performance Activity	Quantity	Budget
Public Service		**$100,000**
Tool Library	400 checkouts	
Technology Access	400 visits	
Solid Waste Removal	25 tons	
Computer Classes	10 classes	
Construction Classes	10 classes	
Residential Rehabilitation	6 homes	**$270,000**
Reconstruction (Not feasible for rehab)	10 homes	**$480,000**
Administration		**$150,000**
TOTAL		**$1,000,000**

EXHIBIT B

COLONIA SHC AWARD DESCRIPTION

Subrecipient: Starr County
Contact: The Honorable Eloy Vera, Starr County Judge
Colonias: Mesquite #1
Trevino's
Share 52
Venencia
Victoria

Starr County proposes the following housing and community development activities to benefit an estimated 1,746 persons, of which 1,746 or 80% are of low- to moderate-income:

Performance Activity	Quantity	Budget
Public Service		**$70,000**
Tool Library	300 checkouts	
Technology Access	300 visits	
Solid Waste Removal	5 events	
Technology Classes	10 classes	
Construction Classes	10 classes	
Residential Rehabilitation	1 home	**$30,000**
Reconstruction (Not feasible for rehab)	11 homes	**$495,000**
Administration		**$105,000**
TOTAL		**$700,000**

4a

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on Resolution No. 20-006 approving the form and substance of Warehousing Agreement, Retained Mortgage Loan Agreement, and Master Trade Confirmation; authorizing the execution of documents and instruments related 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) financed approximately $1.5 billion in first mortgage loans in fiscal year 2019. Financing sources were the Department's Taxable Mortgage Program (TMP) and Single Family Mortgage Revenue Bonds (SFMRBs). The Department's Warehousing Agreement, Master Trade Confirmation, and Retained Mortgage Loan Agreement are critical components to the Department's financing structure for its homeownership programs. Brief descriptions of the purpose of each agreement are provided below.

Warehousing Agreement. At the Board meeting of October 10, 2019, staff reported the selection of Hilltop Securities to provide a Warehouse Facility (the Facility). The Facility is primarily used to reduce the cost of negative arbitrage associated with the issuance of SFMRBs. Negative arbitrage is incurred when the interest paid to bondholders exceeds the interest earned on the investment of bond proceeds. The Facility reduces negative arbitrage by allowing the Department to originate and pool mortgage loans prior to bond closing. Mortgage-backed securities (MBS), created with mortgage loans originated prior to bond closing, are purchased and held in the Facility until the bond issue closes, at which time bond proceeds are used to purchase the MBS into the trust estate for the bonds. While the MBS are held in the Facility, the Facility receives and retains the payments received on the MBS. Depending on mortgage rates and other factors, the Department typically receives a fee against the par amount of MBS held in the Facility. The Department has maintained a Facility since 2010 and its current Facility, evidenced by a Warehousing Agreement, expires on December 1, 2019. The proposed Warehousing Agreement, to be effective December 1, 2019, is provided as Exhibit A to the attached Resolution.

Master Trade Confirmation. At the Board meeting of October 10, 2019, staff reported the selection of Hilltop Securities as TBA Program Administrator (the TBA Administrator) for the Department's Taxable Mortgage Program (TMP). The TMP financing mechanism is commonly referred to as TBA, which stands for To Be Announced, because mortgage rates and loan pricing are established daily for an unspecified par amount of mortgage loans to be reserved, closed, pooled into MBS, and delivered to the TBA Administrator in the future. The TBA Administrator hedges the TMP loan pipeline, bearing the financial risks and costs associated with changes in market conditions and loan pipeline fallout. The Department has had a TBA Administrator since 2012 and its current contract, evidenced by a Master Trade Confirmation, expires December 1, 2019. The proposed Master Trade Confirmation, to be effective December 1, 2019, is provided as Exhibit B to the attached Resolution.

Retained Mortgage Loan Agreement. Through the Retained Mortgage Loan Agreement, the Department can use TMP loans that were intended to back MBS for sale to the TBA Administrator to, instead, collateralize SFMRBs. The Department typically retains loans to reduce negative arbitrage or in response to a shift in mortgage rates while loans are being originated for purchase with bond proceeds. Related costs are offset by negative arbitrage savings, and hedge costs incurred in retaining loans in advance of a new issue of SMRBs can be recouped through the economics of the bond issue; other benefits include reducing or eliminating the amount of bonds redeemed due to non-origination. Previously, the Master Trade Confirmation established the terms by which the Department could retain loans that had been originated and hedged through TMP. As the terms of retention and required documentation have expanded, this aspect of the Master Trade Confirmation has been moved to a separate contract. The proposed Retained Mortgage Loan Agreement, to be effective December 1, 2019, is provided as Exhibit C to the attached Resolution.

RESOLUTION NO. 20-006

RESOLUTION APPROVING THE FORM AND SUBSTANCE OF WAREHOUSING AGREEMENT, RETAINED MORTGAGE LOAN AGREEMENT AND MASTER TRADE CONFIRMATION; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATED 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, 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 Board of the Department (the "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, the Department has previously entered into a Second Amended and Restated Warehousing Agreement dated as of December 1, 2011, as previously amended and assigned (the "2011 Warehousing Agreement") with The Bank of New York Mellon Trust Company, N.A., as indenture trustee (the "Trustee"), Hilltop Securities Inc. (the "Warehouse Provider") and The Bank of New York Mellon Trust Company, N.A., as custodian (the "Custodian"), providing for the acquisition and temporary warehousing by the Warehouse Provider of qualifying mortgage-backed securities ("Mortgage Certificates") acquired under the Department's single family mortgage program; and

WHEREAS, the Department, the Trustee, the Warehouse Provider and the Custodian now desire to enter into a new Warehousing Agreement (the "Warehousing Agreement") with substantially similar terms as the 2011 Warehousing Agreement; and

WHEREAS, pursuant to Chapter 1371, Texas Government Code, as amended ("Chapter

1371"), the Department is authorized to enter into "credit agreements" as defined in Chapter 1371; and

WHEREAS, the Board has determined that the Warehousing Agreement is a "credit agreement" under Section 1371.001 of the Texas Government Code, as amended, relating to the Department's single family and residential mortgage revenue bonds (the "Bonds"); and

WHEREAS, in order to modify the Department's risk of interest rate changes in anticipation of the issuance of future single family and residential mortgage revenue bonds, the Board desires to authorize the execution and delivery of the Retained Mortgage Loan Agreement (the "Retained Loan Agreement") and the Master Trade Confirmation (the "Master Trade Confirmation") in substantially the forms attached hereto, each between the Department and Hilltop Securities Inc.; and

WHEREAS, the Board has determined that the Retained Loan Agreement and the Master Trade Confirmation are "credit agreements" under Section 1371.00 of the Texas Government Code, as amended, relating to the Bonds; and

WHEREAS, the Board desires to approve the execution and delivery of the Warehousing Agreement, the Retained Loan Agreement, and the Master Trade Confirmation and the taking of such other actions as may necessary or convenient to carry out the purposes of this Resolution; and

WHEREAS, the Board has examined the Warehousing Agreement, the Retained Loan Agreement, and the Master Trade Confirmation and has found the form and substance thereof to be satisfactory and proper, and has determined to authorize the execution and delivery of such document and the taking of such other action as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1. Authority to Approve Form and Certain Terms of Warehousing Agreement. The Authorized Representatives are hereby authorized and empowered, in accordance with Chapter 1371, to fix and determine the terms of the Warehousing Agreement, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Warehousing Agreement.

Section 1.2. Approval, Execution and Delivery of Warehousing Agreement. The Warehousing Agreement, in substantially the form presented to the Board, is hereby approved and the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Warehousing Agreement and

to deliver the Warehousing Agreement to the Trustee, the Warehouse Provider and the Custodian.

Section 1.3. Approval of Retained Loan Agreement and Master Trade Confirmation. That in accordance with Chapter 1371 and the Act, the form and substance of the Retained Loan Agreement and the Master Trade Confirmation are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Retained Loan Agreement and the Master Trade Confirmation and to deliver such documents to Hilltop Securities Inc.

Section 1.4. Execution and Delivery of Other Documents. 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.

Section 1.5. 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 1.6. 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 - Warehousing Agreement
Exhibit B - Master Trade Confirmation
Exhibit C - Retained Mortgage Loan Agreement

Section 1.7. 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 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 Multifamily Bonds of the Department, the Director of Texas Homeownership 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.

Section 1.8. Submission to the Attorney General of Texas. The Board hereby authorizes the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of a transcript of the legal proceedings relating to the authorization of the Warehousing Agreement.

Section 1.9. Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Warehousing Agreement are hereby ratified and confirmed.

Section 1.10. Board Determination. The Board has determined that the Warehousing Agreement, the Retained Mortgage Loan Agreement and the Master Trade Confirmation are each a "credit agreement" under Section 1371.001 of the Texas Government Code, as amended.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1. 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 2.2. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 7th day of November, 2019.

_____
Chair, Board

ATTEST:

_____
Secretary to the Board

(SEAL)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

WAREHOUSING AGREEMENT

THIS WAREHOUSING AGREEMENT (this "Warehousing Agreement") dated as of December 1, 2019, is by and between Texas Department of Housing and Community Affairs (the "Department"), The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture (defined below) (the "Trustee"), The Bank of New York Mellon Trust Company, N.A., as custodian (the "Custodian"), and Hilltop Securities Inc. (the "Warehouse Provider").

WHEREAS, the Department has issued, and will issue bonds (the "Bonds"), under a Residential Mortgage Revenue Bond Trust Indenture, dated as of July 1, 2019, as amended and supplemented from time to time (the "RMRB Indenture"), and the Amended and Restated Single Family Mortgage Revenue Bond Trust Indenture, dated as of June 1, 2017, as amended and supplemented from time to time (the "Single Family Indenture," and collectively with the RMRB Indenture, the "Indenture"), both by and between the Department and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, the parties previously entered into a Warehousing Agreement dated as April 8, 2010, which was amended and restated as of January 1, 2011 and as of December 1, 2011, and subsequently amended (collectively, the "Prior Warehousing Agreement"), and now wish to enter into this Warehousing Agreement to replace the Prior Warehousing Agreement, effective as of the date written above; and

WHEREAS, under the Indenture the Trustee is required to purchase certain mortgage-backed certificates (the "Certificates") guaranteed as to payment of principal and interest by the Government National Mortgage Association, Fannie Mae or Freddie Mac in accordance with the terms of a Program Administration and Servicing Agreement entered into (the "Servicing Agreement"), by and among the Department, the Servicer (defined below) and the Trustee; and

WHEREAS, the Department has determined to enter into this agreement to provide for the temporary warehousing of the Certificates pending the establishment of Certificate Sale Dates as described herein, and the Warehouse Provider has agreed to warehouse Certificates in accordance with the terms and conditions of this Warehousing Agreement; and

WHEREAS, the Department by its execution below, hereby authorizes and instructs the Custodian to (i) purchase the Certificates on behalf of the Warehouse Provider at the Warehousing Purchase Price from funds of the Warehouse Provider deposited with the Custodian and deliver the Certificates to the Warehouse Provider as described herein, all in accordance with Section 2 below, and (ii) purchase the Certificates from the Warehouse Provider on each Certificate Sale Date (as defined below) in accordance with Section 3 below.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

For purposes of this Warehousing Agreement, unless the context clearly indicates otherwise, the following words or terms have the respective meanings provided therefor. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in the Indenture.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions are closed in New York, New York, or in the state in which either the Principal Office or the Operations Office of the Custodian is located, or (iii) a day on which the New York Stock Exchange is closed.

"Certificates" means the GNMA Certificates, Fannie Mae Certificates or Freddie Mac Certificates, as applicable, originated in with respect to any Bond series or issue designated by the Department or backed by retained mortgage loans under the TMP.

"Certificate Delivery Date" means any date on or before the termination date of this Warehousing Agreement, as it may be extended from time to time, on which the Servicer delivers Certificates to the Custodian (on behalf of the Warehouse Provider) or the Warehouse Provider for purchase under this Warehousing Agreement.

"Certificate Sale Date" means any Business Day or Days on or before termination date of this Warehousing Agreement, as it may be extended from time to time, which is mutually agreed to by the Department and the Warehouse Provider.

"GSE" means either Fannie Mae or Freddie Mac or both, collectively, as the context may require.

"Principal Payments" means any principal payments received by the Warehouse Provider on the Certificates on or before a Certificate Sale Date.

"Program" means the program pursuant to which the Department will provide funds through the issuance of the Bonds to finance the purchase of Mortgage Loans through the purchase of Certificates.

"Servicer" means Idaho Housing and Finance Association, the master servicer for the Mortgage Loans financed with the proceeds of the Bonds, or any other servicer selected by the Department with notice to the Warehouse Provider.

"Warehousing Purchase Price" means the amount paid to the Custodian by the Warehouse Provider on a Certificate Delivery Date for the purchase of each Certificate, which will be 100% of the outstanding principal amount of such Certificate, plus accrued and unpaid interest, if any, to such Certificate Delivery Date.

SECTION 2. PURCHASE OF CERTIFICATES BY WAREHOUSE PROVIDER ON CERTIFICATE DELIVERY DATES

(a) (i) As early as practicable on each Certificate Delivery Date, the Warehouse Provider shall transfer to the Custodian an amount equal to the Warehousing Purchase Price in the manner described in Section 9 hereof. The Warehouse Provider hereby directs the Custodian to establish segregated accounts for the benefit of the Warehouse Provider for the sole purpose of settling the Certificates that are purchased by the Custodian (on behalf of the Warehouse Provider) from the Servicer under this Warehousing Agreement. Notwithstanding the foregoing provisions of this paragraph or any other provision of this Section 2(a), the Warehouse Provider may purchase Certificates from the Servicer (directly, and not through the Custodian acting on behalf of the Warehouse Provider), in accordance with settlement and delivery instructions among the Department, the Warehousing Provider and the Servicer, and the provisions of those instructions shall control the purchase of warehoused Certificates by the Warehouse Provider to the extent contrary to the provisions of Section 2(a); provided that all other provisions of this Section 2(a) shall remain in effect.

The Warehouse Provider shall have no obligation to purchase a Certificate that bears interest at a pass-through rate that is less than 3.50% per annum unless the Warehouse Provider consents in writing to such a purchase; provided that the Warehouse Provider shall purchase Certificates (or portions thereof) bearing interest at a pass-through rate that is less than 3.50% to the extent such Certificates are backed by Mortgage Loans made in federally designated targeted areas ("Targeted Area Mortgage Loans").

(ii) As soon as practicable upon the Custodian's receipt of the Warehousing Purchase Price from the Warehouse Provider, the Custodian shall, on behalf of the Warehouse Provider, purchase the Certificates at the applicable Warehousing Purchase Price, delivery against payment, from the Servicer; provided, however, that if the Custodian does not receive the Certificates from the Servicer by 3:00 p.m., New York time on the Certificate Delivery Date, the Custodian shall at the written instructions of the Warehouse Provider, either (A) promptly redeliver the Warehousing Purchase Price to the Warehouse Provider or (B) invest the Warehousing Purchase Price overnight in a U.S. Government money market fund managed by the Custodian or its affiliates and remit any interest earned thereon to the Warehouse Provider.

(iii) In addition to the Warehousing Purchase Price paid for each Certificate, on or before each Certificate Delivery Date the Department shall pay, or cause to be paid, to the Servicer any amount required to be paid to the Servicer in excess of the Warehousing Purchase Price for such Certificate.

(iv) The Department agrees that the maximum total principal amount of Certificates required to be warehoused by the Warehouse Provider on any particular date shall not exceed $200,000,000 without the written consent of the Warehouse Provider and a resolution of the Department.

(v) If the warehoused Certificates hereunder on any particular date are at least $175,000,000, upon action of the Board of the Department, the Department may request that the Warehouse Provider purchase Certificates in excess of $200,000,000; if the Warehouse Provider do not so agree within 10 calendar days of such a request, the Department may engage one or more additional warehouse providers to purchase Certificates up to an additional maximum amount of $100,000,000 (or such greater amount approved by the Warehouse Provider); provided that the Warehouse Provider shall retain a first priority for warehousing Certificates up to $200,000,000 and shall retain its rights hereunder to establish a Certificate Sale Date.

(vi) As soon as practicable after the receipt of the Warehousing Purchase Price from the Warehouse Provider, the payment thereof to the Servicer, and the Custodian's receipt of the Certificates from the Servicer, the Custodian shall make a "free" delivery of such Certificates to the Warehouse Provider. Any payments of principal or interest made on the Certificates prior to the Certificate Sale Date for such Certificates while in the possession of the Custodian shall be the exclusive property of the Warehouse Provider and shall be paid to the Warehouse Provider immediately.

(b) The Custodian agrees to give the Warehouse Provider at least five (5) Business Days notice prior to the delivery of the Certificates to the Warehouse Provider, specifying the type and principal balance, the pass-through rate, the CUSIP number and the pool number of each Certificate and the proposed Certificate Delivery Date. All Certificate deliveries to the Warehouse Provider shall be via the Federal Reserve wire system.

(c) The Custodian shall provide immediate written notice to the Trustee and the Department of all Certificates delivered to the Warehouse Provider pursuant to this Warehousing Agreement.

(d) The Warehouse Provider shall not be required to transfer the Warehousing Purchase Price to the Custodian or accept delivery of Certificates if the Custodian, the Trustee or the Department has defaulted in the performance of its obligations under this Warehousing Agreement or an event of default has occurred and is continuing under the Indenture or the Servicing Agreement that adversely affects the ability of the Warehouse Provider, in its judgment, to purchase or re-sell the Certificates.

(e) Although the parties hereto intend that the transactions contemplated by Section 2(a) (the "Purchases") be treated as purchases and sales and not loans, in the event any such Purchases are deemed to be loans, the Custodian shall be deemed to have pledged to the Warehouse Provider as security for the performance by the Custodian of its obligations under each such Purchase, and shall be deemed to have granted to the Warehouse Provider a perfected security interest in, all of the Certificates with respect to all Purchases hereunder and all proceeds thereof. To the extent required by applicable law, all Certificates in the possession of the Custodian shall be segregated from other securities in its possession and shall be identified as subject to this Warehousing Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial intermediary or a clearing corporation. Title to all Certificates shall pass to the Warehouse Provider and, unless otherwise agreed in writing by the Warehouse Provider and the Custodian, nothing shall relieve

the Warehouse Provider of its obligation to transfer Certificates to the Trustee pursuant to Section 3 hereof.

(f) The Warehouse Provider shall not be required to accept any Certificates unless accompanied by a certification from the Servicer to the effect that they qualify for funding under the Program. The Warehouse Provider shall retain all Principal Payments with respect to the warehoused Certificates (including scheduled principal payments and prepayments).

(g) Subject to Section 2(a)(v), the Department agrees that all Certificates financed under the Program relating to the Bonds (and pooled by the Servicer) shall be sold to the Warehouse Provider under this Warehousing Agreement unless (i) the Certificates are sold by the Servicer directly to the Department or the Trustee, (ii) the Warehouse Provider is unable to discharge its obligations hereunder, or (iii) the written consent of the Warehouse Provider is provided to the Department.

SECTION 3. SALE OF CERTIFICATES FROM WAREHOUSE PROVIDER TO TRUSTEE; PLEDGE OF COLLATERAL BY DEPARTMENT; SHARING OF WAREHOUSING SPREAD.

(a) The Warehouse Provider shall sell, and the Trustee shall purchase, in accordance with the Indenture, the applicable warehoused Certificates on each Certificate Sale Date for a purchase price equal to 100% of the outstanding principal balance of the Certificates on such Certificate Sale Date. The Trustee shall only be required to purchase those Certificates identified by CUSIP number and pool number delivered to the Warehouse Provider in accordance with Section 2(b) of this Warehousing Agreement. Such purchase shall represent payment of the Certificate Purchase Price as provided under the Indenture. In addition, the Trustee shall pay to the Warehouse Provider accrued, unpaid interest to such Certificate Sale Date promptly following receipt thereof on the next interest payment date for the related Certificates. The Warehouse Provider shall deliver the related Certificates to the Trustee on each Certificate Sale Date in the manner that satisfies the conditions of the Indenture and the reasonable requests of the Trustee.

(b) The Department shall take all actions necessary to ensure that the Certificates are purchased from the Warehouse Provider by the Trustee from moneys under the Indenture (or such other funds as directed by the Department) on each Certificate Sale Date.

(c) If the Department fails to establish a Certificate Sale Date as required under this Warehousing Agreement, then the Warehouse Provider shall have the right to sell the warehoused Certificates in the open market pursuant to a good faith bidding process, or other sales process approved by the Department. In lieu of a bidding process, the Department may have a right of first refusal to purchase the Certificates provided that the Warehouse Provider approves the sale price. Any premium on any sale of Certificates shall be paid to the Department.

(d) The Department shall maintain on deposit, cash and/or securities (collectively, the "Collateral"), with the Texas State Treasury Safekeeping Trust Company (the "Escrow Agent"), with a market value (at the time of such deposit) equal to at least $750,000. If in connection with

a sale of Certificates as described in the immediately preceding paragraph, the net sales proceeds are less than the outstanding principal amount of the Certificates sold, the Warehouse Provider shall have the right to dispose of Collateral sufficient to cover any such shortfall, up to a maximum of $750,000. Thus, if the Certificates are sold at a net sales price of 97% of par, the Warehouse Provider shall have the right to sell or cause to be sold Collateral in an amount sufficient to cover the 3% shortfall, up to a total shortfall amount of $750,000. If the Collateral shall include securities, such securities shall be subject to the approval of the Warehouse Provider. The interest earnings on the Collateral shall be paid to the Department to the extent such earnings are in excess of losses (if any) relating to the reinvestment of the Collateral. The Collateral shall remain on deposit under that certain Amended and Restated Escrow Agreement dated (and effective) January 11, 2011, as amended by a First Amendment to Amended and Restated Escrow Agreement dated as of October 1, 2015, and a Second Amendment to Amended and Restated Escrow Agreement dated December 1, 2019, each by and among the Department, the Escrow Agent and the Warehouse Provider. The Department agrees that the Authorized Investments (as defined in the Escrow Agreement) shall be limited to Repurchase Agreements (as defined in the Escrow Agreement) unless the Warehouse Provider consents to a different Authorized Investment.

(e) From the interest paid on the warehoused Certificates (including any interest paid by the Trustee to the Warehouse Provider under Section 3(a) hereof), the Department shall be paid an amount equal to the applicable outstanding principal amount of the warehoused Certificates times 0.75%, but only after (and to the extent available) the Warehouse Provider has earned a spread of 2.00% (over the Warehouse Provider's bank funding cost); provided that no amount shall be paid to the Department for any Certificate principal bearing interest at a pass-through rate less than 3.50% that is backed by Targeted Area Mortgage Loans. Any interest received in excess of the 0.75% amount payable to the Department shall be retained by the Warehouse Provider. Upon each purchase of a warehoused Certificate by the Warehouse Provider, the Warehouse Provider shall, based on its best available information, advise the Department if such Certificate shall receive all or a portion of the 0.75% amount (and shall specify any such portion).

The amounts determined pursuant to the preceding paragraph shall be computed on a daily basis (without compounding, and on a 30/360 basis) by the Warehouse Provider. The amount payable to the Department shall be (i) reported by the Warehouse Provider to the Department in a monthly income report (in the form set forth in Exhibit A) and (ii) paid to the Department on a monthly basis, in each case not later than the 15th day of the calendar month succeeding the calendar month in which such amount is received by the Warehouse Provider.

SECTION 4. RIGHTS OF THE WAREHOUSE PROVIDER

(a) The Warehouse Provider shall have the attributes and benefits of ownership of the Certificates, including, without limitation (i) the right to receive payments of principal and interest on the Certificates and (ii) the right to re-hypothecate, sell or transfer the Certificates to others (subject to Section 5(b) below), provided that the foregoing shall not be deemed to modify or limit the Warehouse Provider's obligations to sell the Certificates to the Trustee on each Certificate Sale Date.

(b) The Warehouse Provider may sell, lend or otherwise transfer the Certificates it has purchased, but only in repurchase, reverse repurchase or similar transactions to which the Department and the Custodian are not a party:

(i) that mature prior to the applicable Certificate Sale Date,

(ii) that do not permit the other principal to the transaction to further sell or lend such Certificates except in the event of a default by the Warehouse Provider or Providers under such transaction, and

(iii) under which the Certificates are held by a custodian for the benefit of the Warehouse Provider's customer in order to perfect any security interest therein which the Warehouse Provider may grant to such customer, or under a repurchase agreement pursuant to which the Warehouse Provider or its custodian retains possession of the Certificates;

provided that the Warehouse Provider must sell to the Trustee the Certificates identified by CUSIP and pool number in accordance with Section 3.

(c) The Warehouse Provider hereby grants to the Trustee, to the maximum extent allowed by law and consistent with customary warehousing agreement documentation, the right to perform in the Warehouse Provider's stead under any repurchase, reverse repurchase or similar transaction in which the Warehouse Provider has sold, loaned or otherwise transferred Certificates purchased by the Warehouse Provider hereunder if (i) the Warehouse Provider has defaulted on the obligation to repurchase or accept redelivery of such Certificates in conformity with the terms of any such transaction, and (ii) the Trustee has funds in sufficient quantity and is otherwise capable of effecting such performance, provided, however, the Trustee shall have no obligation to exercise such rights except at the written direction of the Department.

SECTION 5. REPRESENTATIONS AND WARRANTIES.

Each Warehouse Provider, the Department, the Custodian and the Trustee each represent and warrant to each other that:

(a) it has the power to enter into this Warehousing Agreement and to consummate the transactions contemplated hereby;

(b) this Warehousing Agreement has been duly authorized, executed and delivered by it and, assuming the due authorization, execution and delivery hereof by the other parties hereto, constitutes a legal, valid and binding obligation of it enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency and similar laws affecting creditors rights generally, and subject, as to enforceability, to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law, and further subject to any aspects of sovereign immunity that are applicable to the Department; and

(c) to the best of its knowledge, its execution and delivery of this Warehousing Agreement and its performance of its obligations hereunder do not and will not constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on

any of its property under, its charter or by-laws, or the Indenture, or any other agreement, instrument, judgment, injunction or order applicable to it or any of its property.

SECTION 6. AMENDMENT TO OTHER AGREEMENTS.

The Department will deliver a copy of each proposed amendment to the Indenture to the Warehouse Provider. The Department agrees that no amendment to the Indenture or any other document relating to the actions described hereunder shall be made which would adversely affect the Warehouse Provider's rights under this Warehousing Agreement or adversely affect the financial position of the Warehouse Provider or reduce its expected economic benefits with respect to this Warehousing Agreement, without the prior written consent of the Warehouse Provider, provided that so long as the Warehouse Provider has been delivered a copy of any such proposed amendment, the obligation of the Department to obtain the consent of the Warehouse Provider under this Section 7 shall arise only after the Department has been advised by the Warehouse Provider in writing that the amendment's terms adversely affect the Warehouse Provider's rights under this Warehousing Agreement or might adversely affect the financial position of the Warehouse Provider or reduce its expected economic benefits with respect to this Warehousing Agreement. If no such objection is received within seven (7) Business Days after the date the Warehouse Provider has been delivered a copy of such proposed amendment or supplement, the Department may conclusively assume that Warehouse Provider has no such objection.

SECTION 7. BINDING EFFECT; TRANSFER.

This Warehousing Agreement shall be binding upon the Custodian, the Trustee, the Warehouse Provider and the Department and upon their respective successors and permitted transferees. A Warehouse Provider may assign its interests and obligations under this Warehousing Agreement to any other person or entity with the written consent of the Department. Neither the Custodian nor the Trustee nor the Department may assign its interests and obligations under this Warehousing Agreement without the prior written consent of the Warehouse Provider except that the Trustee may transfer its interests and obligations to a successor trustee in accordance with the provisions of the Indenture.

SECTION 8. PAYMENT INSTRUCTIONS.

All payments due under this Warehousing Agreement to the Department, the Custodian or the Warehouse Provider are to be made in immediately available funds by means of a bank or Federal funds wire, to the account specified by the payee from time to time pursuant to Section 10.

SECTION 9. NOTICES.

Any written notice authorized or required by this Warehousing Agreement shall be sufficiently given if addressed to the receiving party and hand delivered, sent by overnight courier, or sent by facsimile or electronic mail to the addressee specified in this paragraph or to such other person as the receiving party may from time to time designate in writing to the other party.

Notice to Custodian or Trustee:	The Bank of New York Mellon Trust Company, N.A. 601 Travis Street, 16th Floor Houston, Texas 77002 Attention: Corporate Trust Department-Brian Tinsley Telephone: (713) 483-7017 Fax: (713) 483-7035 brian.tinsley@bnymellon.com
Account for delivery of funds:	The Bank of New York Mellon ABA: 021000018 For Credit to GLA: 211065 FFC: 790046 Account Name: FSWC WAREHOUSE AC for TDHCA09C CASH Attn: Brian Tinsley 713.483.7017
Account for delivery of Certificates:	FED Wireable: ABA 021000018 BK of NYC/CUST/790045 Account Name: FSWC WAREHOUSE AC for TDHCA09C CERTS [[update?]] Attn: Brian Tinsley 713.483.7017
Notice to Warehouse Provider:	Hilltop Securities Inc. 1201 Elm Street Suite 3500 Dallas, TX 75270 Attention: Michael J. Marz Telephone: (214) 953-4040 Fax: (214) 954-4339 michael.marz@hilltopsecurities.com
Account for delivery of funds:	The Bank of New York 1 Wall Street, New York, NY 10012 ABA# 021000018 Account Name: Hilltop Securities Inc. Account # 8900271779

Account for delivery of Certificates:	FED Wireable: ABA # 021000018 Ref: BK OF NYC/FSWC DTC instructions: DTC # 0309 Agent ID : 95499
Notice to Department:	Texas Department of Housing and Community Affairs P.O. Box 13941 Austin, Texas 78711-3941 Attention: Monica Galuski Telephone: (512) 936-9268 Fax: (512) 475-4798 monica.galuski@tdhca.state.tx.us
Account for delivery of funds:	Tex Compt Austin ABA # 114900164 Acct: 440474001 Ref: TDHCA FD/BP/COI #1726

Any notice given hereunder may be in the form of oral instructions if promptly confirmed in writing.

SECTION 10. LIMITATION.

Nothing expressed or implied herein is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto, any right, remedy or claim by reason of this Warehousing Agreement or any term hereof, and all terms contained herein shall be for the sole and exclusive benefit of the parties hereto, and their successors and permitted transferees.

SECTION 11. LIMITED OBLIGATION OF THE DEPARTMENT.

The obligations of the Department to make payments under this Warehousing Agreement are limited obligations of the Department and payable only from the Collateral.

SECTION 12. GOVERNING LAW.

This Warehousing Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflict of law principles.

SECTION 13. TERM OF THIS WAREHOUSING AGREEMENT.

This Warehousing Agreement shall remain in full force and effect from the date hereof until December 1, 2021, and shall renew automatically for up to three additional one-year periods unless terminated by the Department or the Warehouse Provider.

SECTION 15. SEVERABILITY.

If one or more provisions of this Warehousing Agreement, or the applicability of any such provisions for any set of circumstances shall be determined to be invalid or ineffective for any reason, such determination shall not affect the validity and enforceability of the remaining provisions of this Warehousing Agreement or the applicability of the provisions found to be invalid or ineffective for a specific set of circumstances to other circumstances.

SECTION 16. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Warehousing Agreement may be amended or any of its terms modified only by a written document authorized, executed and delivered by each of the parties hereto.

SECTION 17. COUNTERPARTS.

This Warehousing Agreement may be executed in counterparts by the parties hereto, and each such counterpart shall be considered an original and all such counterparts shall constitute one and the same instrument.

SECTION 18. PERFORMANCE OF SERVICES BY CUSTODIAN.

With regard to the services described herein that the Custodian is performing on behalf of the Warehouse Provider, such services are being performed as an independent contractor of the Warehouse Provider, and nothing contained in this Warehousing Agreement shall be construed to place the Warehouse Provider and the Custodian in a relationship as partners, joint venturers, employer/employee or principal/agent. The Custodian shall not have any authority to create or assume in the Warehouse Provider's name or on its behalf any obligation, expressed or implied, or to act or purport to act as the Warehouse Provider's agent or legally empowered representative for any purpose whatsoever.

The provisions of the Indenture concerning the Trustee's standard of care, rights and protections available to the Trustee, indemnification of the Trustee and the right of the Trustee to require satisfactory indemnification before taking actions not specifically set forth as an obligation of the Custodian hereunder are expressly incorporated into this Warehousing Agreement by reference for the benefit of the Custodian and the Trustee, to the same extent as if set forth herein in their entirety.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Department, the Custodian, the Trustee and the Warehouse Provider have caused this Warehousing Agreement to be executed by their respective duly authorized officers, all as of the date and year first above written.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Department

By _____
Name: Monica Galuski
Title: Director of Bond Finance and Chief Investment Officer

HILLTOP SECURITIES INC.,
as a Warehouse Provider

By _____
Name: Michael Marz
Title: Vice Chairman

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Custodian

By _____
Name: Brian Tinsley
Title: Vice President

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee under the Indenture

By _____
Name: Brian Tinsley
Title: Vice President

EXHIBIT A

FORM OF INCOME REPORT

[Note: The specific data provided in the table below is for illustrative purposes only.]

Hilltop Securities Inc./Texas Department of Housing and Community Affairs
Warehousing Program – Income Report
20-Nov-18

Warehousing Pool Description			Warehousing Pool Financial Info			10/29 to 11/20 (2018)				Total
Pool	Type	CUSIP	Principal Balance: Face at WH Inception	Coupon Rate	TDHCA Revenue Share	Principal Paydown	Principal Balance After Paydown	Interest Earning Days	TDHCA Revenue Share	Total Due to TDHCA
.GBK0694	GNMA II	3617J0XX0	4,002,543.00	3.250%	0.000%	-	4,002,543.00	21	-	-
.GBK0695	GNMA II	3617J0XY8	22,487,049.00	4.930%	0.750%	-	22,487,049.00	21	(9,838.08)	(9,838.08)
			26,489,592.00				**26,489,592.00**	**21**	**(9,838.08)**	**(9,838.08)**

DRAFT NO. 1 10/17/19
DRAFT NO. 2 10/23/19
DRAFT NO. 3 10/28/19
DRAFT NO. 4 10/29/19
#46564934v4

December 1, 2019

Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-4798
Attention: Monica Galuski

RE: Taxable Mortgage Program ("TMP")

This letter agreement, made as of the above date, shall be the master trade confirmation ("Master Trade Confirmation") with respect to one or more trades (each a "Transaction"), made as of the dates set forth in the related Securities Confirmations (as defined below), pursuant to which Hilltop Securities Inc., or its permitted successor or assigns ("Purchaser"), has agreed to provide Rate Locks (as defined below) for certain Mortgage Loans (as defined below), and purchase, and Texas Department of Housing and Community Affairs ("Seller") has agreed to sell, in each case subject to the conditions set forth herein, certain mortgage-backed pass-through securities backed by Mortgage Loans (as defined below), the repayment of which is guaranteed in full as to principal and interest by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac") (each a "Security"). The Transactions, as evidenced by the related Securities Confirmations, shall be governed by this Master Trade Confirmation.

The terms and conditions of the respective Transactions are as follows:

1. Purpose. Seller has previously implemented and wishes to continue the TMP (the "Program") to originate Mortgage Loans to qualified mortgagors in the State of Texas. Under the Program, Purchaser will purchase from Seller, and Seller will sell to Purchaser, in each case subject to the conditions set forth herein, Securities backed by Mortgage Loans, as defined in Section 2 below, which Mortgage Loans have been originated with the benefit of a Rate Lock Confirmation, and which shall be pooled by Seller or Servicer in accordance with Purchaser's written pooling instructions (which may include instructions by email) and delivered by Seller or its designee to Purchaser or its designee in the form of Securities. In consideration of Seller's obligation to sell the related Securities to Purchaser, Purchaser will assume the risk of potential borrowers not closing on Mortgage Loans or such Mortgage Loans not being acquired by or on behalf of Seller, and the risk of fluctuations in market interest rates.

2. Definitions. For purposes of this Master Trade Confirmation, each Rate Lock Confirmation and each Securities Confirmation, the following terms shall have the meanings set forth below with respect thereto:

    a. "Act of Insolvency" means (i) the commencement by Purchaser or Seller, as applicable, as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for Purchaser or Seller, as applicable, or any substantial part of such party's property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against Purchaser or Seller, as applicable, or another seeking such an appointment or election, or the filing against Purchaser or Seller, as applicable, of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970 ("SIPA"), which (A) is consented to or not timely contested by Purchaser or Seller, as applicable, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order

having a similar effect; or (C) is not dismissed within fifteen (15) days, (iii) the making by Purchaser or Seller, as applicable, of a general assignment for the benefit of creditors, or (iv) the admission in writing by Purchaser or Seller of its inability to pay such party's debts as they become due;

b. "Business Day" means any day that is not: (i) a Saturday or Sunday, (ii) a day designated by the Securities Industry and Financial Markets Association (SIFMA) that the U.S. financial markets shall be closed for business, (iii) a day on which banking or savings and loan institutions in the State of Texas, the State of California, the State of New York, or the state in which Purchaser's or Servicer's operations are located and are authorized or obligated by law or executive order to be closed, or (iv) a day on which Purchaser's offices are closed (and written notice of such day is provided in advance to Seller and Servicer).

c. "Debt" means at any date, without duplication, all obligations secured by the general credit of Seller and shall exclude bonds or other evidences of indebtedness issued pursuant to indentures of trust or secured by special funds of Seller.

d. "Deemed Price" of any Replacement Securities means the price set forth on Bloomberg L.P. or Tradeweb for any such Replacement Securities on the date and the time the hedge closeout transactions are entered into, subject to the Total Hedge Size.

e. "Mortgage Loan" means a mortgage loan that: (a) is sold by lenders designated by Seller to Servicer in conjunction with the Program; (b) is a conventional or government mortgage loan eligible for delivery to, or guaranteed by, GNMA, Fannie Mae or Freddie Mac, as a TBA Deliverable Security; (c) bears interest at the annual rate of interest specified in the related Rate Lock Confirmation; and (d) has a term specified in the related Rate Sheet.

f. "Rate Lock" means the annual rate of interest and terms and conditions specified on a related Rate Sheet for a Mortgage Loan.

g. "Rate Lock Confirmation" means the confirmation by Purchaser to provide a Rate Lock on Mortgage Loans, which pursuant to a separate Securities Confirmation will be delivered as Securities to Purchaser (but only to the extent the related Mortgage Loans actually close and are delivered to Seller). The form of Rate Lock Confirmation is attached hereto as Exhibit B.

h. "Securities Confirmation" means Purchaser's form of confirmation of a Securities trade, a form of which is attached hereto as Exhibit D.

i. "Security" means a security (a) issued by Servicer and fully guaranteed as to principal and interest by GNMA as authorized under Section 3.06(g) of Title III of the National Housing Act of 1934, as amended, or issued (including in the form of a Uniform Mortgage-Backed Security) and guaranteed as to principal and interest by Fannie Mae or Freddie Mac; and (b) backed by Mortgage Loans originated under the Program.

j. "Seller Confirmation" means written notice from Seller to Purchaser, which may be in the form of an email, in which Seller confirms its agreement to the terms of the related Rate Lock Confirmation.

k. "Servicer" means Idaho Housing and Finance Association or any successor master servicer designated by Seller in writing to Purchaser.

l. "Settlement Date" means the date of sale of a Security by Seller to Purchaser.

m. "TBA Deliverable Security" refers to a Security which satisfies the "good delivery guidelines" published by the Securities Industry and Financial Markets Association (SIFMA), an industry trade group whose members include broker-dealers and asset managers, as part of its Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities.

n. "Total Hedge Size" means in connection with any Rate Lock Confirmation a notional amount equal to the aggregate pipeline principal amount of (i) any Mortgage Loans covered by a Rate Lock Confirmation but not yet closed, (ii) any closed but not yet securitized Mortgage Loans covered thereby and (iii) any outstanding Securities relating thereto not yet purchased by Purchaser.

o. "Uniform Mortgage-Backed Security" means single-class mortgage-backed security backed by conventional single family mortgage loans issued by either Fannie Mae or Freddie Mac through a common securitization platform, which security has the same characteristics (such as payment delay, pooling prefixes and minimum pool submission amounts) regardless of whether Fannie Mae or Freddie Mac is the issuer.

3. Delivery of Rate Sheets, Reports and Related Rate Lock Confirmations. On each Business Day, beginning on December 2, 2019, Purchaser shall deliver to Seller one or more rate sheets (each a "Rate Sheet"), a form of which is attached hereto as Exhibit A. Each Rate Sheet shall set forth a price (as a percentage of par) and a related interest rate for each Mortgage Loan backing a Security to be purchased by Purchaser.

Seller and Purchaser agree that there may be market-related events that require an adjustment to the interest rates and/or the prices set forth in any Rate Sheet and the delivery of more than one Rate Sheet on a Business Day. Each subsequent Rate Sheet on a Business Day shall replace the prior Rate Sheet, and upon receipt by Seller, Seller shall update the offered interest rates in its Mortgage Loan pricing system not later than one hour subsequent to receipt of such subsequent Rate Sheet. Rate Locks issued prior to the update of the Mortgage Loan pricing system or one hour subsequent to receipt of such Rate Sheet, whichever is earlier, shall be governed by the replaced Rate Sheet.

On each such Business Day, Purchaser shall deliver to Seller by email (i) the first Rate Sheet no later than 8:45 a.m. Central time, and (ii) any subsequent Rate Sheets thereafter no later than 4:00 p.m. Central time, unless otherwise mutually agreed upon by Seller and Purchaser in writing (which may include email). The last Rate Sheet delivered on a Business Day shall remain effective until 5:00 p.m. Central time, unless otherwise mutually agreed upon by Seller and Purchaser in writing (which may include email). Rate Sheets shall be issued only on Business Days.

With respect to each Rate Sheet delivered under the preceding paragraph, Seller shall be deemed to have accepted such Rate Sheet unless Seller notifies Purchaser by email within one (1) hour of delivery that it does not accept such Rate Sheet. If a Rate Sheet is not accepted by Seller, then no Mortgage Loan reservations shall be made after such nonacceptance for such Business Day.

On each Business Day on which a Rate Sheet (or Rate Sheets) is issued and accepted, Seller, or Servicer on behalf of Seller, shall deliver to Purchaser the following reports with respect to Mortgage Loans reserved on that day and containing updated information for Mortgage Loans previously reserved: (i) a Mid-Day Intraday Report by 12:00 p.m. Central time and (ii) a Final Intraday Report by 5:30 p.m. Central time (collectively with the Mid-Day Intraday Report, the "Reports") (a form for the Reports is attached hereto as Exhibit E), unless otherwise mutually agreed upon by Seller and Purchaser in writing (which may include email). Alternatively, Seller shall provide Purchaser access to Seller's and/or Servicer's, or other applicable, origination system sufficient to allow Purchaser to obtain the information required for such Reports.

Purchaser shall re-confirm its agreement to the pricing terms for any Rate Lock with respect to the Mortgage Loans designated in the Reports (or pursuant to information otherwise obtained by Purchaser as described in the preceding paragraph) by issuing a Rate Lock Confirmation by email to Seller (and Servicer if requested by Seller) not later than 10:00 a.m. Central time on the Business Day following the date of the related Rate Sheet(s). Not later than 12:00 p.m. Central time on the same Business Day a Rate Lock Confirmation is submitted to Seller, Seller shall send a Seller Confirmation to confirm the terms of such Rate Lock Confirmation.

Failure by Purchaser to deliver a Rate Lock Confirmation, or failure by Seller to deliver a Seller Confirmation, shall not affect the respective obligations of Purchaser and Seller hereunder with respect to the purchase and sale of the Securities backed by Mortgage Loans subject to Rate Locks.

A Mortgage Loan must be closed and sold to Purchaser (or Servicer) by the expiration of the related Rate Lock period, which shall be sixty (60) days from the date of the related Rate Lock, unless a different period is mutually agreed to by Purchaser and Seller. If such expiration date is not a Business Day, then the expiration date shall be the next succeeding Business Day. Prior to such expiration, Seller may extend such Rate Lock period, on a one-time basis, for a five (5), fifteen (15), twenty-two (22) or thirty (30) day period, provided that Seller pays Purchaser the applicable extension fee set forth in the Rate Sheet issued on the date of Seller's extension request. Purchaser shall deduct any such extension fee from the Purchase Price, as defined in Section 6 below.

If a Rate Lock period (including extensions) expires with respect to a Mortgage Loan and such Mortgage Loan has not closed, no new Rate Lock may be made for the same borrower for the same property address until sixty (60) days after expiration of the prior Rate Lock period (including extensions).

If a Mortgage Lender participating in the Program has a high rate of cancellations of loan reservations, or otherwise engages in behavior inconsistent with Program goals, Purchaser shall have the right to consult with Seller regarding the termination of such Mortgage Lender with respect to the Program.

4. Settlement of Securities. Upon delivery of a Rate Lock Confirmation, Seller agrees that any Mortgage Loans closed pursuant to such Rate Lock Confirmation and sold to Servicer by the related Mortgage Lender shall be pooled and securitized and then sold as a Security (or portion thereof) to Purchaser.

Seller shall use its best reasonable efforts to cause Mortgage Loans to be closed and sold to Servicer, but shall have no obligation to Purchaser with respect to Mortgage Loans that do not close or that are closed but are not sold by the related Mortgage Lender to Servicer.

Purchaser shall purchase Securities backed by Mortgage Loans subject to the terms of this Master Trade Confirmation and the related Securities Confirmations at the Purchase Price therefor.

For each Settlement Date, Purchaser shall deliver (in writing or by email) to Seller and Servicer a related Securities Confirmation not later than 8:00 a.m. Central time on the second (2nd) Business Day prior to the related Settlement Date.

Each Settlement Date shall be established by Purchaser and shall occur not earlier than fifteen (15) days, and not later than sixty (60) days, after the expiration of the related Rate Lock period (including any extension of such period); provided that each Settlement Date can be (i) advanced to an earlier date upon the mutual agreement of Purchaser and Seller, (or Servicer on behalf of Seller), and (ii) extended to a later date upon satisfaction of the conditions set forth in paragraph 5 below.

For each Security purchase on a Settlement Date, Purchaser shall issue a funding schedule ("Funding Schedule") to Seller and Servicer which shall set forth the Purchase Price (as defined in Section 6 below) of such Security and the calculation of such Purchase Price based on applicable prices for the underlying

Mortgage Loans as described in the related Rate Lock Confirmations. A form of the Funding Schedule is attached hereto as Exhibit C.

5. Security Issue and Delivery. A Security shall be delivered to Purchaser or its designee by Seller or Servicer no later than the Settlement Date specified in the related Securities Confirmation. If Seller, or Servicer on behalf of Seller, notifies Purchaser no later than 9:00 a.m. Central time on the second (2nd) Business Day prior to a Settlement Date that it is not able to deliver the Security on the specified Settlement Date, but it expects to be able to deliver the Security after the Settlement Date and such delivery would otherwise be in accordance with all of the terms and conditions of the related Securities Confirmation, Purchaser may, in its sole discretion, agree to extend the Settlement Date, in which case Seller shall pay Purchaser an extension fee as set forth in the Rate Sheet issued on the date of Purchaser's extension request. If any such extension occurs, the date to which Purchaser has agreed to extend the Settlement Date shall thereafter be considered the Settlement Date for the purpose of determining whether Seller or Servicer has delivered the Security in accordance with all of the terms and conditions of this Master Trade Confirmation and the related Securities Confirmation. Purchaser shall deduct any such extension fee from the Purchase Price, as defined in Section 6 below.

   If Seller, or Servicer on behalf of Seller, fails to timely deliver a Security to Purchaser or its designee on the related Settlement Date (and has not notified Purchaser in advance of such failure as described in the preceding paragraph), then the provisions of Section 20 of this Master Trade Confirmation shall apply; provided that such provisions shall be in addition to the default and remedy provisions available to Purchaser as set forth in Section 12 of this Master Trade Confirmation.

6. Purchase Price. As payment for a Security, Purchaser shall pay Seller, or Servicer on behalf of Seller, an amount equal to the purchase price percentage specified in the related Securities Confirmation multiplied by the face amount of the Security, plus applicable accrued interest, and less any adjustments for extension fees payable under Section 3 or 5 (collectively, the "Purchase Price").

7. Conditional Agreement to Purchase. Purchaser's obligation to purchase each Security is expressly conditioned upon Seller's or Servicer's delivery of such Security to Purchaser in accordance with all of the terms and conditions of this Master Trade Confirmation and the related Securities Confirmation, including, without limitation, that the Security and the Mortgage Loans satisfy the requirements of this Master Trade Confirmation and the related Securities Confirmation in all respects. In the event that Seller, or Servicer on behalf of Seller, fails to deliver any Security to Purchaser in accordance with all of the terms and conditions of the Master Trade Confirmation and the related Securities Confirmation, Purchaser shall have no obligation to purchase such Security.

8. Security Settlement Procedures. Purchaser (or a custodian on behalf of Purchaser) and Seller (or Servicer on Seller's behalf) shall settle the Securities on a mutually agreeable basis (including, without limitation "free" delivery of a Security or delivery versus payment) through the Federal Reserve Book-Entry System to the Federal Reserve member depository account specified by Purchaser immediately upon delivery of the Security by wire transfer of Federal Funds in accordance with the wire instructions provided to Purchaser by Seller.

9. Seller's Representations and Warranties.

   a. On the date hereof, Seller represents and warrants to Purchaser and, on the date of each respective Rate Lock Confirmation and Securities Confirmation, Seller will be deemed to repeat all of the foregoing representations and warranties to Purchaser, that: (i) it is duly authorized to execute and deliver this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations, to enter into the related Transaction and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (ii) the person signing this Master Trade Confirmation and each Rate Lock Confirmation and Securities Confirmation on its behalf is duly authorized to do so; (iii) it has

obtained all authorizations of any governmental body required in connection with this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations and the related Transactions and such authorizations are in full force and effect; (iv) the execution, delivery and performance of this Master Trade Confirmation and each Rate Lock Confirmation and Securities Confirmation and the related Transactions will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected, (v) the terms of this Master Trade Confirmation and each Rate Lock Confirmation and Securities Confirmation and the related Transactions do not conflict with the terms of any servicing agreement, origination agreement or other agreement entered into by Seller that relates to the implementation or operation of the Program; (vi) this Master Trade Confirmation and the related Rate Lock Confirmations and Securities Confirmations are enforceable obligations of Seller; (vii) it has made its own independent decisions to enter into this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations and the related Transactions, and as to whether the respective Transactions are appropriate or proper for it, based upon its own judgment and upon advice from such advisors as it has deemed necessary; (viii) it is not relying on any communication (written or oral) of Purchaser as investment advice or as a recommendation to enter into this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations or the related Transactions, it being understood that information and explanations related to the terms and conditions of the respective Transactions shall not be considered investment advice or a recommendation to enter into the respective Transactions; (ix) it has not received from Purchaser any assurance or guarantee as to expected results of any Transactions; (x) it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the respective Transactions; (xi) it is capable of assuming, and assumes, the financial and other risks of the respective Transactions; (xii) it has not relied on Purchaser for any legal, tax accounting or regulatory advice concerning this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations or the related Transactions; and (xiii) it understands and acknowledges that Purchaser is acting under this Master Trade Confirmation and the related Transactions in its capacity as a principal, and not as an agent of Seller, on an arm's length basis, and Purchaser is not providing advice or recommending any action to Seller regarding municipal financial products or the issuance of municipal securities, and Purchaser is not acting as a financial advisor, municipal advisor or investment advisor to Seller and does not owe a fiduciary duty to Seller pursuant to the federal securities laws, Texas law or any other applicable law.

b. On each date Purchaser provides a Rate Lock, Seller shall be deemed to represent and warrant to Purchaser that it will use its best reasonable efforts to cause the Mortgage Loans to be funded and closed and pooled into Securities, and the Securities to be sold to Purchaser.

c. On each date on which a Security is settled on in accordance with the related Securities Confirmation, Seller shall be deemed to represent and warrant to Purchaser that (i) Seller or Servicer, as applicable, has valid title to, or a valid security entitlement in respect of, the Security, free and clear of all security interests, claims, liens, equities or other encumbrances and (ii) upon settlement on the Security in accordance with the respective Securities Confirmation, Purchaser shall (A) acquire valid title to the Security free and clear of any adverse claim, or a valid security entitlement in respect of the Security and no action based on an adverse claim may be asserted against Purchaser in respect of such security entitlement and (B) have the unqualified right to sell, transfer, assign, hypothecate, enter into repurchase transactions with and pledge the Security or such security entitlement, as the case may be, without any restrictions imposed upon or relating to Seller.

10. Purchaser's Representations and Warranties.

    a. On the date hereof, Purchaser represents and warrants to Seller and, on the date of each Rate Lock Confirmation and Securities Confirmation, Purchaser shall be deemed to repeat all of the foregoing representations and warranties to Seller, that: (i) it is duly authorized to execute and deliver this Master Trade Confirmation and the respective Rate Locks, Rate Sheets, Rate Lock Confirmations and Securities Confirmations, to enter into the related Transaction and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (ii) the person signing this Master Trade Confirmation and each Rate Lock Confirmation and Securities Confirmation on its behalf is duly authorized to do so; (iii) the execution, delivery and performance of this Master Trade Confirmation and each Rate Lock Confirmation and Securities Confirmation and the related Transactions will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected; and (iv) this Master Trade Confirmation and the related Rate Lock Confirmations and Securities Confirmations are enforceable obligations of Purchaser.

    b. On each date Seller submits a Seller Confirmation with respect to a Rate Lock Confirmation, Purchaser will be deemed to represent and warrant to Seller that it will use its best efforts to cause the Securities subject to a Rate Lock Confirmation to be purchased.

11. Term. This Master Trade Confirmation shall be in effect for two years from the date hereof and shall automatically renew for up to three (3) succeeding one-year periods upon written notice from Seller to Purchaser at least thirty (30) days prior to the expiration date. Either party may terminate this Master Trade Confirmation and related Transactions upon at least thirty (30) days advance written notice (which may be by e-mail) to the other party. Notwithstanding any termination of this Master Trade Confirmation, to the extent that there are outstanding Rate Locks or Securities that Seller must deliver to Purchaser, the terms and conditions of this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations shall continue to govern such Rate Locks and the delivery of such Securities.

12. Events of Default and Remedies.

    Each of the following is an Event of Default by Seller under this Master Trade Confirmation: (i) Seller fails to, or admits to Purchaser, its inability to, or its intention not to, perform any of its obligations hereunder; (ii) an Act of Insolvency occurs with respect to Seller; (iii) any representation made by Seller is incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; (iv) Seller shall fail to make any payment due hereunder; or (v) Seller shall fail to pay when due any Debt of Seller in an aggregate principal amount in excess of $1,000,000 or any event shall occur as a result of which any holder or holders (or a trustee on behalf of such holders) of any Debt of Seller in an aggregate principal amount in excess of $1,000,000 shall have the right to accelerate the maturity of such Debt, shall occur and be continuing but only if, in each case, there is a failure to cure such event within three (3) Business Days of such default (Seller shall provide Purchaser immediate notice of any event described in this clause (v)).

    In the Event of Default by Seller, Purchaser may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default, and without notice to Seller; (i) stop issuing Rate Sheets or engage in any new Transaction; (ii) cancel and otherwise liquidate and close out any or all Transactions, whereupon Seller shall be liable to Purchaser for any resulting loss, damage, cost and expense; and (iii) take any other action necessary or appropriate to protect and enforce its rights and preserve the benefits of its bargain under the Transactions. Purchaser shall (except upon the occurrence of an Act of Insolvency) give notice to Seller of the exercise of its option to declare an Event of Default as promptly as practicable.

In connection with the remedy described in clause (ii) above, Purchaser may (a) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) securities ("Replacement Securities") of the same class and amount as any Securities required to be delivered by Seller to Purchaser hereunder (including Securities to be formed for any Mortgage Loans, whether closed or not, subject to Rate Locks), at the price set forth on Bloomberg L.P. or Tradeweb on the date and time of such purchase; or (b) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities, at the Deemed Price (in either case, the "Quoted Price"), whereupon Seller shall be liable to Purchaser for the negative difference, if any, between the Purchase Price of Securities payable under the Rate Lock Confirmation and the Quoted Price for such Securities.

Each of the following is an Event of Default by Purchaser under this Master Trade Confirmation: (i) Purchaser fails to, or admits to Seller, its inability to, or its intention not to, perform any of its obligations hereunder; (ii) an Act of Insolvency occurs with respect to Purchaser; (iii) any representation made by Purchaser is incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; or (iv) Purchaser shall fail to make any payment due hereunder.

In the Event of Default by Purchaser, Seller may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), and with prior notice to Purchaser: (i) immediately sell, or direct Servicer to sell, in a recognized market (or otherwise in a commercially reasonable manner), at such price or prices as Seller may reasonably deem satisfactory) any Securities subject to Rate Lock Confirmations under this Master Trade Confirmation Agreement, whereupon Purchaser shall be liable to Seller for any losses suffered arising from the difference in Purchase Price of Securities payable under the Rate Lock Confirmation and the price received as part of a sale directed by Seller pursuant to this section in the event of Purchaser's default, or (ii) in its sole discretion elect, in lieu of selling Securities (including Securities still to be formed backed by Mortgage Loans, whether closed or not, subject to Rate Lock Confirmations) to be deemed to have sold such Securities at the price therefor on such date as set forth on Bloomberg L.P. or Tradeweb on the date and time of such purchase (in either case, the "Quoted Price"), whereupon Purchaser shall be liable to Seller for the positive difference, if any, between the Purchase Price of Securities payable under the Rate Lock Confirmation and the Quoted Price for such Securities.

In the Event of Default by Seller or Purchaser, the defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, and (ii) any loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction which is not reimbursed under the preceding provisions of this Section 12.

To the extent permitted by applicable law, a defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by such defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party; or (ii) satisfied in full by the exercise of a non-defaulting party's rights hereunder. Interest on any sum payable under this paragraph shall be at a rate equal to the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates).

The parties hereto acknowledge and agree that (i) the Securities are instruments traded in a recognized market; (ii) in the absence of a generally recognized source for prices or bid or offer quotations for any such securities, the non-defaulting party may establish the source therefor in its sole discretion; and (iii) all prices, bids and offers shall be determined together with accrued principal and/or interest thereon (except to the extent contrary to market practice with respect to the relevant securities).

The non-defaulting party shall have all of the rights and remedies provided to a secured party under the Texas Uniform Commercial Code and, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

13. Escrow Deposit by Seller to Cover Purchaser Losses; Total Pipeline Limitation. Seller shall maintain a deposit of cash and/or securities with the Texas Treasury Safekeeping Trust Company, or other mutually acceptable third party escrow agent, in an amount at least equal to $2,000,000 (or such higher amount required pursuant to the next succeeding paragraph); such escrowed amount shall remain in escrow for the term of this Agreement, subject to reductions for amounts payable to Purchaser to reimburse it for any net losses sustained by it under Section 12.

    If at any time the escrowed amount balance is less than an amount equal to 2.5% times the Total Pipeline Amount, then Purchaser shall have the option to notify Seller that no further Mortgage Loan reservations may be made under the Program, until the escrowed amount balance equals at least 2.5% of the Total Pipeline Amount. The "Total Pipeline Amount" means, at time of calculation, the sum of (i) any Mortgage Loans covered by Rate Lock Confirmations that are not yet closed, (ii) any closed but not yet securitized Mortgage Loans, (iii) any outstanding Securities not yet purchased by Purchaser on the applicable Settlement Date (including Securities temporarily warehoused by Purchaser), and (iv) any mortgage-backed certificate warehoused by Purchaser on behalf of Seller pursuant to the Second Amended and Restated Warehousing Agreement dated as of December 1, 2019 between Seller and Purchaser.

14. Limited Obligation of Seller. Notwithstanding any provision of this Agreement to the contrary, Seller's obligations under this Master Trade Confirmation are limited obligations of Seller and any net losses attributable to Seller default shall be payable only from the amounts deposited with the Texas Treasury Safekeeping Trust Company pursuant to Section 13 hereof.

15. Amendments. No amendment or modification of this Master Trade Confirmation or the related Rate Lock Confirmations or Securities Confirmations is valid, unless in writing and signed by both parties hereto.

16. No Waivers, Etc. No express or implied waiver of any Event of Default by Purchaser or Seller shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by Purchaser or Seller shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations and no consent by either party hereto to a departure from the terms hereof shall be effective unless and until such modification or waiver shall be in writing and duly executed by both of the parties hereto.

    No waiver of any provision of this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations and no consent by either party hereto to a departure from the terms hereof shall be effective unless and until such waiver shall be in writing and duly executed by both of the parties hereto.

17. Non-Assignability. Neither of the parties hereto may assign or delegate any of its rights or duties under this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations without the prior written consent of the other party and any assignment or delegation in violation of this Section 17 shall be void *ab initio;* provided that Hilltop Securities Inc. may consolidate with or merge with an affiliated or commonly controlled entity, if (i) the surviving or resulting entity shall have a net worth equal to or greater than the current net worth of Hilltop Securities Inc., evidenced to the reasonable satisfaction of Seller and (ii) such entity shall assume all obligations of Purchaser under this Master Trade Confirmation, evidenced to the reasonable satisfaction of Seller. Notwithstanding the foregoing, it is understood that Servicer may undertake certain of Seller's duties hereunder.

18. Intent. The parties recognize that each Transaction is a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended, or, if applicable, a "qualified financial contract," as that term is defined in the Federal Deposit Insurance Act, as amended, and any rules, orders or policy statements thereunder. It is understood that the parties' rights to exercise remedies pursuant to Section 12 is a contractual right to liquidate the respective Transactions as described in Section 555 of Title 11 of the United States Code, as amended.

19. Damage Limitations. Without limiting the ability of either party hereto to recover losses pursuant to any provision of this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations, including, but not limited to, losses, damages, costs and expenses as set forth in Section 12, under no circumstances will either party hereto be liable for any consequential, indirect, special or punitive damages, opportunity costs or lost profits suffered or incurred by the other party for any claim under this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations, whether or not foreseeable or preventable. For the avoidance of doubt, replacement costs and other costs included under Section 12 shall not constitute consequential damages.

20. Application of Agency Mortgage-Backed Securities Fails Charge Trading Practice to Securities Settlements. Settlements of Securities under this Master Trade Confirmation shall be deemed to be subject to Agency Debt and Agency Mortgage-Backed Securities Fails Charge Trading Practice published by the Treasury Market Practices Group and the Securities Industry and Financial Markets Association, including its Asset Management Group, as may be amended from time to time and which may be found at http://www.sifma.org/capital_markets/docs/Fails-Charge-Trading-Practice.pdf. The terms set forth therein shall be incorporated herein by reference, including but not limited to the section thereof entitled "Calculation of Fails Charges."

21. Governing Law. This Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations will be construed in accordance with the laws of the State of Texas, without regard to its conflicts of law principles.

22. Severability. If any one or more of the terms or conditions of this Master Trade Confirmation and the respective Rate Lock Confirmations and Securities Confirmations is determined by a court of competent jurisdiction to be invalid, the invalidity will in no way affect the validity or effectiveness of the remaining terms and conditions.

23. Entire Agreement. This Master Trade Confirmation and the Rate Sheets, Rate Lock Confirmations and Securities Confirmations constitute the entire agreement of, and supersedes all prior agreements between, the parties hereto with respect to the subject matter hereof.

24. Agreement as to Force and Effect of Emails. Seller and Purchaser each agree that any email transmitted by it or its representatives pursuant to this Agreement shall be given the same force and effect as if such email had been in the form of a writing and manually signed by the person transmitting such document.

25. Confidentiality. Except to the extent Seller, or Purchaser, or in each case its board members, officers, employees or agents, may be required by law or any court of competent jurisdiction to disclose this Master Trade Confirmation, the Transactions, the Rate Sheets, the Rate Lock Confirmations, and the Securities Confirmations, together with any other documentation, items or financial information relating to the foregoing (collectively, the "Confidential Information"), to any person or party, Seller and Purchaser agree that the Confidential Information shall be kept confidential and its contents shall not be divulged by Seller or Purchaser to any person or party without Purchaser's or Seller's consent, respectively, except to the extent that it is reasonable and necessary for Seller or Purchaser to do so in working with its agents, advisors, legal counsel, auditors, taxing authorities or other governmental agencies. Purchaser acknowledges that Seller is subject to Chapter 552, Texas Government Code, as amended (the "Texas Open Records Act"), and as a result, will include a copy of this Agreement in its board book when considering approval of the Agreement, and may be required to provide copies of this

Master Trade Confirmation, the Rate Sheets, the Rate Lock Confirmations and/or the Security Confirmations to anyone requesting copies pursuant to the Texas Open Records Act.

26. Seller Option to Retain Mortgage Loans. Notwithstanding any provision of this Agreement to the contrary, in connection with Seller's potential issuance of qualified mortgage bonds collateralized by Securities, Seller may elect to retain Mortgage Loans ("Retained Mortgage Loans") originated under the Program and not deliver Securities backed by such Retained Mortgage Loans to Purchaser under this Agreement. Following such notification, Seller and Purchaser shall have no additional obligations or rights hereunder with respect to the Retained Mortgage Loans. Instead, the Retained Mortgage Loans shall be governed by the terms of that certain Retained Mortgage Loan Agreement dated as of December 1, 2019, between Seller and Purchaser.

27. Additional Purchaser Representations. Purchaser hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Master Trade Confirmation. The foregoing verification is made solely to comply with Section 2270.0002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Purchaser understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

    To the extent this Master Trade Confirmation is a contract for goods or services, Purchaser represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such office's internet website:

    1. https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf

    2. https://comptroller.texas.gov/purchasing/docs/iran-list.pdf

    3. https://comptroller.texas.gov/purchasing/docs/fto-list.pdf

    The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes Purchaser and such entity's respective parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Purchaser understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

[Remainder of Page Intentionally Left Blank]

Please acknowledge your receipt of and agreement to the terms and conditions of this Master Trade Confirmation by executing and returning this Master Trade Confirmation by PDF copy to mike.awadis@hilltopsecurities.com. Executed originals should be sent to Hilltop Securities Inc., 16000 Ventura Blvd., Suite 1100, Encino, California 90436, Attention: Mike Awadis.

HILLTOP SECURITIES INC.

By:_____
Name: Michael J. Marz
Title: Vice Chairman

ACKNOWLEDGED AND AGREED TO AS OF THE DATE FIRST WRITTEN ABOVE:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By:_____
Name: Monica Galuski
Title: Director of Bond Finance and Chief Investment Officer

EXHIBIT A

Form of Rate Sheet

(Specific Data Shown for Illustrative Purposes Only)

HilltopSecurities
A Hilltop Holdings Company.

GNMA Servicing Retained Price Ratesheet
Fannie Mae (HFA Preferred) Servicing Retained Price Ratesheet
Freddie Mac Servicing Retained Price Ratesheet

30YR FIXED RATE GOVERNMENT MORTGAGE	
ASSUMPTIONS	45 Day Rate Lock
Initial Rate Lock Date	10/17/2019
Rate Lock Expiration Date	12/2/2019
Latest Lender Loan Sale to Master Servicer Date	12/16/2019
Latest GNMA Security (MBS) Settlement Date	1/21/2020
Servicing release premium included in rate lock price?	No
Gain built into rate lock price for TDHCA	0 points
Lender fees built into rate lock price	0 points

30YR FIXED RATE GOVERNMENT MORTGAGE

Gross Rate (%)	Total Servicing Fee (%)	Idaho Servicing Fee (%)	TDHCA Servicing Fee (%)	Guarantee Fee (%)	MBS Coupon (%)	GNMA Type	45 Day Rate Lock TBA Price	Payup	45 Day Rate Lock Price***
3.500	0.440	0.140	0.300	0.060	3.000	GN1	102.27344	0.06641	102.21484
3.625	0.565	0.140	0.425	0.060	3.000	GN2	102.22656	0.06641	102.16797
3.750	0.190	0.140	0.050	0.060	3.500	GN2	103.39453	0.46094	103.73047
3.875	0.315	0.140	0.175	0.060	3.500	GN2	103.39453	0.46094	103.73047
4.000	0.440	0.140	0.300	0.060	3.500	GN1	103.53516	0.35938	103.76953
4.125	0.565	0.140	0.425	0.060	3.500	GN2	103.39453	0.46094	103.73047
4.250	0.190	0.140	0.050	0.060	4.000	GN2	103.81250	1.44531	105.13281
4.375	0.315	0.140	0.175	0.060	4.000	GN2	103.81250	1.44531	105.13281
4.500	0.440	0.140	0.300	0.060	4.000	GN2	103.81250	1.44531	105.13281
4.625	0.565	0.140	0.425	0.060	4.000	GN2	103.81250	1.44531	105.13281
4.750	0.190	0.140	0.050	0.060	4.500	GN2	104.88281	2.40234	107.16016
4.875	0.315	0.140	0.175	0.060	4.500	GN2	104.88281	2.40234	107.16016
5.000	0.440	0.140	0.300	0.060	4.500	GN2	104.88281	2.40234	107.16016
5.125	0.565	0.140	0.425	0.060	4.500	GN2	104.88281	2.40234	107.16016
5.250	0.190	0.140	0.050	0.060	5.000	GN2	105.89063	3.35156	109.11719
5.375	0.315	0.140	0.175	0.060	5.000	GN2	105.89063	3.35156	109.11719
5.500	0.440	0.140	0.300	0.060	5.000	GN2	105.89063	3.35156	109.11719
5.625	0.565	0.140	0.425	0.060	5.000	GN2	105.89063	3.35156	109.11719
5.750	0.190	0.140	0.050	0.060	5.500	GN2	106.73828	3.16797	109.78125

Rate Lock Extension	Extension Fees
7 days	0.06250 Points
15 days	0.12500 Points
22 days	0.18750 Points
30 days	0.25000 Points

30YR FIXED RATE CONVENTIONAL MORTGAGE -- FANNIE MAE HFA PREFERRED	
ASSUMPTIONS	45 Day Rate Lock
Initial Rate Lock Date	10/17/2019
Rate Lock Expiration Date	12/2/2019
Latest Lender Loan Sale to Master Servicer Date	12/16/2019
Latest Fannie Mae Security (MBS) Settlement Date	1/14/2020
Servicing release premium included in rate lock price?	No
Fannie Mae Adverse Market Delivery Charge built into rate lock price	0 points
Fannie Mae Loan Level Pricing Adjustment built into rate lock price	0 points
Gain built into rate lock price for TDHCA	0 points
Lender fees built into rate lock price	0 points

30YR FIXED RATE CONVENTIONAL MORTGAGE -- FANNIE MAE HFA PREFERRED

Gross Rate (%)	Total Servicing Fee (%)	Idaho Servicing Fee (%)	TDHCA Servicing Fee (%)	Guarantee Fee (%)	MBS Coupon (%)	Buyup/Buyd own Fee (%)	Buyup/Buydown Price	45 Day Rate Lock TBA Price	Payup	45 Day Rate Lock Price***
4.000	0.250	0.140	0.110	0.450	3.500	(0.200)	(1.138)	102.42578	0.55859	101.72138
4.125	0.250	0.140	0.110	0.450	3.500	(0.075)	(0.409)	102.42578	0.55859	102.45063
4.250	0.250	0.140	0.110	0.450	3.500	0.050	0.098	102.42578	0.55859	102.95788
4.375	0.250	0.140	0.110	0.450	4.000	(0.325)	(1.690)	103.78908	1.30078	103.27486
4.500	0.250	0.140	0.110	0.450	4.000	(0.200)	(1.026)	103.78908	1.30078	103.93886
4.625	0.250	0.140	0.110	0.450	4.000	(0.075)	(0.377)	103.78908	1.30078	104.56836
4.750	0.250	0.140	0.110	0.450	4.500	(0.450)	(2.228)	105.34375	2.20313	105.19438
4.875	0.250	0.140	0.110	0.450	4.500	(0.325)	(1.622)	105.34375	2.20313	105.80013
5.000	0.250	0.140	0.110	0.450	4.500	(0.200)	(1.006)	105.34375	2.20313	106.41588
5.125	0.250	0.140	0.110	0.450	4.500	(0.075)	(0.378)	105.34375	2.20313	107.04388
5.250	0.250	0.140	0.110	0.450	4.500	0.050	0.104	105.34375	2.20313	107.52538
5.375	0.250	0.140	0.110	0.450	4.500	0.175	0.333	105.34375	2.20313	107.75438
5.500	0.250	0.140	0.110	0.450	5.000	(0.200)	(1.014)	107.20313	2.29688	108.36100
5.625	0.250	0.140	0.110	0.450	5.000	(0.075)	(0.385)	107.20313	2.29688	108.99025
5.750	0.250	0.140	0.110	0.450	5.000	0.050	0.100	107.20313	2.29688	109.47500

Rate Lock Extension	Extension Fees
7 days	0.06250 Points
15 days	0.12500 Points
22 days	0.18750 Points
30 days	0.25000 Points

30YR FIXED RATE CONVENTIONAL MORTGAGE -- FREDDIE MAC	
ASSUMPTIONS	45 Day Rate Lock
Initial Rate Lock Date	10/17/2019
Rate Lock Expiration Date	12/2/2019
Latest Lender Loan Sale to Master Servicer Date	12/16/2019
Latest Freddie Mac Security (MBS) Settlement Date	1/14/2020
Servicing release premium included in rate lock price?	No
Freddie Mac Loan Level Pricing Adjustment built into rate lock price	0 points
Gain built into rate lock price for TDHCA	0 points
Lender fees built into rate lock price	0 points

30YR FIXED RATE CONVENTIONAL MORTGAGE -- FREDDIE MAC

Gross Rate (%)	Total Servicing Fee (%)	Idaho Servicing Fee (%)	TDHCA Servicing Fee (%)	Guarantee Fee (%)	MBS Coupon (%)	Buyup/Buyd own Fee (%)	Buyup/Buydown Price	45 Day Rate Lock TBA Price	Payup	45 Day Rate Lock Price***
4.000	0.310	0.140	0.170	0.440	3.000	0.250	1.093	101.03516	0.19531	102.19797
4.125	0.250	0.140	0.110	0.440	3.500	(0.065)	(0.348)	102.42578	0.58984	102.54288
4.250	0.250	0.140	0.110	0.440	3.500	0.060	0.242	102.42578	0.58984	103.13243
4.375	0.250	0.140	0.110	0.440	3.500	0.185	0.718	102.42578	0.58984	103.60843
4.500	0.250	0.140	0.110	0.440	4.000	(0.190)	(0.893)	103.78906	1.37109	104.14216
4.625	0.250	0.140	0.110	0.440	4.000	(0.065)	(0.330)	103.78906	1.37109	104.70496
4.750	0.250	0.140	0.110	0.440	4.500	(0.440)	(2.055)	105.34375	2.24609	105.41004
4.875	0.250	0.140	0.110	0.440	4.500	(0.315)	(1.427)	105.34375	2.24609	106.03789
5.000	0.250	0.140	0.110	0.440	4.500	(0.190)	(0.846)	105.34375	2.24609	106.61934
5.125	0.250	0.140	0.110	0.440	4.500	(0.065)	(0.274)	105.34375	2.24609	107.19054
5.250	0.250	0.140	0.110	0.440	5.000	(0.440)	(1.826)	107.20313	2.39063	107.64275
5.375	0.250	0.140	0.110	0.440	5.000	(0.315)	(1.282)	107.20313	2.39063	108.18670
5.500	0.250	0.140	0.110	0.440	5.000	(0.190)	(0.768)	107.20313	2.39063	108.70115
5.625	0.250	0.140	0.110	0.440	5.000	(0.065)	(0.263)	107.20313	2.39063	109.20550
5.750	0.250	0.140	0.110	0.440	5.000	0.060	0.143	107.20313	2.39063	109.61215

Rate Lock Extension	Extension Fees
7 days	0.06250 Points
15 days	0.12500 Points
22 days	0.18750 Points
30 days	0.25000 Points

ANNOUNCEMENTS
Prices expire at 6pm local time
Assumes loan can be delivered into TBA eligible GNMA/Fannie Mae MBS/Freddie Mac MBS
For each rate lock, only upto one rate lock extension will be granted
Borrower not allowed to re-lock until 60days after expiration of previous rate lock
*** Rate lock price is HTS's purchase price of MBS subject to TDHCA meeting all requirements as outlined in the corresponding master trade agreement
**** Assumptions as suggested for use by TDHCA on 09/30/2016
***** Not a guarantee, and is dependent upon the accuracy of the various assumptions outlined here, timely delivery of the expected MBS, and subject to TDHCA meeting all requirements as outlined in the corresponding master trade confirm

CONTACT INFORMATION	
Ishdeep Singh	Mike Awadis
Hilltop Securities Inc.	Hilltop Securities Inc.
485 Madison Avenue, Suite 1800, New York, NY 10173	16000 Ventura Blvd. Suite 1100, Encino, CA 91436
Direct 212.474.8820 Mobile 347.852.3542	Direct 310.401.8060 Mobile 805.796.2227

EXHIBIT B

Form of Rate Lock Confirmation

HilltopSecurities
A Hilltop Holdings Company.

TDHCA Rate Lock Confirm for 10/16/2019 (Specific Data Shown for Illustrative Purposes Only)

New Rate Locks

Loan Number	Lock Status	Lock Status Detailed	Product	Initial Principal Balance	Gross Rate	Servicing Fee	MBS Coupon	Original Term	Initial Rate Lock Date	Rate Lock Term Days	Rate Lock Expiration Date	Latest Lender Loan Sale Date	Latest MBS Settlement Date	Borrower First Name	Borrower Last Name	HTS Payup	HTS Rate Lock Price
5024827	Current	Reservation	FHA 203 (b)	$130,591	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Maria	Garcia	1.4453125	105.1757813
5024829	Current	Reservation	FHA 203 (b)	$147,283	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Henry	Hernandez	1.4453125	105.1757813
5024830	Current	Reservation	FHA 203 (b)	$185,262	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Fernando	Rangel	1.4453125	105.1757813
5024835	Current	Reservation	FHA 203 (b)	$305,897	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Allen	Kinsala	1.4453125	105.1757813
5024837	Current	Reservation	FHA 203 (b)	$181,649	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Jaime	Aquilar	1.4453125	105.1757813
5024843	Current	Reservation	FHA 203 (b)	$227,699	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Francisco	Macias	1.4453125	105.1757813
5024845	Current	Reservation	FHA 203 (b)	$323,040	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Ashley	Rigsby	1.4453125	105.1757813
5024848	Current	Reservation	FHA 203 (b)	$185,280	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Holly	Harris	1.4453125	105.1757813
5024849	Current	Reservation	FHA 203 (b)	$163,085	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Miami	Valimont	1.4453125	105.1757813
5024854	Current	Reservation	FHA 203 (b)	$127,645	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Michael	Garcia	1.4453125	105.1757813
5024855	Current	UW Certification	FHA 203 (b)	$182,631	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Deshea	Bell	1.4453125	105.1757813
5024857	Current	Reservation	FHA 203 (b)	$228,779	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Kalem	Ruthardt	1.4453125	105.1757813
5024858	Current	Reservation	FHA 203 (b)	$226,816	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Armando	Rivera	1.4453125	105.1757813
5024861	Current	Reservation	USDA-RHS	$133,000	3.500	0.440	3	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Benjamin	Groves	0.06640625	102.2578125
5024862	Current	Reservation	FHA 203 (b)	$183,612	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Dulce	Parra	1.4453125	105.1757813
5024873	Current	Reservation	FHA 203 (b)	$205,103	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Valerie	Jordan	1.4453125	105.1757813
5024874	Current	Reservation	FHA 203 (b)	$102,606	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Maria	Torres Barron	1.4453125	105.1757813
5024875	Current	Reservation	FHA 203 (b)	$108,007	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Lesley	Rojas	1.4453125	105.1757813
5024865	Current	Reservation	FHA 203 (b)	$218,960	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Stephanie	Campbell	1.4453125	105.1757813
5024877	Current	Reservation	FHA 203 (b)	$141,341	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Miguel	Morales	1.4453125	105.1757813
5024879	Current	Reservation	FHA 203 (b)	$154,156	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Oscar	Vargas	1.4453125	105.1757813
5024842	Current	Reservation	FHA 203 (b)	$164,843	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Ramon	Ontiveros Chavez	1.4453125	105.1757813
5024844	Current	Reservation	FHA 203 (b)	$132,456	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Randy	Gonzalez	1.4453125	105.1757813
5024859	Current	Reservation	FHA 203 (b)	$190,486	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Cory	Soriello	1.4453125	105.1757813
5024860	Current	Reservation	FHA 203 (b)	$190,105	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	David	Wilcox	1.4453125	105.1757813
5024864	Current	Reservation	FHA 203 (b)	$202,553	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Norkeithen	Payne	1.4453125	105.1757813
5024867	Current	Reservation	FHA 203 (b)	$247,435	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Brandi	Guggenheim	1.4453125	105.1757813
5024869	Current	Reservation	FHA 203 (b)	$206,125	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Joe	Martinez	1.4453125	105.1757813
5024870	Current	Reservation	FHA 203 (b)	$258,137	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Anne A	Olcono	1.4453125	105.1757813
5024871	Current	Reservation	FHA 203 (b)	$199,312	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Tanisha	Curry	1.4453125	105.1757813
5024872	Current	Reservation	FHA 203 (b)	$202,376	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Ralph	Virgilio	1.4453125	105.1757813
5024878	Current	Reservation	FHA 203 (b)	$245,471	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Derek	Phariss	1.4453125	105.1757813
5024846	Current	Reservation	FHA 203 (b)	$206,196	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Megan	Gaca	1.4453125	105.1757813
5024847	Current	Reservation	FHA 203 (b)	$197,359	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Francisco	Urdaneta	1.4453125	105.1757813
5024850	Current	Reservation	VA	$75,000	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Cynthia	Wenner	1.4453125	105.1757813
5024851	Current	Reservation	FHA 203 (b)	$127,645	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Kenneth	Ligon	1.4453125	105.1757813
5024852	Current	Reservation	FHA 203 (b)	$202,258	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Ramon	Ohara Aguilera	1.4453125	105.1757813
5024853	Current	Reservation	FHA 203 (b)	$166,920	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Yesica	Gonzalez	1.4453125	105.1757813
5024856	Current	Reservation	FHA 203 (b)	$132,554	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Sarah	Smith	1.4453125	105.1757813
5024826	Current	Reservation	FHA 203 (b)	$162,011	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Cassaundra	Williams	1.4453125	105.1757813
5024828	Current	Reservation	FHA 203 (b)	$238,837	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Susan	Hernandez	1.4453125	105.1757813
5024831	Current	Reservation	FHA 203 (b)	$273,455	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Mario	Davis	1.4453125	105.1757813
5024832	Current	Reservation	FHA 203 (b)	$132,554	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Elizabeth	Corral	1.4453125	105.1757813
5024833	Current	Reservation	FHA 203 (b)	$196,367	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Cindy	Williams	1.4453125	105.1757813
5024834	Current	Reservation	FHA 203 (b)	$136,432	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Daniel	Zamora	1.4453125	105.1757813
5024836	Current	Reservation	FHA 203 (b)	$129,559	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Manuel	Jurado Zarate	1.4453125	105.1757813
5024838	Current	Reservation	FHA 203 (b)	$227,699	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Miranda	Scherer	1.4453125	105.1757813
5024839	Current	Reservation	FHA 203 (b)	$117,826	4.250	0.190	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Christine	Manuel	1.4453125	105.1757813
5024840	Current	Reservation	FHA 203 (b)	$223,885	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Maria	Villarreal	1.4453125	105.1757813
5024841	Current	Reservation	FHA 203 (b)	$237,728	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Gregory	Lee, Ii	1.4453125	105.1757813
5024866	Current	Reservation	FHA 203 (b)	$216,997	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Mario	Zamora	1.4453125	105.1757813
5024868	Current	Reservation	FHA 203 (b)	$153,174	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Rachel	Valdez Gonzales	1.4453125	105.1757813
5024876	Current	Reservation	FHA 203 (b)	$196,377	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Mallory	Roy	1.4453125	105.1757813
5024863	Current	Reservation	FHA 203 (b)	$225,864	4.375	0.315	4	360	10/16/2019	45	12/2/2019	12/16/2019	1/21/2020	Mayra	Garcia-Valencia	1.4453125	105.1757813
				$10,078,438													

Rate lock price is HTS' purchase price of MBS subject to TDHCA meeting all requirements as outlined in the corresponding master trade agreement.

Rate Lock Cancellations

Loan Number	Lock Status	Lock Status Detailed	Product	Initial Principal Balance	Gross Rate	Original Term	Initial Rate Lock Date	Rate Lock Term Days	Rate Lock Expiration Date	Latest Lender Loan Sale Date	Latest MBS Settlement Date	Borrower First Name	Borrower Last Name	HTS Payup
5023220	Cancelled	Reservation	FHA 203 (b)	$201,276	4.625	360	8/22/2019	45	10/7/2019	10/21/2019	11/20/2019	Edgar	Morales	
5023248	Cancelled	Reservation	FHA 203 (b)	$195,395	4.625	360	8/22/2019	45	10/7/2019	10/21/2019	11/20/2019	Cody	Preece	
5023337	Cancelled	Reservation	FHA 203 (b)	$275,811	4.875	360	8/27/2019	45	10/11/2019	10/28/2019	11/20/2019	Thomas	Miller	
5024415	Cancelled	Reservation	FHA 203 (b)	$145,319	4.625	360	10/1/2019	45	11/15/2019	12/2/2019	12/19/2019	Ana	Rodriguez	
5024503	Cancelled	Reservation	FHA 203 (b)	$175,630	4.625	360	10/3/2019	45	11/18/2019	12/2/2019	12/19/2019	Mario	Varela Miranda	
5024677	Cancelled	Reservation	FHA 203 (b)	$166,331	4.375	360	10/10/2019	45	11/25/2019	12/9/2019	1/21/2020	Cristina	Mason	
5024678	Cancelled	Reservation	FHA 203 (b)	$142,373	4.375	360	10/10/2019	45	11/25/2019	12/9/2019	1/21/2020	Sergio	Rosas Olvera	
				$1,302,135										

Rate Lock Extensions

Loan Number	Lock Status	Lock Status Detailed	Product	Initial Principal Balance	Gross Rate	Servicing Fee	MBS Coupon	Original Term	Initial Rate Lock Date	Rate Lock Term Days	Rate Lock Expiration Date	New Latest Lender Loan Sale Date	New Latest MBS Settlement Date	Borrower First Name	Borrower Last Name	HTS Payup	New HTS Rate Lock Price	Notes	Extn Fees	Extn Days	Extn Date
5020932	Current	eHP Compliance	FannieMae HFA Preferred	$80,750	5.125	0.250	4.5	360	6/14/2019	45	7/29/2019	10/19/2019	11/18/2019	Jannet	Saenz	1.375	104.6783906	loan brought back	-0.5625	67	10/16/2019
5021053	Current	eHP Compliance	FHA 203 (b)	$105,061	4.875	0.315	4.5	360	6/19/2019	45	8/5/2019	10/18/2019	11/18/2019	Ivan	Chavez	1.28125	104.6484375		-0.5	60	10/16/2019
5021478	Current	eHP Compliance	FannieMae HFA Preferred	$206,513	5.125	0.250	4.5	360	7/2/2019	45	8/16/2019	10/18/2019	11/24/2019	Nicolas	Avila Segura	1.76171875	105.3157344		-0.375	45	10/16/2019
5021832	Current	eHP Compliance	FannieMae HFA Preferred	$52,440	5.000	0.250	4.5	360	7/12/2019	45	8/26/2019	10/17/2019	11/16/2019	Juan	Dimas	1.76171875	104.7254844		-0.3125	37	10/16/2019
5022021	Current	eHP Compliance	FHA 203 (b)	$240,463	5.000	0.440	4.5	360	7/18/2019	45	9/3/2019	10/23/2019	11/27/2019	Carolyn	Huston	1.9296875	105.6484375		-0.3125	37	10/16/2019
5022345	Current	eHP Compliance	FannieMae HFA Preferred	$205,543	5.000	0.250	4.5	360	7/26/2019	45	9/9/2019	10/24/2019	11/9/2019	Mona	Ramirez	1.8359375	105.1378281		-0.25	30	10/16/2019
5022386	Current	eHP Compliance	FHA 203 (b)	$255,290	5.000	0.440	4.5	360	7/26/2019	45	9/9/2019	10/24/2019	11/20/2019	Fnu	Jeff Sunny	1.37890625	105.9179688		-0.25	30	10/16/2019
5022407	Current	eHP Compliance	FannieMae HFA Preferred	$190,993	5.000	0.250	4.5	360	7/29/2019	45	9/12/2019	10/19/2019	12/5/2019	Tyrone	Williams	1.8359375	105.1925156		-0.1875	22	10/16/2019
5022558	Exceptions	UW Certification	FannieMae HFA Preferred	$236,634	4.875	0.250	4	360	8/1/2019	45	9/16/2019	10/22/2019	12/5/2019	Anabel	Prado	0.8125	104.8081563		-0.1875	22	10/16/2019
5022771	Current	eHP Compliance	FannieMae HFA Preferred	$169,750	5.000	0.250	4.5	360	8/7/2019	45	9/23/2019	10/22/2019	11/29/2019	Teresa	Cyphers	1.94921875	105.8526719		-0.125	15	10/16/2019
5022855	Current	eHP Compliance	FHA 203 (b)	$216,015	4.875	0.315	4.5	360	8/9/2019	45	9/23/2019	10/23/2019	12/5/2019	Luis	Perez	2.046875	106.15625		-0.125	15	10/16/2019
5022895	Current	eHP Compliance	FHA 203 (b)	$225,834	4.875	0.315	4.5	360	8/12/2019	45	9/26/2019	10/18/2019	11/27/2019	Joe	Rodriguez	2.046875	106.15625		-0.0625	7	10/16/2019
5022923	Current	eHP Compliance	FHA 203 (b) (2)	$101,624	4.875	0.315	4.5	360	8/13/2019	45	9/27/2019	10/22/2019	11/27/2019	Gilberto	Luna-Lopez	2.046875	106.0859375		-0.0625	7	10/16/2019
				$2,286,910																	

Other

Loan Number	Lock Status	Lock Status Detailed	Product	Initial Principal Balance	Gross Rate	Servicing Fee	MBS Coupon	Original Term	Initial Rate Lock Date	Rate Lock Term Days	Rate Lock Expiration Date	Latest Lender Loan Sale Date	Latest MBS Settlement Date	Borrower First Name	Borrower Last Name	HTS Payup	HTS Rate Lock Price
5021753	Current	eHP Compliance	FHA 203 (b)	$212,970	5.125	0.565	4.5	360	7/10/2019	45	8/26/2019	9/9/2019	10/10/2019	Jay	Martinez	1.6484375	105.765625
5023136	Current	Reservation	FHA 203 (b)	$132,544	4.375	0.315	4	360	8/20/2019	45	10/4/2019	10/21/2019	11/20/2019	Blanca	Contreras	0.8515625	104.5546875
5024415	Current	Reservation	FHA 203 (b)	$145,319	4.625	0.565	4	360	10/1/2019	45	11/15/2019	12/2/2019	12/19/2019	Ana	Rodriguez	1.21484375	104.9765625
5024503	Current	Reservation	FannieMae 80% AMI	$175,630	4.750	0.250	4.5	360	10/3/2019	45	11/18/2019	12/2/2019	1/14/2020	Mario	Varela Miranda	1.890625	105.0459375
5024677	Current	Reservation	FannieMae 80% AMI	$166,331	4.750	0.250	4.5	360	10/10/2019	45	11/25/2019	12/9/2019	1/14/2020	Cristina	Mason	2.203125	105.350625
5024678	Current	Reservation	FHA 203 (b)	$142,373	4.375	0.315	4	360	10/10/2019	45	11/25/2019	12/9/2019	1/21/2020	Sergio	Rosas Olvera	1.4453125	105.2773438
				$975,167													

EXHIBIT C

Form of Funding Schedule

(Specific Data Shown for Illustrative Purposes Only)

BQ3161	BQ3160	BQ3159	BQ3158	BQ3157
10/17/2019	10/17/2019	10/17/2019	10/17/2019	10/17/2019
2,420,340.16	9,545,451.81	6,819,477.32	7,251,092.68	1,794,723.58
2,420,340.00	9,545,451.00	6,819,477.00	7,251,092.00	1,794,723.00
105.97285	106.10802	106.06673	106.01775	105.82221
100.00000	100.00000	100.00000	100.00000	100.00000
-	-	-	-	-
105.97285	106.10802	106.06673	106.01775	105.82221
$ 4,840.68	$ 19,090.90	$ 13,638.95	$ 14,502.19	$ 3,988.27
$ 2,564,903.29	$10,128,488.95	$ 7,233,195.92	$ 7,687,444.68	$1,899,215.45
$ 2,569,743.97	$10,147,579.85	$ 7,246,834.87	$ 7,701,946.87	$1,903,203.73
$ 2,425,180.68	$ 9,564,541.90	$ 6,833,115.95	$ 7,265,594.19	$1,798,711.27
$ 144,563.29	$ 583,037.95	$ 413,718.92	$ 436,352.68	$ 104,492.45

Gross Rate	Guarantee Fee	Servicing Fee	Excess Servicing Fee	Original Term	Initial Rate Lock Date	Rate Lock Term (Days)	Lender Actual Close Date	Servicer Purchase Date	MBS Settlement Date	Extension Date	Extension Fees	Extension Days	Borrower First Name	Borrower Last Name	MBS Ticker	MBS Pool Number	MBS Cusip	MBS Coupon	DPA Amount	HTS Rate Lock Price	Accrued Interest	Buy Price (Idaho)
4.919	0.060	0.361	-	360		45					(0.07)	8.43						4.50	1,331,937	105.96	66,487	100.00
5.375	0.06	0.315	0	360	00:00.0	45	7/17/2019	9/9/2019	10/17/2019	9/6/2019	-0.5625	67	Francisco	Carrillo Espinoza	G2SF	BQ3157	3617LMQJ8	5	3,142	105.30859	174	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/7/2019	9/13/2019	10/17/2019	9/12/2019	-0.5	60	Levi	Savage	G2SF	BQ3157	3617LMQJ8	5	4,792	105.46094	265	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/14/2019	9/13/2019	10/17/2019	9/12/2019	-0.5	60	Angela	Hammond	G2SF	BQ3157	3617LMQJ8	5	4,988	105.46094	276	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/26/2019	10/2/2019	10/17/2019	10/1/2019	-0.625	75	Brittany	Dodson	G2SF	BQ3157	3617LMQJ8	5	7,423	105.26953	411	100.00
5.250	0.06	0.19	0	360	00:00.0	45	6/28/2019	9/10/2019	10/17/2019	9/9/2019	-0.375	45	Joe	Leyva	G2SF	BQ3157	3617LMQJ8	5	6,987	105.56641	387	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/28/2019	9/20/2019	10/17/2019	9/19/2019	-0.5	60	Jose	Torres Salinas	G2SF	BQ3157	3617LMQJ8	5	7,380	105.51172	409	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/13/2019	9/27/2019	10/17/2019	9/26/2019	-0.5	60	Filiberto	Ramirez Gonzalez	G2SF	BQ3157	3617LMQJ8	5	4,988	105.72656	276	100.00
5.250	0.06	0.19	0	360	00:00.0	45	6/21/2019	9/11/2019	10/17/2019	9/10/2019	-0.25	30	Abel	Avila	G2SF	BQ3157	3617LMQJ8	5	3,673	106.60156	203	100.00
5.250	0.06	0.19	0	360	00:00.0	45	6/21/2019	9/9/2019	10/17/2019	9/6/2019	-0.25	30	Saul	Reyes	G2SF	BQ3157	3617LMQJ8	5	7,462	106.60156	413	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/2/2019	10/1/2019	10/17/2019	9/30/2019	-0.4375	52	Summer	Cooley	G2SF	BQ3164	3617LMQR0	4	6,280	103.20313	279	100.00
5.375	0.06	0.315	0	360	00:00.0	45	6/28/2019	9/6/2019	10/17/2019	9/5/2019	-0.375	45	Leslie	Cardenas	G2SF	BQ3157	3617LMQJ8	5	6,987	105.63672	387	100.00
5.375	0.06	0.315	0	360	00:00.0	45	7/24/2019	9/17/2019	10/17/2019	9/16/2019	-0.375	45	Cody	Shook	G2SF	BQ3157	3617LMQJ8	5	6,677	106.04688	370	100.00
5.250	0.06	0.19	0	360	00:00.0	45	6/28/2019	9/24/2019	10/17/2019	9/19/2019	-0.375	45	Jennifer	Creveling	G2SF	BQ3157	3617LMQJ8	5	7,524	106.47656	417	100.00
5.000	0.06	0.44	0	360	00:00.0	45	6/28/2019	9/23/2019	10/17/2019	9/20/2019	-0.375	45	Juan	Lozano Sanchez	G2SF	BQ3158	3617LMQK5	4.5	9,268	104.85938	462	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/5/2019	10/1/2019	10/17/2019	9/30/2019	-0.3125	37	Latisha	Johnson	G2SF	BQ3158	3617LMQK5	4.5	9,151	105.56641	457	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/21/2019	9/26/2019	10/17/2019	9/25/2019	-0.25	30	Lily	Serna	G2SF	BQ3160	3617LMQM1	4.5	7,934	105.70703	396	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/6/2019	9/23/2019	10/17/2019	9/20/2019	-0.25	30	Richmond	Henderson	G2SF	BQ3163	3617LMQQ2	4.5	4,602	105.70703	230	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/19/2019	9/27/2019	10/17/2019	9/26/2019	-0.25	29	Pedro	Sanchez	G2SF	BQ3161	3617LMQN9	4.5	6,677	105.44531	333	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/16/2019	10/1/2019	10/17/2019	9/30/2019	-0.25	30	Carla	Medrano	G2SF	BQ3162	3617LMQP4	4.5	5,695	105.54688	284	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/16/2019	10/2/2019	10/17/2019	10/1/2019	-0.25	30	Steven	Smith	G2SF	BQ3164	3617LMQR0	4	4,792	103.85547	213	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/28/2019	9/20/2019	10/17/2019	9/19/2019	-0.3125	37	Sharrell	Rogers	G2SF	BQ3160	3617LMQM1	4.5	7,070	105.15625	353	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/30/2019	10/1/2019	10/17/2019	9/30/2019	-0.3125	37	Dewayne	Perry	G2SF	BQ3163	3617LMQQ2	4.5	4,890	105.64453	244	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/19/2019	9/27/2019	10/17/2019	9/26/2019	-0.25	30	Robert Joseph	Allen Jr.	G2SF	BQ3162	3617LMQP4	4.5	5,966	105.78516	298	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/2/2019	9/27/2019	10/17/2019	9/26/2019	-0.25	30	Daniel	Ledesma	G2SF	BQ3160	3617LMQM1	4.5	7,022	105.67578	351	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/15/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Melton	Tippen	G2SF	BQ3159	3617LMQL3	4.5	8,444	105.67188	422	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Miguel	Cruz	G2SF	BQ3161	3617LMQN9	4.5	6,751	105.67188	337	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Lesly	Sanchez-Sandoval	G2SF	BQ3160	3617LMQM1	4.5	7,026	105.64063	350	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Alexis	Noyola Baez	G2SF	BQ3161	3617LMQN9	4.5	6,751	105.64063	337	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Carlos	Gonzalez Gonzalez	G2SF	BQ3159	3617LMQL3	4.5	8,401	105.64063	419	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/19/2019	10/2/2019	10/17/2019	10/1/2019	-0.25	30	Jerry	Eddy	G2SF	BQ3159	3617LMQL3	4.5	8,209	105.51563	409	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/5/2019	10/2/2019	10/17/2019	10/1/2019	-0.25	30	David	Yi	G2SF	BQ3158	3617LMQK5	4.5	9,230	105.45703	461	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/25/2019	9/26/2019	10/17/2019	9/25/2019	-0.1875	22	Ana	Rojas	G2SF	BQ3161	3617LMQN9	4.5	6,202	105.46094	309	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/8/2019	10/2/2019	10/17/2019	10/1/2019	-0.1875	22	Armando	Echeveste	G2SF	BQ3160	3617LMQM1	4.5	7,419	105.46094	370	100.00
5.125	0.06	0.565	0	360	00:00.0	45	8/2/2019	9/23/2019	10/17/2019	9/20/2019	-0.125	15	Dru	Arispe	G2SF	BQ3161	3617LMQN9	4.5	6,363	105.47656	318	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/25/2019	9/25/2019	10/17/2019	9/24/2019	-0.125	15	Laura	Figueroa	G2SF	BQ3159	3617LMQL3	4.5	8,797	105.47656	439	100.00
4.875	0.06	0.315	0	360	00:00.0	45	7/31/2019	10/1/2019	10/17/2019	9/30/2019	-0.1875	22	Guadalupe	Mendoza	G2SF	BQ3160	3617LMQM1	4.5	7,384	105.41406	368	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/26/2019	9/20/2019	10/17/2019	9/19/2019	-0.0625	7	Sharon	Bartee	G2SF	BQ3163	3617LMQQ2	4.5	3,633	105.54297	181	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/15/2019	10/1/2019	10/17/2019	9/30/2019	-0.125	15	Rhonda	Walker	G2SF	BQ3162	3617LMQP4	4.5	5,754	105.83594	287	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/19/2019	10/2/2019	10/17/2019	10/1/2019	-0.1875	22	Mark	Hernandez	G2SF	BQ3158	3617LMQK5	4.5	12,941	105.77344	646	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/27/2019	10/17/2019	9/26/2019	-0.125	15	Gabriel	Edwards	G2SF	BQ3158	3617LMQK5	4.5	9,230	105.83594	460	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/16/2019	9/25/2019	10/17/2019	9/24/2019	-0.0625	7	Julian	Rodriguez	G2SF	BQ3161	3617LMQN9	4.5	6,166	105.97266	308	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/16/2019	9/23/2019	10/17/2019	9/20/2019	-0.0625	7	Christina	Gantz	G2SF	BQ3158	3617LMQK5	4.5	9,740	105.97266	486	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/28/2019	9/23/2019	10/17/2019	9/20/2019	-0.0625	7	Raquel	Coleman	G2SF	BQ3163	3617LMQQ2	4.5	3,142	105.97266	157	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/12/2019	9/23/2019	10/17/2019	9/20/2019	-0.0625	7	Jonathan	Wooten	G2SF	BQ3163	3617LMQQ2	4.5	3,456	105.97266	173	100.00
4.750	0.06	0.19	0	360	00:00.0	45	9/9/2019	10/2/2019	10/17/2019	10/1/2019	-0.125	15	Michael	Corpus	G2SF	BQ3162	3617LMQP4	4.5	5,102	105.82031	255	100.00
5.000	0.06	0.44	0	360	00:00.0	45	7/31/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Haley	Ruffer	G2SF	BQ3160	3617LMQM1	4.5	7,576	105.64063	378	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/26/2019	9/20/2019	10/17/2019	9/19/2019	-0.125	15	Andrew	Butler	G2SF	BQ3159	3617LMQL3	4.5	8,208	105.58203	409	100.00
5.125	0.06	0.565	0	360	00:00.0	45	7/18/2019	9/26/2019	10/17/2019	9/25/2019	-0.1875	22	Alan	Carroll	G2SF	BQ3158	3617LMQK5	4.5	9,819	105.46094	490	100.00
5.125	0.06	0.565	0	360	00:00.0	45	8/28/2019	10/2/2019	10/17/2019	10/1/2019	-0.1875	22	Dante	Sims	G2SF	BQ3158	3617LMQK5	4.5	10,797	105.46094	539	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/30/2019	9/25/2019	10/17/2019	9/24/2019	-0.125	15	Manuel	Cardenas	G2SF	BQ3163	3617LMQQ2	4.5	4,242	105.86719	212	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	9/23/2019	10/17/2019	9/20/2019	-0.0625	7	Santiago	Garcia	G2SF	BQ3160	3617LMQM1	4.5	7,026	105.92969	351	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	9/26/2019	10/17/2019	9/25/2019	-0.125	15	Roy	Trevino	G2SF	BQ3160	3617LMQM1	4.5	7,733	105.86719	386	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/16/2019	9/20/2019	10/17/2019	9/19/2019	-0.0625	7	Juan Alberto	Alvarez Jr	G2SF	BQ3160	3617LMQM1	4.5	7,105	105.92969	355	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/19/2019	9/20/2019	10/17/2019	9/19/2019	-0.0625	7	Michael	Martinez	G2SF	BQ3160	3617LMQM1	4.5	7,537	105.92969	376	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/19/2019	10/2/2019	10/17/2019	10/1/2019	-0.1875	22	Jessica	Gonzalez	G2SF	BQ3159	3617LMQL3	4.5	8,165	105.77344	408	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/15/2019	9/20/2019	10/17/2019	9/19/2019	-0.0625	7	Isaac	Washington	G2SF	BQ3160	3617LMQM1	4.5	7,148	105.89844	357	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/14/2019	9/24/2019	10/17/2019	9/23/2019	-0.0625	7	Kamry	Madlock	G2SF	BQ3162	3617LMQP4	4.5	5,695	105.91797	284	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/22/2019	9/20/2019	10/17/2019				Feliciano	Curiel Gil	G2SF	BQ3160	3617LMQM1	4.5	7,498	106.03516	374	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/14/2019	9/24/2019	10/17/2019	9/23/2019	-0.0625	7	Deborah	Van Ness	G2SF	BQ3158	3617LMQK5	4.5	11,193	105.97266	559	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/21/2019	9/27/2019	10/17/2019	9/26/2019	-0.0625	7	Julian Andres	Isaza	G2SF	BQ3158	3617LMQK5	4.5	10,836	105.97266	541	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/22/2009	9/23/2019	10/17/2019	9/20/2019	-0.0625	7	Jesusita	Alvarado	G2SF	BQ3160	3617LMQM1	4.5	7,600	105.97266	380	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/22/2019	9/20/2019	10/17/2019				Alexander	Watson	G2SF	BQ3159	3617LMQL3	4.5	8,401	106.03516	420	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/23/2019	9/24/2019	10/17/2019	9/23/2019	-0.0625	7	Lauren	De La Rosa	G2SF	BQ3159	3617LMQL3	4.5	8,797	105.88281	439	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/23/2019	9/27/2019	10/17/2019				Daniel	Palmeros	G2SF	BQ3161	3617LMQN9	4.5	6,677	106.15234	333	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/27/2019	9/30/2019	10/17/2019	9/27/2019	-0.0625	7	Ryan	Rangel	G2SF	BQ3163	3617LMQQ2	4.5	4,831	106.08984	241	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/27/2019	9/20/2019	10/17/2019				Jennifer	Tripodi	G2SF	BQ3160	3617LMQM1	4.5	7,698	106.22656	384	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/16/2019	9/26/2019	10/17/2019				Yannelya	Di Nicola Canizales	G2SF	BQ3159	3617LMQL3	4.5	8,876	106.03906	443	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/2/2019	10/17/2019	10/1/2019	-0.0625	7	Sheneka	Hawkins	G2SF	BQ3161	3617LMQN9	4.5	6,834	105.97656	341	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	10/1/2019	10/17/2019				Stephanie	Brown	G2SF	BQ3163	3617LMQQ2	4.5	4,658	106.03906	233	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/28/2019	9/30/2019	10/17/2019				Angel	Hernandez	G2SF	BQ3161	3617LMQN9	4.5	6,284	106.03906	314	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/19/2019	10/1/2019	10/17/2019				Anna	Davis	G2SF	BQ3159	3617LMQL3	4.5	8,408	106.21875	420	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/30/2019	10/17/2019				Bradleigh	Shala	G2SF	BQ3160	3617LMQM1	4.5	7,540	106.33594	377	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/16/2019	9/30/2019	10/17/2019				Marcel	Machado	G2SF	BQ3161	3617LMQN9	4.5	6,088	106.23047	304	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/22/2019	9/26/2019	10/17/2019				Bernard	Burton	G2SF	BQ3160	3617LMQM1	4.5	7,266	106.30469	363	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/15/2019	9/26/2019	10/17/2019				Jorge	Ramirez	G2SF	BQ3163	3617LMQQ2	4.5	4,320	106.30469	216	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/19/2018	9/26/2019	10/17/2019	9/25/2019	-0.0625	7	Donald	Medina	G2SF	BQ3159	3617LMQL3	4.5	8,562	105.88281	428	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/19/2019	9/20/2019	10/17/2019				Julia	Ibarra	G2SF	BQ3159	3617LMQL3	4.5	8,048	105.94531	402	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/21/2019	9/24/2019	10/17/2019	9/23/2019	-0.0625	7	Sabin	Flores	G2SF	BQ3159	3617LMQL3	4.5	8,048	105.88281	402	100.00
4.750	0.06	0.19	0	360	00:00.0	45	8/22/2019	9/20/2019	10/17/2019				Nathan-Alan	Garcia	G2SF	BQ3160	3617LMQM1	4.5	7,458	105.94531	372	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/20/2019	9/20/2019	10/17/2019				Joel	Garcia Jr	G2SF	BQ3160	3617LMQM1	4.5	7,458	106.15234	372	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/26/2019	9/30/2019	10/17/2019	9/27/2019	-0.0625	7	Greg	Eads	G2SF	BQ3160	3617LMQM1	4.5	7,733	106.08984	386	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/22/2019	9/24/2019	10/17/2019	9/23/2019	-0.0625	7	Erica	Jackson	G2SF	BQ3159	3617LMQL3	4.5	8,916	106.13672	445	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/26/2019	9/24/2019	10/17/2019				Ricardo	Escobedo Jr	G2SF	BQ3158	3617LMQK5	4.5	9,383	106.16797	469	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	9/25/2019	10/17/2019	9/24/2019	-0.0625	7	Steven	Morales Robles	G2SF	BQ3158	3617LMQK5	4.5	9,069	106.10547	453	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/26/2019	9/30/2019	10/17/2019	9/27/2019	-0.0625	7	Andrew	Johnson	G2SF	BQ3162	3617LMQP4	4.5	5,887	106.10547	294	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/15/2019	9/25/2019	10/17/2019				Billy	Williams	G2SF	BQ3159	3617LMQL3	4.5	8,444	106.15234	422	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	9/25/2019	10/17/2019				Bobby	Rodriguez	G2SF	BQ3163	3617LMQQ2	4.5	4,556	106.15234	228	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/20/2019	9/24/2019	10/17/2019				Tolulope	Olojede	G2SF	BQ3158	3617LMQK5	4.5	9,815	106.15234	490	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/23/2019	9/25/2019	10/17/2019				Anika	Butler	G2SF	BQ3159	3617LMQL3	4.5	8,326	106.12109	416	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/30/2019	9/30/2019	10/17/2019				David R	Hernandez Cortina	G2SF	BQ3159	3617LMQL3	4.5	8,912	106.12109	445	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/28/2019	9/26/2019	10/17/2019				Roberto	Cruz Jr.	G2SF	BQ3163	3617LMQQ2	4.5	3,299	106.12109	165	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/28/2019	9/30/2019	10/17/2019				Jesse	Perez	G2SF	BQ3160	3617LMQM1	4.5	7,969	106.05859	398	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/23/2019	9/20/2019	10/17/2019				Luis	Franco	G2SF	BQ3159	3617LMQL3	4.5	8,444	106.05859	422	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	9/20/2019	10/17/2019				Warren	Price	G2SF	BQ3159	3617LMQL3	4.5	8,837	106.05859	441	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/30/2019	10/2/2019	10/17/2019	10/1/2019	-0.0625	7	Jose	Nogueras	G2SF	BQ3160	3617LMQM1	4.5	7,600	105.99609	380	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/12/2019	10/1/2019	10/17/2019	9/30/2019	-0.0625	7	Desiree	Allen	G2SF	BQ3161	3617LMQN9	4.5	6,284	105.99609	314	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/23/2019	9/23/2019	10/17/2019				Debra	Marshall	G2SF	BQ3159	3617LMQL3	4.5	8,872	106.05859	443	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/26/2019	10/2/2019	10/17/2019	10/1/2019	-0.0625	7	Temitope	Omoyajowo	G2SF	BQ3160	3617LMQM1	4.5	7,462	105.99609	373	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/23/2019	9/20/2019	10/17/2019				Charlton	Craig	G2SF	BQ3158	3617LMQK5	4.5	10,094	105.97656	504	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/15/2019	9/30/2019	10/17/2019				Natalie	Kilgo	G2SF	BQ3160	3617LMQM1	4.5	7,791	106.03906	389	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/17/2019	10/2/2019	10/17/2019	10/1/2019	-0.0625	7	Hannah	Holick	G2SF	BQ3158	3617LMQK5	4.5	10,015	105.97656	500	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/22/2019	9/25/2019	10/17/2019				Criselda	Ortiz	G2SF	BQ3158	3617LMQK5	4.5	10,051	106.03906	502	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/26/2019	9/24/2019	10/17/2019				Samantha	Wagner	G2SF	BQ3158	3617LMQK5	4.5	9,186	106.03906	459	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/25/2019	10/17/2019				Princess	Odom	G2SF	BQ3160	3617LMQM1	4.5	7,462	106.21875	373	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	9/30/2019	10/17/2019				Jonathan	Arnold	G2SF	BQ3158	3617LMQK5	4.5	10,408	106.21875	520	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/19/2019	9/25/2019	10/17/2019				Cody	Harrell	G2SF	BQ3160	3617LMQM1	4.5	7,183	106.33594	359	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/28/2019	9/30/2019	10/17/2019				Jacob	Mcadams	G2SF	BQ3160	3617LMQM1	4.5	7,262	106.33594	363	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/27/2019	10/17/2019				Sheri	Gonzalez	G2SF	BQ3162	3617LMQP4	4.5	5,302	106.33594	265	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/30/2019	10/17/2019				Anthony	Beyer	G2SF	BQ3159	3617LMQL3	4.5	8,562	106.33594	428	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/22/2019	9/30/2019	10/17/2019				Richard	Mcdermott	G2SF	BQ3160	3617LMQM1	4.5	7,857	106.33594	392	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/20/2019	10/2/2019	10/17/2019				Hezekiah	Emfinger	G2SF	BQ3162	3617LMQP4	4.5	5,966	106.33594	298	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/28/2019	10/2/2019	10/17/2019				Luis	Pena	G2SF	BQ3159	3617LMQL3	4.5	8,283	106.33594	414	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/24/2019	10/17/2019				Summer	Teasdale	G2SF	BQ3161	3617LMQN9	4.5	6,791	106.33594	339	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/30/2019	10/17/2019				Curtis	Frink Ii	G2SF	BQ3159	3617LMQL3	4.5	8,724	106.33594	436	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	9/26/2019	10/17/2019				Quintina	Harris	G2SF	BQ3158	3617LMQK5	4.5	9,893	106.33594	494	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	10/1/2019	10/17/2019				Martin	Gutierrez	G2SF	BQ3160	3617LMQM1	4.5	7,266	106.23047	363	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	10/2/2019	10/17/2019				Cesar	Cruz Jr	G2SF	BQ3160	3617LMQM1	4.5	7,655	106.23047	383	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/28/2019	9/30/2019	10/17/2019				Victoria	Longoria	G2SF	BQ3159	3617LMQL3	4.5	8,798	106.23047	439	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/24/2019	10/17/2019				Richard	Stricklen	G2SF	BQ3160	3617LMQM1	4.5	7,266	106.23047	363	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	9/25/2019	10/17/2019				David	Carmona-Terrero	G2SF	BQ3160	3617LMQM1	4.5	7,266	106.30469	363	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/20/2019	10/17/2019				Juan	Lizama Loza	G2SF	BQ3161	3617LMQN9	4.5	6,284	106.30469	314	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/26/2019	10/2/2019	10/17/2019				Ahron	Molina Reyes	G2SF	BQ3160	3617LMQM1	4.5	7,733	106.30469	386	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/26/2019	9/25/2019	10/17/2019				Isaac	Flores	G2SF	BQ3158	3617LMQK5	4.5	10,365	106.30469	518	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	10/2/2019	10/17/2019				Matthew	Grymko	G2SF	BQ3158	3617LMQK5	4.5	11,233	106.30469	561	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/24/2019	9/23/2019	10/17/2019				Alton	Clarkson	G2SF	BQ3160	3617LMQM1	4.5	7,070	106.28125	353	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/24/2019	10/17/2019				Justin	Moore	G2SF	BQ3159	3617LMQL3	4.5	8,405	106.28125	420	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	9/26/2019	10/17/2019				Anabel	Estrada	G2SF	BQ3159	3617LMQL3	4.5	8,609	106.28125	430	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/28/2019	9/26/2019	10/17/2019				Diany	Villanueva Sifuentes	G2SF	BQ3158	3617LMQK5	4.5	9,033	106.14844	451	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	10/2/2019	10/17/2019				Christopher	Mcgill	G2SF	BQ3160	3617LMQM1	4.5	7,816	106.14844	391	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/23/2019	10/17/2019				Nadezhda	Gorelova	G2SF	BQ3160	3617LMQM1	4.5	7,352	106.14844	367	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/27/2019	10/17/2019				Lois	Glasker	G2SF	BQ3160	3617LMQM1	4.5	7,855	106.50781	392	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/1/2019	10/17/2019				Keyvis	Watson	G2SF	BQ3159	3617LMQL3	4.5	8,002	106.50781	400	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/6/2019	9/30/2019	10/17/2019				Robert	Aldridge	G2SF	BQ3159	3617LMQL3	4.5	8,994	106.37500	450	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/1/2019	10/17/2019				Anabel	Reyna	G2SF	BQ3161	3617LMQN9	4.5	6,638	106.37500	331	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/26/2019	10/17/2019				Alejandra	Ugartechea	G2SF	BQ3163	3617LMQQ2	4.5	4,909	106.37500	245	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/26/2019	10/17/2019				Victor	Hadley	G2SF	BQ3160	3617LMQM1	4.5	7,816	106.53906	390	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	9/25/2019	10/17/2019				Lashan	Hicks	G2SF	BQ3160	3617LMQM1	4.5	7,030	106.53906	351	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/29/2019	9/20/2019	10/17/2019				David	Allen	G2SF	BQ3164	3617LMQR0	4	10,290	104.67188	457	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/26/2019	9/20/2019	10/17/2019				Arfaxad	Castro	G2SF	BQ3160	3617LMQM1	4.5	7,458	106.28125	372	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/2/2019	10/17/2019				Esther	Wambua	G2SF	BQ3160	3617LMQM1	4.5	7,223	106.28125	361	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/3/2019	9/26/2019	10/17/2019				Darryan	Simon	G2SF	BQ3158	3617LMQK5	4.5	9,033	106.21875	452	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	9/23/2019	10/17/2019				Roland	Aghahowa	G2SF	BQ3158	3617LMQK5	4.5	9,579	106.21875	478	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/30/2019	10/17/2019				David	Cantu	G2SF	BQ3162	3617LMQP4	4.5	5,891	106.21875	294	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/25/2019	10/17/2019				Ekeneolise	Atenaga	G2SF	BQ3158	3617LMQK5	4.5	11,861	106.21875	592	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	10/2/2019	10/17/2019				Roderick B	Walker Jr	G2SF	BQ3159	3617LMQL3	4.5	8,853	106.21875	442	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/30/2019	10/17/2019				Shawn Renee	Heimann	G2SF	BQ3160	3617LMQM1	4.5	7,655	106.21875	382	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/21/2019	9/24/2019	10/17/2019				Roger	Ludwig Jr	G2SF	BQ3160	3617LMQM1	4.5	7,458	106.14844	372	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/22/2019	9/26/2019	10/17/2019				Matthew	Rios	G2SF	BQ3160	3617LMQM1	4.5	7,855	106.14844	392	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/23/2019	10/17/2019				Francisco	Javier Salas	G2SF	BQ3162	3617LMQP4	4.5	5,695	106.14844	284	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/26/2019	10/17/2019				Evan	Lucas	G2SF	BQ3159	3617LMQL3	4.5	8,904	106.14844	445	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/23/2019	10/17/2019				Aimee	Richardson	G2SF	BQ3160	3617LMQM1	4.5	7,855	106.14844	392	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/1/2019	10/17/2019				Johnathan	Kelley	G2SF	BQ3158	3617LMQK5	4.5	10,286	106.14844	514	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/5/2019	9/27/2019	10/17/2019				Michael	Bock	G2SF	BQ3160	3617LMQM1	4.5	7,773	106.14844	389	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/20/2019	10/17/2019				Bobby	Sanchez	G2SF	BQ3160	3617LMQM1	4.5	7,207	106.14844	360	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/20/2019	9/18/2019	10/17/2019				Adam	Eaton	G2SF	BQ3164	3617LMQR0	4	7,187	104.42969	319	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/22/2019	9/17/2019	10/17/2019				Jessica	Hadley	G2SF	BQ3164	3617LMQR0	4	6,123	104.42969	272	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/26/2019	9/30/2019	10/17/2019				Caren	Condiff	G2SF	BQ3164	3617LMQR0	4	9,603	104.42969	426	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/30/2019	10/2/2019	10/17/2019				Gilberto	Villarreal Iii	G2SF	BQ3164	3617LMQR0	4	8,444	104.42969	375	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/27/2019	10/17/2019				Felix	Trejo	G2SF	BQ3159	3617LMQL3	4.5	8,444	106.29297	422	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/23/2019	9/27/2019	10/17/2019				Tammy	Barks	G2SF	BQ3160	3617LMQM1	4.5	7,592	106.29297	379	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	9/30/2019	10/17/2019				Heather	Pedraza	G2SF	BQ3162	3617LMQP4	4.5	5,341	106.50781	267	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/30/2019	10/17/2019				Linda	Shields	G2SF	BQ3162	3617LMQP4	4.5	5,102	106.50781	255	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/27/2019	10/17/2019				Stacy	Rogers	G2SF	BQ3160	3617LMQM1	4.5	7,973	106.37500	398	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/27/2019	9/25/2019	10/17/2019				Jeffry	Torres Montes	G2SF	BQ3160	3617LMQM1	4.5	7,655	106.37500	382	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/26/2019	10/17/2019				Linda	Mateo	G2SF	BQ3163	3617LMQQ2	4.5	3,535	106.37500	177	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/29/2019	9/27/2019	10/17/2019				Michael	Salvo	G2SF	BQ3158	3617LMQK5	4.5	9,819	106.53906	490	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/30/2019	9/25/2019	10/17/2019				Jonathan	Cortez	G2SF	BQ3164	3617LMQR0	4	5,652	104.67188	251	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/30/2019	9/23/2019	10/17/2019				Otis	Smith Jr.	G2SF	BQ3164	3617LMQR0	4	9,258	104.67188	411	100.00
4.625	0.06	0.565	0	360	00:00.0	45	8/30/2019	9/27/2019	10/17/2019				Becky	Gonzlez Escobedo	G2SF	BQ3164	3617LMQR0	4	7,659	104.67188	340	100.00
5.000	0.06	0.44	0	360	00:00.0	45	9/10/2019	10/2/2019	10/17/2019				Alyssa	Gutierrez	G2SF	BQ3163	3617LMQQ2	4.5	4,316	106.71094	216	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/29/2019	9/25/2019	10/17/2019				Grant	Nelson	G2SF	BQ3160	3617LMQM1	4.5	7,619	106.71094	381	100.00
5.000	0.06	0.44	0	360	00:00.0	45	8/30/2019	9/26/2019	10/17/2019				Jeffrey	Perkins	G2SF	BQ3163	3617LMQQ2	4.5	4,905	106.71094	245	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/1/2019	10/17/2019				Kevin	Aubrey	G2SF	BQ3158	3617LMQK5	4.5	9,344	106.48438	467	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/6/2019	10/1/2019	10/17/2019				Cierra	Smith	G2SF	BQ3159	3617LMQL3	4.5	8,440	106.48438	422	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/4/2019	9/25/2019	10/17/2019				Sheneen	Woods	G2SF	BQ3162	3617LMQP4	4.5	5,675	106.50391	284	100.00
4.875	0.06	0.315	0	360	00:00.0	45	8/30/2019	10/2/2019	10/17/2019				Thomas	Brooks	G2SF	BQ3162	3617LMQP4	4.5	5,499	106.50391	275	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/3/2019	9/25/2019	10/17/2019				Stephen	Cisneros	G2SF	BQ3161	3617LMQN9	4.5	6,166	106.54688	308	100.00
4.875	0.06	0.315	0	360	00:00.0	45	9/6/2019	9/30/2019	10/17/2019				Kerri	Maldonado	G2SF	BQ3158	3617LMQK5	4.5	9,736	106.53906	487	100.00

EXHIBIT D

Form of Securities Confirmation

(Specific Data Shown for Illustrative Purposes Only)

ISIN: US36290NNP32	As of: 02/24/12
TRDR: ISHDEEP SINGH	(DATED: 07/01/03)
BUYS: 1,638,797 of GN613128	CUSIP: 36290NNP3
PRICE 100-00 or YIELD 2.020916	
SETTLEMENT on 02/28/12	ISSUER: Government National Mortgage A
NOTES:	

** PRINCIPAL:	USD 622,872.00 **
** ACCRUED (27 days):	2335.77 **
** TOTAL:	USD 625,207.77 **
++ TOTAL in @ -999998.000000(USD/):	0.00 ++

EXHIBIT E

Form of Intraday Report

(Specific Data Shown for Illustrative Purposes Only)

Loan Number	Government Type	Initial Principal	Gross Rate	Servicing Fee	PandI	Original Term	Initial Rate Lock Date	Loan Status	Rate Lock Term	Rate Lock Expiration Date	First Pay Date	Maturity Date	Latest GNMA Security (MBS) Settlement Date	Original LTV	Second Lien LTV	DPA	Original Appraisal	Sales Price	Loan Purpose	Street Address	City	State	Zip	Borrower First Name	Borrower Last Name	Borrower SSN	Decision FICO	Property Type	Occupancy	MI Company	MI Coverage (%)	DTI	Servicer	Number Units	Channel	Lender Name
123456	FHA	100,000	4.25	0.19	491.94	360	1/3/2012	Rate Lock	45	2/17/2012	4/1/201	3/1/2042	4/19/2012	96.5	0	3.5	103,627	103,627	Purchase	123 Alpha	Santa	CA	93109	John	Smith	012-34-	600	SFR	Primary	None	0	35	U.S.Ban	1	Retail	Stonegate

RETAINED MORTGAGE LOAN AGREEMENT

This Retained Mortgage Loan Agreement (this "Agreement"), made as of December 1, 2019, is between the Texas Department of Housing and Community Affairs (the "Department") and Hilltop Securities, Inc., or its permitted successor or assigns (the "Provider") and relates to certain transactions with respect to Retained Mortgage Loans (as defined below), subject to the conditions set forth herein. Such transactions will be governed by this Agreement.

The terms and conditions for this Agreement are as follows:

1. Purpose. The Department has implemented a Taxable Mortgage Program (the "TMP" or "Program") to originate Mortgage Loans (as defined below) to qualified mortgagors in the State of Texas. In connection with the Department's issuance of qualified mortgage bonds ("Hedged Bonds") collateralized by mortgage-backed securities, the Department has determined to retain certain Mortgage Loans (as defined below) originated under the Program and not deliver securities backed by such Retained Mortgage Loans (as defined below) to the Provider under the master trade confirmation entered into by the Provider and the Department on December 1, 2019 (the "TBA Master Trade Confirmation"). In connection with or in anticipation of the issuance of, and to modify the Department's risk of interest rate changes with respect to, the Hedged Bonds, the Department and the Provider will enter into Transactions with respect to Retained Mortgage Loans, which will be settled on a cash settlement basis on the related Settlement Date. This Agreement applies to Retained Loan Notices provided by the Department to the Provider on and after December 1, 2019.

2. Definitions. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the TBA Master Trade Confirmation.

    a. "Act of Insolvency" means (i) the commencement by the Provider or the Department, as applicable, as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for the Provider or the Department, as applicable, or any substantial part of such party's property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against the Provider or the Department, as applicable, or another seeking such an appointment or election, or the filing against the Provider or the Department, as applicable, of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970 ("SIPA"), which (A) is consented to or not timely contested by the Provider or the Department, as applicable, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect; or (C) is not dismissed within fifteen (15) days, (iii) the making by the Provider or the Department, as applicable, of a general assignment for the benefit of creditors, or (iv) the admission in writing by the Provider or the Department of its inability to pay such party's debts as they become due.

    b. "Hedged Bonds" means revenue bonds issued or to be issued by the Department that are expected to be secured by Retained Loan Securities.

c. "Pair-Off Amount" means the amount calculated by the Provider for any actual net financial loss or gain incurred or to be incurred by the Provider in connection with the Provider's settling ("pairing off") of its hedging arrangements with respect to its prior obligation under the TBA Master Trade Confirmation with respect to particular Retained Mortgage Loans. The Pair-Off Amount will be calculated net of the applicable amount (.25% of the outstanding principal balance of the Retained Mortgage Loans) payable to the Provider; therefore, any Pair-Off Amount payable to the Department will be net of the applicable amount payable to the Provider, and any Pair-Off Amount payable to the Provider will be in addition to the applicable amount payable to the Provider.

d. "Retained Loan Notice" means written notice from the Department to the Provider, which may be in the form of an email, in which the Department confirms its intention to retain the Mortgage Loans specified therein.

e. "Retained Loan Notice Date" means the date on which the Department identifies Retained Mortgage Loans by delivering a Retained Loan Notice to the Provider.

f. "Retained Loan Securities" means mortgage-backed securities relating to Retained Mortgage Loans.

g. "Retained Mortgage Loans" means Mortgage Loans that the Department has identified in a Retained Loan Notice and that are to be retained in connection with the Department's intended issuance of Hedged Bonds.

h. "Servicer" means Idaho Housing and Finance Association or any successor master servicer designated by the Department in writing to the Provider.

i. "Settlement Date" means the date identified as the "pooling date" in the list of Retained Mortgage Loans that is part of a Retained Loan Notice.

j. "Transaction" means each issuance by the Department of a Retained Loan Notice.

3. Identification of Retained Mortgage Loans. Retained Mortgage Loans must be closed Mortgage Loans that have been purchased or will be purchased by Servicer. The identification date for any Retained Loan must occur in accordance with the following: (i) for GNMA-eligible Mortgage Loans, by the 3rd Business Day of the calendar month in which related securities had been scheduled for settlement under the TBA Master Trade Confirmation, and (ii) for Fannie Mae- or Freddie Mac-eligible Mortgage Loans by the 3rd from last Business Day of the calendar month preceding the calendar month in which related securities had been scheduled for settlement under the TBA Master Trade Confirmation. There may be multiple Retained Loan Notice Dates in any month. The Retained Mortgage Loans with respect to a Retained Loan Notice Date will be identified in a Retained Loan Notice, which will be substantially in the form set forth in Exhibit A of the Qualified Hedge Identification Certificate (defined below).

4. Hedge Identification. Recognizing that the Department's decision to retain Retained Mortgage Loans is made in connection with the Department's expected issuance of Hedged Bonds and that each Transaction is entered to modify the risk of interest rate changes with respect to such Hedged Bonds, within 15 days of each Retained Loan Notice Date, (i) the Department will identify the Transaction by executing a hedge identification certificate (the "Qualified Hedge Identification Certificate") in the form attached as Exhibit A to this Agreement and (ii) the

Provider will execute a certificate of hedge provider in substantially the form attached as Exhibit B to the Qualified Hedge Identification Certificate.

5. Determination of Settlement Amount. Not later than 2:00 p.m. Central time one Business Day prior to the Settlement Date for any Retained Loans, the Provider will calculate the expected Pair-Off Amount for each Retained Mortgage Loan to be settled on such Settlement Date, and will provide such calculation to the Department. All calculations of the Pair-Off Amount provided to the Department will be in the form set forth in Exhibit B. By 5:00 Central time on such date, the Department will confirm such calculation of the final Pair-Off Amount.

6. Settlement. On each Settlement Date or such other date as agreed upon by the Provider and the Department, the Department will pay to the Provider, or the Provider will pay to the Department, the applicable Pair-Off Amount. Any Pair-Off Amount that is greater than zero will be paid by the Provider to the Department. Any Pair-Off Amount less than zero will be paid by the Department to the Provider.

7. Extension of Settlement Date. If the Department instructs the Provider to continue to hedge the interest rate risk on the Hedged Bonds past the related Settlement Date, the Provider will charge an additional 0.25% on the unpaid principal balance of the related Retained Mortgage Loans for every subsequent 30-day period (or a pro rata amount for any period of less than 30 days).

8. Department's Representations and Warranties.

    a. On the date hereof, the Department represents and warrants to the Provider that: (i) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (ii) the person signing this Agreement and each Retained Loan Notice on its behalf is duly authorized to do so; (iii) it has obtained all authorizations of any governmental body required in connection with the execution and delivery of this Agreement and such authorizations are in full force and effect; (iv) the execution, delivery and performance of this Agreement and the Retained Loan Notices will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected, (v) the terms of this Agreement do not conflict with the terms of any servicing agreement, origination agreement or other agreement entered into by the Department that relates to the implementation or operation of the Program; (vi) this Agreement and the Rate Lock Notices are enforceable obligations of the Department; (vii) it has made its own independent decisions to enter into this Agreement as to whether this Agreement and the related transactions are appropriate, proper and authorized for the Department, based upon its own judgment and upon advice from such advisors, including counsel, as it has deemed necessary; (viii) it is not relying on any communication (written or oral) of the Provider as investment advice or as a recommendation to enter into this Agreement, it being understood that information and explanations related to the terms and conditions of the respective transactions shall not be considered investment advice or a recommendation to enter into the respective transactions; (ix) it has not received from the Provider any assurance or guarantee as to expected results of any transactions; (x) it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the respective transactions; (xi) it is capable of assuming, and assumes, the financial and other risks of the respective transactions; (xii) it has not relied on the Provider for any tax or accounting advice concerning this Agreement or the related transactions; and (xiii) it

understands and acknowledges that the Provider is acting under this Agreement and the related transactions in its capacity as a principal, and not as an agent of the Department, on an arm's length basis, and the Provider is not providing advice or recommending any action to the Department regarding municipal financial products or the issuance of municipal securities, and the Provider is not acting as a financial advisor, municipal advisor or investment advisor to the Department and does not owe a fiduciary duty to the Department pursuant to the federal securities laws, Texas law or any other applicable law.

b. On each Retained Loan Notice Date, the Department shall be deemed to repeat all of the representations and warranties set forth in Section 8a. hereof and to represent and warrant to the Provider that it will use its best reasonable efforts to cause the related Retained Mortgage Loans to be funded and closed and pooled into Retained Loan Securities to be purchased with proceeds of Hedged Bonds.

9. Provider's Representations and Warranties. On the date hereof, the Provider represents and warrants to the Department that: (i) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (ii) the person signing this Agreement on its behalf is duly authorized to do so; (iii) the execution, delivery and performance of this Agreement will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected; and (iv) this Agreement is an enforceable obligation of the Provider.

10. Term. This Agreement shall be in effect for two years from the date hereof and shall automatically renew for up to three (3) succeeding one-year periods upon written notice from the Department to the Provider at least thirty (30) days prior to the expiration date. Either party may terminate this Agreement and related Transactions upon at least thirty (30) days advance written notice (which may be by email) to the other party.

11. Events of Default and Remedies.

Each of the following is an Event of Default by the Department under this Agreement: (i) the Department fails to, or admits to the Provider, its inability to, or its intention not to, perform any of its obligations hereunder; (ii) an Act of Insolvency occurs with respect to the Department; (iii) any representation made by the Department is incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; or (iv) the Department shall fail to make any payment due hereunder.

In the Event of Default by the Department, the Provider may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default and take any action necessary or appropriate to protect and enforce its rights and preserve the benefits of its bargain under this Agreement. The Provider shall (except upon the occurrence of an Act of Insolvency) give notice to the Department of the exercise of its option to declare an Event of Default as promptly as practicable.

Each of the following is an Event of Default by the Provider under this Agreement: (i) the Provider fails to, or admits to the Department, its inability to, or its intention not to, perform any of its obligations hereunder; (ii) an Act of Insolvency occurs with respect to the Provider; (iii) any representation made by the Provider is incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated; or (iv) the Provider shall fail to make any

payment due hereunder.

In the Event of Default by the Provider, the Department may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default and take any action necessary or appropriate to protect and enforce its rights and preserve the benefits of its bargain under this Agreement. The Department shall (except upon the occurrence of an Act of Insolvency) give notice to the Provider of the exercise of its option to declare an Event of Default as promptly as practicable.

In the Event of Default by the Department or the Provider, the defaulting party shall be liable to the non-defaulting party for (i) the amount of all reasonable legal or other expenses incurred by the non-defaulting party in connection with or as a result of an Event of Default, and (ii) any loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a transaction which is not reimbursed under the preceding provisions of this Section 11.

To the extent permitted by applicable law, a defaulting party shall be liable to the non-defaulting party for interest on any amounts owing by such defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party; or (ii) satisfied in full by the exercise of a non-defaulting party's rights hereunder. Interest on any sum payable under this paragraph shall be at a rate equal to the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates).

The non-defaulting party shall have all of the rights and remedies provided to a secured party under the Texas Uniform Commercial Code and, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

12. Escrow Deposit by the Department to Cover Provider Losses. The Department shall maintain a deposit of cash and/or securities with the Texas Treasury Safekeeping Trust Company ("TTSTC"), in accordance with the TDHCA TMP FSC Escrow Agreement dated October 1, 2012, as amended by the First Amendment thereto dated October 1, 2015, and the Second Amendment thereto dated as of December 1, 2019, by and among the Department, the Provider and TTSTC. Such escrowed amount shall remain in escrow for the term of this Agreement, subject to reductions for amounts payable to the Provider to reimburse it for any net losses sustained by it under Section 11.

13. Limited Obligation of the Department. Notwithstanding any provision of this Agreement to the contrary, the Department's obligations under this Agreement are limited obligations of the Department and any net losses attributable to the Department default shall be payable only from the amounts deposited with the Texas Treasury Safekeeping Trust Company pursuant to Section 12.

14. Amendments. No amendment or modification of this Agreement is valid, unless in writing and signed by both parties hereto.

15. No Waivers, Etc. No express or implied waiver of any Event of Default by the Provider or the Department shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by the Provider or the Department shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by either party hereto to a departure from the terms hereof shall be effective unless and

until such modification or waiver shall be in writing and duly executed by both of the parties hereto.

No waiver of any provision of this Agreement and no consent by either party hereto to a departure from the terms hereof shall be effective unless and until such waiver shall be in writing and duly executed by both of the parties hereto.

16. Non-Assignability. Neither of the parties hereto may assign or delegate any of its rights or duties under this Agreement without the prior written consent of the other party and any assignment or delegation in violation of this Section 16 shall be void *ab initio;* notwithstanding the foregoing, it is understood that Idaho Housing and Finance Association, as Servicer, may undertake certain of the Department's duties hereunder.

17. Damage Limitations. Without limiting the ability of either party hereto to recover losses pursuant to any provision of this Agreement, including, but not limited to, losses, damages, costs and expenses as set forth in Section 11, under no circumstances will either party hereto be liable for any consequential, indirect, special or punitive damages, opportunity costs or lost profits suffered or incurred by the other party for any claim under this Agreement, whether or not foreseeable or preventable. For the avoidance of doubt, replacement costs and other costs included under Section 11 shall not constitute consequential damages.

18. Other Arrangements. Notwithstanding the foregoing provisions of this Agreement, the Department and the Provider may agree to alternate arrangements relating to the retention of Retained Mortgage Loans by the Department, in each case with payment of related extension and/or hedging fees by the Provider to the Servicer, and the payment of related pair-off amounts by the Provider to the Department or by the Department to the Provider, as applicable. In the event any such alternate arrangement is agreed to, such agreement shall be set forth in writing executed by the Department and the Provider.

19. Governing Law. This Agreement will be construed in accordance with the laws of the State of Texas, without regard to its conflicts of law principles.

20. Severability. If any one or more of the terms or conditions of this Agreement is determined by a court of competent jurisdiction to be invalid, the invalidity will in no way affect the validity or effectiveness of the remaining terms and conditions.

21. Entire Agreement. This Agreement constitutes the entire agreement of, and supersedes all prior agreements between, the parties hereto with respect to the subject matter hereof.

22. No Reliance. Unless there is a written agreement with the other party to the contrary: (i) the Department has made its own independent decisions to enter into this Agreement and the related transactions, and as to whether the transactions are appropriate or proper for it, based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) the Department is not relying on any communication (written or oral) of the Provider as investment advice or as a recommendation to enter into the Agreement or the related transactions, it being understood that information and explanations related to the terms and conditions of the respective transactions shall not be considered investment advice or a recommendation to enter into the respective transactions; (iii) the Department has not received from the Provider any assurance or guarantee as to expected results of the respective transactions; (iv) the Department is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the respective transactions; (v) the

Department is capable of assuming, and assumes, the financial and other risks of the respective transactions; and (vi) the Department has not relied on the Provider for any tax or accounting advice concerning this Agreement or the related transactions.

23. Agreement as to Force and Effect of Emails. The Department and the Provider each agree that any email transmitted by it or its representatives pursuant to this Agreement shall be given the same force and effect as if such email had been in the form of a writing and manually signed by the person transmitting such document.

24. Confidentiality. Except to the extent the Department, or the Provider, or in each case its board members, officers, employees or agents, may be required by law or any court of competent jurisdiction to disclose this Agreement or any related notice, certificate or calculation (for example as set forth in Exhibit A or B of this Agreement) (collectively, the "Confidential Information"), to any person or party, the Department and the Provider agree that the Confidential Information shall be kept confidential and its contents shall not be divulged by the Department or the Provider to any person or party without the Department's or the Provider's consent, respectively, except to the extent that it is reasonable and necessary for the Department or the Provider to do so in working with its agents, advisors, legal counsel, auditors, taxing authorities or other governmental agencies. The Provider acknowledges that the Department is subject to Chapter 552, Texas Government Code, as amended (the "Texas Open Records Act"), and as a result, will include a copy of this Agreement in its board book when considering approval of the Agreement, and may be required to provide copies of this Agreement and/or related notices and certificates to anyone requesting copies pursuant to the Texas Open Records Act.

25. Additional Provider Representations. The Provider hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.0002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Provider understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

    To the extent this Agreement is a contract for goods or services, the Provider represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such office's internet website:

    1. https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf

    2. https://comptroller.texas.gov/purchasing/docs/iran-list.pdf

    3. https://comptroller.texas.gov/purchasing/docs/fto-list.pdf

    The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Provider and such entity's respective parent company, wholly- or majority-owned subsidiaries,

and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Provider understands "affiliate" to mean an entity that controls, is controlled by, or is under common control with such entity and exists to make a profit.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have executed this Retained Mortgage Loan Agreement as duly authorized representatives of, and on behalf of, Provider and Department, respectively.

HILLTOP SECURITIES INC.

By:_____
Name: Michael J. Marz
Title: Vice Chairman

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By:_____
Name: Monica Galuski
Title: Director of Bond Finance and Chief Investment Officer

EXHIBIT A

FORM OF QUALIFIED HEDGE IDENTIFICATION CERTIFICATE

I, the undersigned officer of the Texas Department of Housing and Community Affairs (the "Department") do hereby identify the Hedge (as defined below) on the Department's books and records for purposes of section 148 of the Internal Revenue Code of 1986, as amended (the "Code") and section 1.148-4(2)(viii) of the Treasury Regulations (the "Regulations") and hereby certify as follows:

1. Responsible Officer. I am the duly chosen, qualified and acting officer of the Department for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this identification certificate on behalf of the Department.

2. Identification of Parties and Hedge Terms. The Department and Hilltop Securities, Inc. (the "Hedge Provider") have entered into a forward transaction (the "Hedge") pursuant to (a) a Retained Mortgage Loan Agreement, dated December __, 2019, and (b) a Retained Loan Notice (the "Retained Loan Notice"), dated _____, 20____ (the "Retained Loan Notice Date"). The Retained Loan Notice, attached hereto as Exhibit A, identifies mortgage loans in an amount of $_____ that are reasonably expected to be pooled into mortgage-backed securities that will be purchased by the Department with proceeds of tax-exempt obligations. The Retained Loan Notice Date is not more than fifteen days prior to the date hereof. The Hedge Provider has executed a Certificate of Hedge Provider, which is attached hereto as Exhibit B.

3. Hedged Bonds. The Department reasonably expects that the Department will issue qualified mortgage bonds (the "Hedged Bonds") (a) for the governmental purpose of financing owner-occupied residences meeting the requirements set forth in section 143 of the Code; (b) at an issue price of $_____; (c) with a maturity date [or dates] of _____; and (d) on _____, 20____. The interest on the Hedged Bonds is reasonably expected to be computed based on [a fixed rate/variable rate]. The Hedged Bonds may be issued as part of a larger issue of bonds.

4. Qualified Hedge Certifications.

a) In general. The Hedge is entered into primarily to modify the Department's risk of interest rate changes with respect to the Hedged Bonds.

b) Acquisition payments. The Hedge Provider did not make a payment to the Department in connection with the acquisition of the contract.

c) No significant investment element. No significant portion of any payment by one party to the Hedge relates to a conditional or unconditional obligation by the other party to make a payment on a different date.

d) Parties. The Hedge Provider is not a "related party" (as defined in section 1.150-1 of the Regulations) to the Department.

e) Coverage. The mortgage loans identified in the Retained Loan Notice have a notional principal amount less than or equal to the reasonably expected principal amount of the Hedged Bonds.

f) Interest-based contract. The Hedge is primarily interest-based because the settlement value of the Hedge is reasonably expected to vary with the yield on

the Hedge Bonds when sold. Without regard to the Hedge, the Hedged Bonds are [fixed rate bonds/a variable rate debt instrument]. After taking into account the amount paid or received, or deemed to be paid or received, by the Department on the Hedge as an adjustment to the sales proceeds of the Hedged Bonds, the resulting Hedged Bond will be a [fixed rate bonds/a variable rate debt instrument].

g) Size and scope of hedge. Based on the reasonably expected terms of the Hedged Bonds, the size and scope of the Hedge is limited to hedging the Department's risk with respect to interest rate changes on the Hedged Bonds. The Hedge only covers those [securitized] mortgage loans that are expected to be purchased with proceeds of the Hedged Bonds.

h) Payments. Other than the amount paid or received, or deemed to be paid or received, by the Department to terminate or otherwise close the Hedge, there are no payments paid or received by the Department pursuant to the hedge.

i) Source of Payments. Any payment to the Hedge Provider will be made from the same source of funds that, absent the Hedge, would be reasonably expected to be used to pay principal of and interest on the Hedged Bonds.

5. Anticipatory Hedge. The Department reasonably expects to terminate the Hedge substantially contemporaneously with the issue date of the Bonds and, therefore, section 1.148-4(h)(5)(ii) of the Regulations applies to the Hedge. Accordingly, the Department intends to treat the amount paid or received, or deemed to be paid or received, by the Department on the Hedge as an adjustment to the sales proceeds of the Hedged Bonds for purposes of section 148 of the Code.

6. Documentation. The existence of the Hedge will be noted on the first form relating to the issuance of the Hedged Bonds that is filed with the Internal Revenue Service on or after the date hereof.

[EXECUTION PAGE FOLLOWS]

EXECUTED as of this _____ day of _____, 20_____.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: _____
Name: Monica Galuski
Title: Director of Bond Finance and Chief Investment Officer

Attachments:

Exhibit A: Retained Loan Notice

Exhibit B: Certificate of Hedge Provider

EXHIBIT A
(to Qualified Hedge Identification Certificate)

RETAINED LOAN NOTICE

[TO BE ADDED]

EXHIBIT B
(to Qualified Hedge Identification Certificate)

CERTIFICATE OF HEDGE PROVIDER

Hillltop Securities Inc. (the "Hedge Provider") has agreed to enter into a forward transaction (the "Hedge") with the Texas Department of Housing and Community Affairs (the "Department") in connection with the proposed issuance of qualified mortgage bonds by the Department (the "Hedged Bonds"). I, the undersigned office of the Hedge Provider, hereby certify as follows:

1. I am the duly chosen, qualified and acting officer of the Hedge Provider for the office shown below my signature; as such, I am familiar with the facts herein certified (which certifications are not necessarily based on personal knowledge, but may instead be based on either inquiry deemed adequate by the undersigned or institution knowledge (or both) regarding the matters set forth herein) and am duly authorized to execute and deliver this certificate on behalf of the Hedge Provider.

2. The terms of the Hedge were agreed to between a willing buyer and willing seller in a bona fide, arm's-length transaction.

3. The Hedge Provider has not made, and does not expect to make, any payment to any third party for the benefit of the Department in connection with the Hedge, except as expressly identified in the Hedge.

4. The amounts payable to the Hedge Provider pursuant to the Hedge do not include any payments for underwriting or other services unrelated to the Hedge Provider's obligations under the Hedge, except for any such payment expressly identified in the Hedge.

The Department is hereby authorized to rely on the statements made herein in connection with making the representations set forth in a federal tax certificate and in its efforts to comply with the conditions imposed by the Internal Revenue Code of 1986, as amended (the "Code"), on the excludability of interest on the Hedged Bonds from the gross income of their owners. Bracewell LLP, as bond counsel, is hereby authorized to rely on this certificate for purposes of its opinion regarding the treatment of interest on the Hedged Bonds as excludable from gross income for federal income tax purposes and its preparation of the Internal Revenue Service Form 8038. The Hedge Provider is certifying only as to facts in existence on the date hereof. The Hedge Provider makes no representation as to the legal sufficiency of the matters set forth herein for purposes of complying with the Code or for any other purpose. Nothing herein represents the Hedge Provider's interpretation of any laws; in particular the regulations under section 148 of the Code or the application of any laws to these facts.

[EXECUTION PAGE FOLLOWS]

Executed as of the _____ day of _____, 20_____.

HILLTOP SECURITIES INC.

By:_____
Name: Michael J. Marz
Title: Vice Chairman

EXHIBIT B

FORM OF PAIR-OFF AMOUNT CALCULATION

(Specific Data Shown for Illustrative Purposes Only)

	Total	G2SF 3.5 Sep	G2SF 4.0 Sep	G2SF 4.5 Sep	G2SF 3.5 Oct	G2SF 4.0 Oct	G2SF 4.5 Oct
Settle Date	9/16/2014	9/16/2014	9/16/2014	9/16/2014	9/16/2014	9/16/2014	9/16/2014
Original Balance	7,967,738.31	1,396,027.63	1,335,259.82	920,417.00	895,062.00	1,479,643.86	1,941,328.00
Hedge Size	7,967,736.00	1,396,027.00	1,335,259.00	920,417.00	895,062.00	1,479,643.00	1,941,328.00
FSW Rate Lock Price	105.04361	102.17680	105.21839	107.45964	102.15628	104.78400	107.36857
FSW Ratesheet Spread	0.75000	0.75000	0.75000	0.75000	0.75000	0.75000	0.75000
Hedge Market Price	105.89122	103.203125	105.968750	108.421875	102.859375	105.625000	108.171875
Net Payoff Price	(0.84761)	(1.026321)	(0.750359)	(0.962240)	(0.703095)	(0.941003)	(0.803301)
Net Payoff Amount	$ (67,535)	$ (14,328)	$ (10,019)	$ (8,857)	$ (6,293)	$ (12,444)	$ (15,595)

Grand Total			7,967,738	4.320	0.060	0.224	-	360		45					[0.03]	2.79					4.04	-	105.04	0.75	
Loan Id	HFA Loan Id	Government Type	Original Balance	Gross Rate	Guarantee Fee	Servicing Fee	Excess Servicing Fee	Original Term	Initial Rate Lock Date	Rate Lock Term (Days)	Lender Actual Close Date	Servicer Purchase Date	Expected MBS Settlement Date	Extension Date	Extension Fees	Extension Days	Borrower First Name	Borrower Last Name	MBS Ticker	TBA Hedge	MBS Coupon	DPA Amount	FSW Rate Lock Price	FSW Ratesheet Spread	Package
100222	3501002228	FHA Insured	51,548	4.250	0.06	0.19	0	360	5/15/2014	45	8/5/2014	8/14/2014	9/20/2014	7/14/2014	-0.375	30	Franz	Clemmer	G2SF	G2SF 4.0 Sep	4		104.83203	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100308	3501003069	FHA Insured	87,387	4.750	0.06	0.19	0	360	6/3/2014	45	7/22/2014	8/11/2014	9/20/2014	9/5/2014	-0.375	30	Analisa R	Lopez	G2SF	G2SF 4.5 Sep	4.5		107.05859	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100370	3501003705	FHA Insured	149,246	4.750	0.06	0.19	0	360	6/10/2014	45	7/30/2014	8/12/2014	10/3/2014	8/8/2014	-0.1875	15	Sarah	Lovell	G2SF	G2SF 4.5 Oct	4.5		107.06250	0.75000	NIMMFA HERO PROGRAM 6599
100339	3501003390	FHA Insured	91,806	3.750	0.06	0.19	0	360	6/6/2014	45	7/25/2014	8/12/2014	9/5/2014	9/5/2014	-0.1875	15	Jaime	Hernandez	G2SF	G2SF 3.5 Sep	3.5		102.25391	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100354	3501003549	FHA Insured	132,456	4.750	0.06	0.19	0	360	6/9/2014	45	8/14/2014	8/22/2014	10/3/2014	9/5/2014	-0.1875	15	Krista	Nunez	G2SF	G2SF 4.5 Oct	4.5		107.10938	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100385	3501003853	FHA Insured	95,243	4.750	0.06	0.19	0	360	6/12/2014	45	8/6/2014	8/25/2014	9/18/2014				Valerie M	Artiaga	G2SF	G2SF 4.5 Sep	4.5		107.19531	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100388	3501003887	FHA Insured	157,003	4.750	0.06	0.19	0	360	6/11/2014	45	7/25/2014	8/15/2014	9/18/2014				Augustus	Saavedra	G2SF	G2SF 4.5 Sep	4.5		107.23600	0.75000	NIMMFA HERO PROGRAM 6599
100433	3501004331	FHA Insured	117,826	3.750	0.06	0.19	0	360	6/19/2014	45	7/23/2014	8/11/2014	9/18/2014				Stormy A	Wesner	G2SF	G2SF 3.5 Sep	3.5		102.28516	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100394	3501003945	FHA Insured	127,645	4.750	0.06	0.19	0	360	6/13/2014	45	7/29/2014	8/22/2014	10/3/2014	9/5/2014	-0.1875	15	Abril I	Obrien	G2SF	G2SF 4.5 Oct	4.5		106.92188	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100397	3501003978	FHA Insured	127,645	4.750	0.06	0.19	0	360	6/17/2014	45	7/1/2014	8/14/2014	9/18/2014				Sean C	Abeyta	G2SF	G2SF 4.5 Sep	4.5		107.35938	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100417	3501004174	FHA Insured	98,188	4.750	0.06	0.19	0	360	6/19/2014	45	8/12/2014	8/28/2014	10/18/2014	8/15/2014	-0.375	30	Ramon	Mora	G2SF	G2SF 4.5 Oct	4.5		107.10547	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100396	3501003960	FHA Insured	153,075	4.250	0.06	0.19	0	360	6/13/2014	45	7/31/2014	8/20/2014	10/3/2014	9/5/2014	-0.1875	15	George	Sarracino	G2SF	G2SF 4.0 Oct	4		104.38281	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100401	3501004018	FHA Insured	137,464	4.250	0.06	0.19	0	360	6/13/2014	45	7/18/2014	8/15/2014	9/18/2014				Jeffery S	Harmount	G2SF	G2SF 4.0 Sep	4		104.57031	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100408	3501004067	FHA Insured	152,683	4.250	0.06	0.19	0	360	6/17/2014	45	7/24/2014	8/12/2014	9/18/2014				Lacey J	Cardoza	G2SF	G2SF 4.0 Sep	4		104.92188	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100520	3501005205	FHA Insured	82,478	4.500	0.06	0.44	0	360	6/30/2014	45	7/17/2014	8/13/2014	9/18/2014				Celenia	Macias	G2SF	G2SF 4.0 Sep	4		105.63281	0.75000	NIMMFA HERO PROGRAM 6599
100459	3501004596	FHA Insured	89,369	3.750	0.06	0.19	0	360	6/23/2014	45	7/31/2014	8/12/2014	9/18/2014				Ruben S	Lujan	G2SF	G2SF 3.5 Sep	3.5		102.48828	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100508	3501005080	FHA Insured	189,504	3.750	0.06	0.19	0	360	6/30/2014	45	7/24/2014	8/14/2014	9/18/2014				Janette	Herrera	G2SF	G2SF 3.5 Sep	3.5		102.72266	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100467	3501004679	FHA Insured	62,840	4.750	0.06	0.19	0	360	6/24/2014	45	8/8/2014	8/20/2014	9/18/2014				Linda Rubi	Romero	G2SF	G2SF 4.5 Sep	4.5		107.63672	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100488	3501004885	FHA Insured	191,468	4.750	0.06	0.19	0	360	6/25/2014	45	7/30/2014	8/12/2014	9/18/2014				Sharon C	Franco	G2SF	G2SF 4.5 Sep	4.5		107.73438	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100524	3501005247	FHA Insured	104,570	4.750	0.06	0.19	0	360	7/2/2014	45	7/31/2014	8/11/2014	9/18/2014				Michael B	Howell	G2SF	G2SF 4.5 Sep	4.5		107.67188	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100450	3501004505	FHA Insured	121,586	4.250	0.06	0.19	0	360	6/23/2014	45	7/18/2014	8/19/2014	9/18/2014				Gregorio T	Chavez	G2SF	G2SF 4.0 Sep	4		105.46484	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100451	3501004513	FHA Insured	98,090	4.250	0.06	0.19	0	360	6/23/2014	45	7/17/2014	8/13/2014	9/18/2014				Renee C	Lager	G2SF	G2SF 4.0 Sep	4		105.46484	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100458	3501004588	FHA Insured	142,864	4.250	0.06	0.19	0	360	6/23/2014	45	6/3/2014	8/13/2014	9/18/2014				Jonny S	Wilson	G2SF	G2SF 4.0 Sep	4		105.46484	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100463	3501004638	FHA Insured	162,670	4.250	0.06	0.19	0	360	6/24/2014	45	7/31/2014	8/28/2014	9/18/2014				Brian	Coy	G2SF	G2SF 4.0 Sep	4		105.19141	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100469	3501004695	FHA Insured	79,532	4.250	0.06	0.19	0	360	6/24/2014	45	8/5/2014	8/22/2014	9/18/2014				Joshua David	Walls	G2SF	G2SF 4.0 Sep	4		105.19141	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100474	3501004745	FHA Insured	106,043	4.250	0.06	0.19	0	360	6/24/2014	45	6/10/2014	8/12/2014	9/18/2014				Omar I	Talamantes	G2SF	G2SF 4.0 Sep	4		105.19141	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100483	3501004836	FHA Insured	84,931	4.250	0.06	0.19	0	360	6/25/2014	45	8/13/2014	8/19/2014	9/18/2014				Christopher P	Rael	G2SF	G2SF 4.0 Sep	4		105.38281	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100490	3501004901	FHA Insured	115,371	4.250	0.06	0.19	0	360	6/26/2014	45	7/24/2014	8/14/2014	9/18/2014				Dorian	Grizzle	G2SF	G2SF 4.0 Sep	4		105.44531	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100504	3501005049	FHA Insured	108,007	4.000	0.06	0.44	0	360	6/27/2014	45	7/24/2014	8/13/2014	9/18/2014				Brandice A	Chacon	G2SF	G2SF 3.5 Sep	3.5		102.66016	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100518	3501005189	FHA Insured	137,464	4.000	0.06	0.44	0	360	7/1/2014	45	7/29/2014	8/19/2014	9/18/2014				Morgan J	Reneker	G2SF	G2SF 3.5 Sep	3.5		102.55078	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100612	3501006120	FHA Insured	154,156	4.750	0.06	0.19	0	360	7/14/2014	45	8/8/2014	8/20/2014	10/23/2014				Melinda E	Song	G2SF	G2SF 4.5 Oct	4.5		107.66406	0.75000	NIMMFA HERO PROGRAM 6599
100615	3501006153	FHA Insured	152,192	4.750	0.06	0.19	0	360	7/15/2014	45	7/25/2014	8/18/2014	10/23/2014				Anita L	Sandoval	G2SF	G2SF 4.5 Oct	4.5		107.42188	0.75000	NIMMFA HERO PROGRAM 6599
100618	3501006187	FHA Insured	191,468	4.750	0.06	0.19	0	360	7/16/2014	45	7/23/2014	8/18/2014	10/23/2014				Carlos E	Verdugo	G2SF	G2SF 4.5 Oct	4.5		107.45313	0.75000	NIMMFA HERO PROGRAM 6599
100512	3501005120	FHA Insured	141,191	3.750	0.06	0.19	0	360	7/3/2014	45	7/31/2014	8/15/2014	9/18/2014				Kari Anne	Wallace	G2SF	G2SF 3.5 Sep	3.5		101.92969	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100547	3501005478	FHA Insured	113,702	3.750	0.06	0.19	0	360	7/7/2014	45	7/30/2014	8/15/2014	10/23/2014				Jonathan	Martinez	G2SF	G2SF 3.5 Oct	3.5		101.66797	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100583	3501005833	FHA Insured	92,592	3.750	0.06	0.19	0	360	7/11/2014	45	7/31/2014	8/15/2014	10/23/2014				Dorothy	Montano	G2SF	G2SF 3.5 Oct	3.5		102.19141	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100590	3501005908	FHA Insured	105,061	3.750	0.06	0.19	0	360	7/11/2014	45	8/1/2014	8/15/2014	10/23/2014				Blanca A	Ontiveros	G2SF	G2SF 3.5 Oct	3.5		102.19141	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100593	3501005932	FHA Insured	126,961	3.750	0.06	0.19	0	360	7/11/2014	45	7/30/2014	8/11/2014	10/23/2014				Joshua M	Creed	G2SF	G2SF 3.5 Oct	3.5		102.19141	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100629	3501006294	FHA Insured	127,546	3.750	0.06	0.19	0	360	7/18/2014	45	8/7/2014	8/21/2014	10/23/2014				Levi	Mcintyre	G2SF	G2SF 3.5 Oct	3.5		102.21875	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100660	3501006609	FHA Insured	88,638	3.750	0.06	0.19	0	360	7/23/2014	45	8/21/2014	9/4/2014	10/23/2014				Eugene T	Lovato	G2SF	G2SF 3.5 Oct	3.5		102.46094	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100529	3501005296	FHA Insured	94,261	4.750	0.06	0.19	0	360	7/2/2014	45	7/30/2014	8/14/2014	9/18/2014				Aaron	Sauceda	G2SF	G2SF 4.5 Sep	4.5		107.67188	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100557	3501005577	FHA Insured	54,003	4.750	0.06	0.19	0	360	7/7/2014	45	7/22/2014	8/11/2014	10/23/2014				Jesse R	Cordova	G2SF	G2SF 4.5 Oct	4.5		107.36719	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100571	3501005718	FHA Insured	102,116	4.750	0.06	0.19	0	360	7/9/2014	45	8/4/2014	8/25/2014	10/23/2014				Jason A	Tingstrom	G2SF	G2SF 4.5 Oct	4.5		107.42969	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100588	3501005882	FHA Insured	124,699	4.750	0.06	0.19	0	360	7/11/2014	45	8/12/2014	9/3/2014	10/23/2014				Maryah J	Vigil	G2SF	G2SF 4.5 Oct	4.5		107.69531	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100614	3501006146	FHA Insured	181,301	4.750	0.06	0.19	0	360	7/17/2014	45	7/30/2014	8/14/2014	10/23/2014				Jesus	Hernandez	G2SF	G2SF 4.5 Oct	4.5		107.42188	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100632	3501006328	FHA Insured	107,811	4.750	0.06	0.19	0	360	7/18/2014	45	8/18/2014	9/4/2014	10/23/2014				Christine L	Clay-Hargraves	G2SF	G2SF 4.5 Oct	4.5		107.46094	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100675	3501006757	FHA Insured	92,101	4.750	0.06	0.19	0	360	7/24/2014	45	8/12/2014	8/28/2014	10/23/2014				David	Anaya	G2SF	G2SF 4.5 Oct	4.5		107.39063	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100525	3501005254	FHA Insured	102,116	4.000	0.06	0.44	0	360	7/2/2014	45	7/24/2014	8/13/2014	9/18/2014				Jonathon K	Gavlik	G2SF	G2SF 3.5 Sep	3.5		102.16406	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100530	3501005304	FHA Insured	195,595	4.000	0.06	0.44	0	360	7/2/2014	45	7/28/2014	8/27/2014	9/18/2014				Richard	Meijers	G2SF	G2SF 3.5 Sep	3.5		102.16406	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100537	3501005379	FHA Insured	152,854	4.000	0.06	0.44	0	360	7/3/2014	45	7/29/2014	8/27/2014	9/18/2014				Oscar	Mendez	G2SF	G2SF 3.5 Sep	3.5		101.92969	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100544	3501005445	FHA Insured	147,184	4.250	0.06	0.19	0	360	7/7/2014	45	8/7/2014	8/25/2014	10/23/2014				Lorinda R	Julian	G2SF	G2SF 4.0 Oct	4		104.69531	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100549	3501005494	FHA Insured	93,180	4.250	0.06	0.19	0	360	7/7/2014	45	8/12/2014	8/27/2014	10/23/2014				Tina M	Carmichael	G2SF	G2SF 4.0 Oct	4		104.69531	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100552	3501005528	FHA Insured	112,425	4.250	0.06	0.19	0	360	7/7/2014	45	7/31/2014	8/22/2014	10/23/2014				Annie M	Miller	G2SF	G2SF 4.0 Oct	4		104.69531	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100560	3501005601	FHA Insured	162,011	4.250	0.06	0.19	0	360	7/7/2014	45	8/6/2014	8/20/2014	10/23/2014				Joshua L	Schaff	G2SF	G2SF 4.0 Oct	4		104.69531	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100562	3501005627	FHA Insured	114,643	4.250	0.06	0.19	0	360	7/8/2014	45	8/12/2014	8/25/2014	10/23/2014				Raquel Veronica	Gallegos	G2SF	G2SF 4.0 Oct	4		104.82031	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100569	3501005690	FHA Insured	128,135	4.250	0.06	0.19	0	360	7/8/2014	45	7/24/2014	9/3/2014	10/23/2014				Carlos R	Banuelos	G2SF	G2SF 4.0 Oct	4		104.82031	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100575	3501005759	FHA Insured	120,606	4.250	0.06	0.19	0	360	7/9/2014	45	7/25/2014	9/3/2014	10/23/2014				Luis Angel	Martinez	G2SF	G2SF 4.0 Oct	4		104.75781	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100595	3501005957	FHA Insured	144,337	4.250	0.06	0.19	0	360	7/14/2014	45	8/14/2014	9/3/2014	10/23/2014				Gregory M	Huber	G2SF	G2SF 4.0 Oct	4		105.11328	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100605	3501006054	FHA Insured	171,593	4.250	0.06	0.19	0	360	7/15/2014	45	7/30/2014	8/20/2014	10/23/2014				Jeremy S	Wilson	G2SF	G2SF 4.0 Oct	4		104.85547	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100625	3501006252	FHA Insured	63,822	4.250	0.06	0.19	0	360	7/18/2014	45	8/4/2014	9/4/2014	10/23/2014				Joel	Ronio Jr	G2SF	G2SF 4.0 Oct	4		105.02734	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100648	3501006488	FHA Insured	68,633	4.250	0.06	0.19	0	360	7/22/2014	45	8/15/2014	8/27/2014	10/23/2014				Michael A	Carrillo	G2SF	G2SF 4.0 Oct	4		105.16406	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999
100665	3501006658	FHA Insured	95,243	4.000	0.06	0.44	0	360	7/23/2014	45	8/15/2014	9/3/2014	10/23/2014				Garrett	Wolfram	G2SF	G2SF 3.5 Oct	3.5		102.48094	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
99935	3500999358	FHA Insured	70,695	4.000	0.06	0.44	0	360	4/1/2014	45	7/18/2014	8/11/2014	9/2/2014	8/11/2014	-0.9375	75	Melinda	Valenzuela	G2SF	G2SF 3.5 Sep	3.5		99.69016	0.75000	NIMMFA MORTGAGE$AVER GOVT 2999
100685	3501006856	FHA Insured	126,663	4.750	0.06	0.19	0	360	7/24/2014	45	8/15/2014	9/3/2014	10/23/2014				Merlinda M	Montoya	G2SF	G2SF 4.5 Oct	4.5		107.39063	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100704	3501007045	FHA Insured	147,283	4.750	0.06	0.19	0	360	7/28/2014	45	8/8/2014	8/28/2014	10/23/2014				Larry C	Montoya	G2SF	G2SF 4.5 Oct	4.5		107.51563	0.75000	NIMMFA MORTGAGE$AVER PLUS GOVT 3999
100679	3501006799	FHA Insured	145,319	4.000	0.06	0.44	0	360	7/24/2014	45	8/15/2014	9/3/2014	10/23/2014				Charlene L	Sanchez	G2SF	G2SF 3.5 Oct	3.5		102.01953	0.75000	NIMMFA MORTGAGE$AVER ZERO GOVT 6999

4b

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding the Issuance of a Multifamily Note (Ventura at Hickory Tree) Resolution No. 20-007 and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted the most recent inducement resolution for Ventura at Hickory Tree at the Board meeting on June 27, 2019;

WHEREAS, a 4% Housing Tax Credit application for the Ventura at Hickory Tree, sponsored by Dominium Holdings, was submitted to the Department on July 24, 2019;

WHEREAS, a Certification of Reservation was issued, in the amount of $30,000,000, on August 20, 2019, with a bond delivery deadline of January 17, 2020;

WHEREAS, pursuant to 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan (QAP) related to Neighborhood Risk Factors, the applicant must disclose the presence of each such factor at the time the application is submitted to the Department;

WHEREAS, the applicant has disclosed the presence of a Neighborhood Risk Factor, specifically the proposed development is located in the attendance zone of an elementary school that did not achieve a Met Standard rating based on the 2018 Accountability Ratings by the Texas Education Agency (TEA);

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein recommends the proposed site be found eligible under §11.101(a)(3);

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by the Executive Award and Review Advisory Committee (EARAC); and

WHEREAS, EARAC recommends the issuance of a Multifamily Note (Ventura at Hickory Tree) and the issuance of a Determination Notice;

NOW, therefore, it is hereby

RESOLVED, the proposed development site is found to be eligible;

FURTHER RESOLVED, that the issuance of an unrated tax-exempt multifamily note in the amount of $28,100,000 (Ventura at Hickory Tree) Series 2019, Resolution No. 20-007 is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of $1,886,974 in 4% Housing Tax Credits for Ventura at Hickory Tree, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The multifamily note will be issued in accordance with Texas Government Code Chapter 2306, the Department's Enabling Statute (the Statute), which provides the authority for the Department to provide such financing for its public purposes, as defined therein. The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Ventura at Hickory Tree will be located at 3401 Hickory Tree Road in Balch Springs, Dallas County, and proposes the new construction of 216 units. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Gross Income (AMGI) that must be served. All of the units will be rent and income restricted at 60% AMGI. The development will serve the general population, and conforms to current zoning.

Site Analysis: The applicant disclosed the presence of a middle school (Floyd Elementary School) within the attendance zone of the proposed development site that did not achieve a Met Standard rating based on the 2018 TEA Accountability Ratings. A letter was submitted from Beth Nicholas, Deputy Superintendent for Mesquite Independent School District that identified the strategies in place and the improvement the school as seen as a result of those strategies. Specifically, Ms. Nicholas represented that Floyd Elementary received an accountability rating of "C" for 2019, which was a 22% increase over the previous 2018 school year. Based on this information, staff recommends the proposed site be found eligible under 10 TAC §11.101(a)(3) of the 2019 QAP.

Organizational Structure and Previous Participation: The Borrower is Balch Springs Leased Housing Associates I, LLLP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Public Hearing/Public Comment: A public hearing for the proposed development was conducted by staff on September 18, 2019 and no one attended. A copy of the hearing transcript is included herein. There have been no letters of support or opposition submitted to the Department.

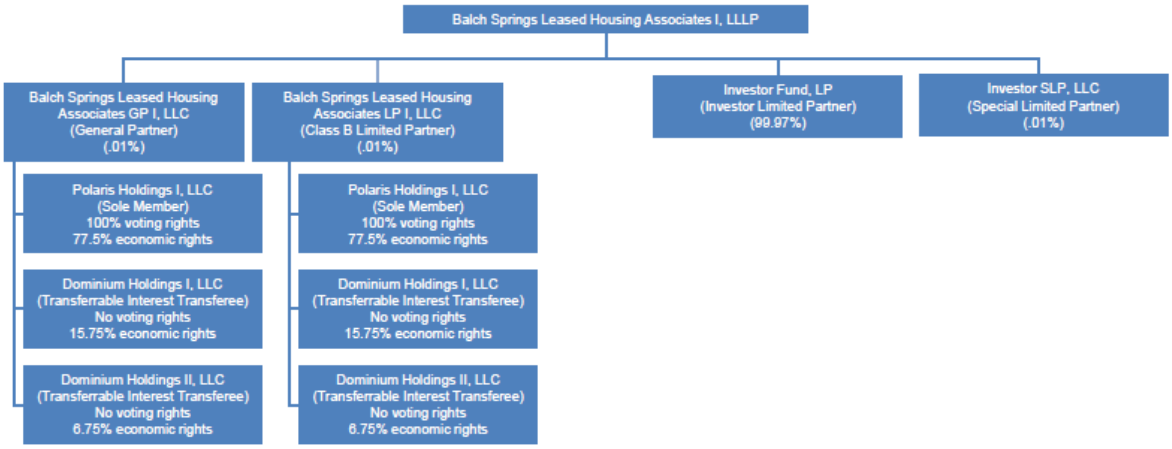
Summary of Financial Structure

Under the proposed structure, the Department will issue an unrated tax-exempt fixed rate multifamily note (similar to fixed rate bond in other structures) in the amount of $28,100,000 that will be initially purchased by TCF Bank. TCF Bank will acquire the loan and the Department's related multifamily note at closing, which will be used to fund an interim construction loan that will carry an approximate interest rate of 3.62%, as more appropriately described in the bond resolution attached hereto. Dougherty Funding LLC will be providing a bridge loan of approximately $9,667,000 at an approximate interest rate of 4.50%, that will be used to cover some construction costs that can't be paid for with bond proceeds (i.e. "bad costs") and to bridge the delivery of some of the equity proceeds.

Once the conditions to conversion to the permanent loan have been met, Berkadia Commercial Mortgage, LLC will purchase the loan from TCF Bank under Freddie Mac's Delegated Underwriting for Targeted Affordable Housing program. Shortly thereafter Freddie Mac will acquire the loan and the Department's related multifamily note from Berkadia, where it is expected to be securitized with other loans. Berkadia will remain as the servicer of the loan for Freddie Mac, who will be the permanent lender and bondholder. The multifamily note will have an interest rate of approximately 4.13% (as more appropriately described in the bond resolution attached hereto), with a 17-year term, 35-year amortization and maturity date of January 1, 2040.

A copy of the Exhibits recommend to be approved by the Board as referenced in Resolution No. 20-007 can be found online at TDHCA's Board Meeting Information Center website at http://www.tdhca.state.tx.us/board/meetings.htm.

Exhibit A



"Note: The General Partner and Class B Limited Partner are Minnesota limited liability companies and each is managed by a Board of Governors. The members of the Board of Governors of the General Partner and Class B Limited Partner and their respective voting rights as governors are as follows: Armand E. Brachman (38.25%), Paul R. Sween (38.25%), and Mark S. Moorhouse (23.50%). The officers of such entities are Mr. Brachman (Co-Chief Manager, Co-President, Secretary), Mr. Sween (Co-Chief Manager, Co-President, Treasurer), Mr. Moorhouse (Senior Vice President) and Jeffrey S. Spicer (Vice President)."

RESOLUTION NO. 20-007

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY NOTE (VENTURA AT HICKORY TREE APARTMENTS), SERIES 2019; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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 (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely 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 "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds (including notes), for the purpose, among others, of obtaining funds to make such loans and provide financing, 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 multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board has determined to authorize the issuance of its Multifamily Note designated Texas Department of Housing and Community Affairs Multifamily Note (Ventura at Hickory Tree Apartments), Series 2019 (the "Governmental Note") pursuant to and in accordance with the terms of a Funding Loan Agreement (the "Funding Loan Agreement") among the Department, U.S. Bank, National Association, as fiscal agent (the "Fiscal Agent"), and TCF Investments Management, Inc., a Minnesota corporation, as initial funding lender (the "Initial Funding Lender"), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Governmental Note to fund a mortgage loan to Balch Springs Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the "Borrower") in order to finance the cost of acquisition,

construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on February 21, 2019, as such resolution was amended by a resolution adopted on June 27, 2019, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and;

WHEREAS, it is anticipated that the Department, the Borrower and the Fiscal Agent will execute and deliver a Project Loan Agreement (the "Project Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Governmental Note (the "Project Loan") to the Borrower to enable the Borrower to finance the cost of acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a multifamily note (the "Project Note") in an original principal amount equal to the original aggregate principal amount of the Governmental Note, and providing for payment of interest on such principal amount equal to the interest on the Governmental Note and to pay other costs described in the Project Loan Agreement; and

WHEREAS, it is anticipated that the Project Note will be secured by a Construction Deed of Trust, Security Agreement, and Fixture Filing Statement (the "Mortgage") and an Assignment of Leases and Rents (the "Assignment of Leases" and together with the Mortgage, the "Security Instrument") from the Borrower for the benefit of the Department and assigned to the Fiscal Agent; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Project Loan Agreement, the Project Note and the Security Instrument will be assigned to the Fiscal Agent pursuant to an Assignment of Security Instrument (the "Assignment") from the Department to the Fiscal Agent; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Code, the Board has determined that the Department, the Fiscal Agent and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Governmental Note, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Governmental Note as exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has determined that the Department, the Fiscal Agent and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has further determined that the Initial Funding Lender will purchase the Governmental Note from the Department; and

WHEREAS, upon completion of certain conditions it is expected that the Federal Home Loan Mortgage Corporation ("Freddie Mac") and its seller/servicer will facilitate the financing of the Development in the permanent phase by acquiring the Governmental Note and in connection with the conversion to the permanent phase the Borrower will execute and deliver the Amended and Restated Project Note (the "Amended Project Note"); and

WHEREAS, the Board has examined proposed forms of (a) the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement, the Assignment and the Tax Exemption Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument, the Project Note, and the Amended Project Note; has found 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, subject to the conditions set forth in Article 1, to authorize the issuance of the Governmental Note, the execution and delivery of the Issuer Documents, the acceptance of the Security Instrument and the Project Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

ISSUANCE OF GOVERNMENTAL NOTE; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Governmental Note. That the issuance of the Governmental Note is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Funding Loan Agreement, and that, upon execution and delivery of the Funding Loan Agreement, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Governmental Note and to deliver the Governmental Note to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Fiscal Agent for authentication (to the extent required in the Funding Loan Agreement), and thereafter to deliver the Governmental Note to or upon the order of the Initial Funding Lender.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That (i) the Governmental Note shall bear interest during the Construction Phase at a Construction Phase Interest Rate (each term as defined in the Funding Loan Agreement) of an adjustable annual rate of interest to be determined monthly, on the first calendar day of each month, that shall be equal to (a) the greater of (1) the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged

by federal funds brokers on any such day for the third Business Day (as defined in the Funding Loan Agreement) prior to such first calendar day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or (2) one and fifty hundredths percent (1.50%) per annum, plus (b) one and seventy-five hundredths percent (1.75%), subject to adjustment as provided in the Funding Loan Agreement and, during the Permanent Phase, at a Permanent Phase Interest Rate (each term as defined in the Funding Loan Agreement) of a fixed rate per annum equal to the sum of (i) 2.19% and (ii) the 10-year US Treasury Security to be determined at least five (5) business days prior to the delivery of the Governmental Note, subject to adjustment as provided in the Funding Loan Agreement; provided that, in no event shall the interest rate (including any default rate) on the Governmental Note exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Governmental Note shall be $28,100,000; (iii) the final maturity of the Governmental Note shall occur on January 1, 2040; and (d) the price at which the Governmental Note is sold to the Initial Funding Lender shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Funding Loan Agreement. That the form and substance of the Funding Loan Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the Fiscal Agent and the Initial Funding Lender.

Section 1.4 Approval, Execution and Delivery of the Project Loan Agreement. That the form and substance of the Project Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Project Loan Agreement, and to deliver the Project Loan Agreement to the Borrower and the Fiscal Agent.

Section 1.5 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved and that the Authorized Representatives are each hereby authorized to execute the Tax Exemption Agreement and to deliver the Tax Exemption Agreement to the Borrower and the Fiscal Agent.

Section 1.6 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Fiscal Agent and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.7 [Reserved].

Section 1.8 Sale of the Governmental Note. That the sale of the Governmental Note to the Initial Funding Lender is hereby authorized and approved.

Section 1.9 Acceptance of the Project Note, the Amended Project Note, and the Security Instrument. That the form and substance of the Project Note, the Amended Project

Note, and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Project Note to the order of the Fiscal Agent without recourse.

Section 1.10 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Fiscal Agent.

Section 1.11 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.12 Power to Revise Form of Documents. That, 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 ("Bond Counsel"), 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 execution of such documents by the Authorized Representatives.

Section 1.13 Exhibits Incorporated Herein. That 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 B	-	Funding Loan Agreement
Exhibit C	-	Project Loan Agreement
Exhibit D	-	Regulatory Agreement
Exhibit E	-	Project Note
Exhibit F	-	Mortgage
Exhibit G	-	Assignment of Leases
Exhibit H	-	Amended Project Note
Exhibit I	-	Assignment
Exhibit J	-	Tax Exemption Agreement

Section 1.14 Authorized Representatives. That the following persons are each 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 Director of Administration of the Department, the Director of

Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Governmental Note in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Governmental Note.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Governmental Note and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Governmental Note and the fees and revenues to be received in connection with the financing of the Development in accordance with the Funding Loan Agreement and to enter into any agreements relating thereto only to the extent permitted by the Funding Loan Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Governmental Note and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Project Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) 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 Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Project Loan Agreement, the Regulatory Agreement and the Tax Exemption

Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Governmental Note to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Project Loan established pursuant to the Project Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Governmental Note and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Governmental Note.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Governmental Note in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Governmental Note and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Funding Loan Agreement, including the revenues and funds of the Department pledged under the Funding Loan Agreement to secure payment of the Governmental Note, and under no circumstances shall the Governmental Note be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Governmental Note shall not be and does not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the

State. The Governmental Note shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 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.

[Execution page follows]

PASSED AND APPROVED this 7th day of November, 2019.

[SEAL]

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

EXHIBIT A

Description of Development

Borrower: Balch Springs Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership

Development: The Development is a 216-unit affordable multifamily community to be known as Ventura at Hickory Tree Apartments and to be located at 3401 Hickory Tree Road, Balch Springs, Dallas County, Texas 75180. It consists of seven (7) residential apartment buildings with approximately 225,684 net rentable square feet. The unit mix will consist of:

48	one-bedroom/one-bath units
84	two-bedroom/two-bath units
84	three-bedroom/two bath units
216	Total Units

Unit sizes will range from approximately 703 square feet to approximately 1,219 square feet.

19604 Ventura at Hickory Tree - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 31, 2019

PROPERTY IDENTIFICATION

Application #	19604
Development	Ventura at Hickory Tree
City / County	Balch Springs / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION

TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	$1,886,974	$1,886,974	$8,736/Unit		$0.89
	Amount	Rate	Amort	Term	Lien
Private Activity Bonds	$25,680,000	4.13%	35	17	1

KEY PRINCIPAL / SPONSOR

Dominium - Paul Sween, Mark Moorhouse, & Armand Brachman
TDHCA - Bond Issuer

Related Parties	Contractor - TBD	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	48	22%
2	84	39%
3	84	39%
4	-	0%
TOTAL	216	100%

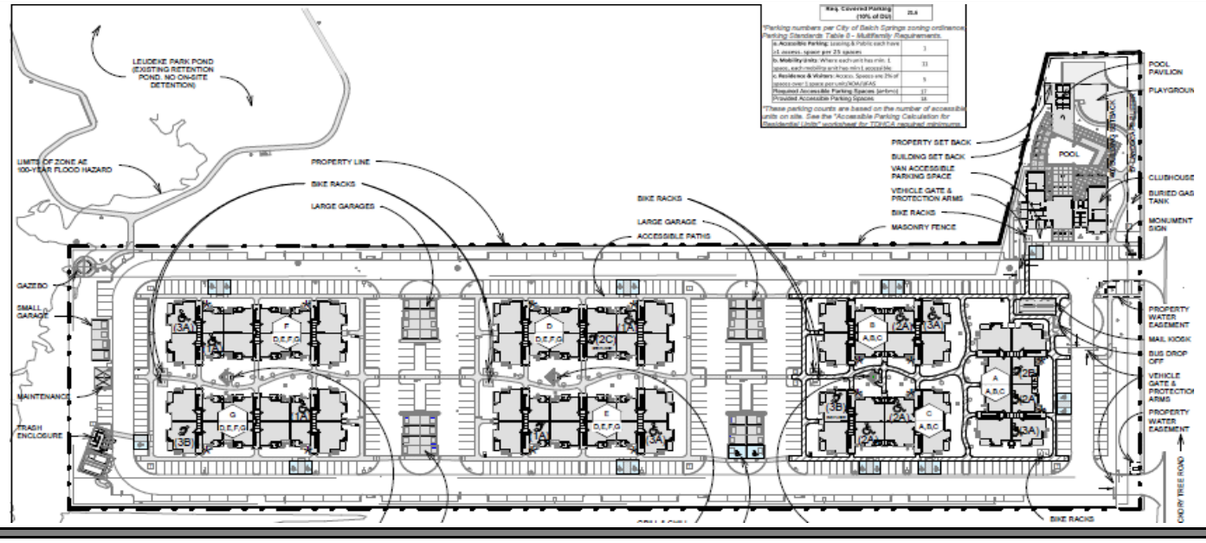
INCOME DISTRIBUTION

Income	# Units	% Total
30%	-	0%
40%	-	0%
50%	-	0%
60%	216	100%
MR	-	
TOTAL	216	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	38.5%
Breakeven Occ.	85.1%	Breakeven Rent	$990
Average Rent	$1,079	B/E Rent Margin	$89
Property Taxes	$919/unit	Exemption/PILOT	0%
Total Expense	$4,724/unit	Controllable	$2,780/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (15% Maximum)			12.0%
Highest Unit Capture Rate	33%	2 BR/60%	84
Dominant Unit Cap. Rate	33%	2 BR/60%	84
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,045 SF	Density	19.0/acre
Acquisition		$05K/unit	$1,055K
Building Cost	$104.80/SF	$110K/unit	$23,652K
Hard Cost		$133K/unit	$28,660K
Total Cost		$219K/unit	$47,296K
Developer Fee	$5,601K	(86% Deferred)	Paid Year: 14
Contractor Fee	$4,025K	30% Boost	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Berkadia/Freddie Mac	17/35	4.13%	$25,680,000	1.15
TOTAL DEBT (Must Pay)			$25,680,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Alliant Asset Management, Tax Credit Eq	$16,794,069
Balch Springs Leased Housing Development I, LLC	$4,821,617
TOTAL EQUITY SOURCES	$21,615,686
TOTAL DEBT SOURCES	$25,680,000
TOTAL CAPITALIZATION	$47,295,686

CONDITIONS

1 Receipt and acceptance before Determination Notice:

- Updated debt and equity terms sheets from all lenders

2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:

a: Certification that testing for asbestos, lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented by a qualified abatement company.

b: Architect certification that buildings were tested for the presence of radon and any recommended mitigation measures were implemented.

c: Confirmation that any management fee above 3.5% must be subordinate to debt service.

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	TDHCA
Expiration Date	1/17/2020
Bond Amount	$30,000,000
BRB Priority	Priority 3
Bond Structure	Freddie Mac Forward Tax Exempt Loan Program
% Financed with Tax-Exempt Bonds	72.9%

RISK PROFILE

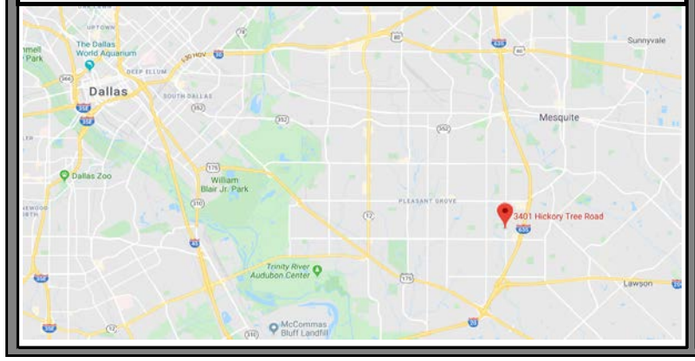
STRENGTHS/MITIGATING FACTORS

- Developer experience
- Expense to Income Ratio & breakeven occupancy

WEAKNESSES/RISKS

- 1st year debt coverage ratio
- 14 years to repay deferred fee

AREA MAP



AERIAL PHOTOGRAPH(s)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING
ON
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS
RELATING TO
VENTURA AT HICKORY TREE APARTMENTS

Auditorium
Balch Springs Public Library Learning Center
12450 Elam Road
Balch Springs, Texas

Wednesday,
September 18, 2019
5:30 p.m.

BEFORE: SHANNON ROTH, Hearing Officer

ON THE RECORD REPORTING
(512) 450-0342

P R O C E E D I N G S

MS. ROTH: Good evening. My name is Shannon Roth. I'd like to proceed with the public hearing. Let the record show it's 5:45 p.m., Wednesday, September 18, 2019, and we are at the City of Balch Springs Public Library Learning Center, located at 12450 Elam Road, Balch Springs, Texas 75180.

I'm here to conduct the public hearing on behalf of the Texas Department of Housing and Community Affairs with respect to an issue of tax-exempt multifamily bonds for a residential rental community.

This hearing is required by the Internal Revenue Code. The sole purpose of the hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development proposed bond issue.

No decisions regarding the development will be made at this hearing. The Department's board is scheduled to meet and consider the transaction on November 7. In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the board at any of their meetings.

The bonds will be issued as tax-exempt multifamily revenue bonds in the aggregate principal amount not to exceed 30 million and taxable bonds, if

necessary, in an amount to be determined and issued in one or more series by the Texas Department of Housing and Community Affairs, the Issuer.

The proceeds of the bonds will be loaned to Balch Springs Leased Housing Associates I, LLLP, or a related person or affiliate entity thereof, to finance a portion of the costs of acquiring, constructing, and equipping a multifamily rental housing community described as follows: a 216-unit multifamily residential rental development to be constructed on approximately 11.353 acres of land located at 3401 Hickory Tree Road, Balch Springs, Dallas County, Texas 75180.

The proposed multifamily rental housing will be initially owned and operated by the borrower or a related person or affiliate entity thereof.

Let the record show there are no attendees; therefore, the meeting is now adjourned, and it is 5:47 p.m.

(Whereupon, at 5:47 p.m., the public hearing was concluded.)

C E R T I F I C A T E

IN RE: Ventura at Hickory Tree Apartments

LOCATION: Balch Springs, Texas

DATE: September 18, 2019

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Donna Boardman before the Texas Department of Housing and Community Affairs.

DATE: September 25, 2019

Laurel N. Stoddard
(Transcriber)

On the Record Reporting
7703 N. Lamar Blvd., Ste. 515
Austin, Texas 78752

5a

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

RECOMMENDED ACTION

WHEREAS, six applications, as further detailed below, were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

WHEREAS, one of the applications, Oaks on North Plaza (#19444), has requested a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan, relating to the required delivery date for the No Objection Resolution for Tax-Exempt Bond Developments;

WHEREAS, pursuant to 10 TAC §11.2(b)(6), the resolution is required to be submitted no later than 14 days before the Board meeting at which the applicant is requesting consideration of the Determination Notice;

WHEREAS, the City of Austin considered the resolution on October 31, 2019, at its city council meeting and as of this posting such resolution was adopted;

WHEREAS, staff believes that the need for the waiver was caused by the timing of a council meeting, and not reasonably foreseeable and preventable by the applicant, and granting the waiver would better serve the purposes articulated in Tex. Gov't Code §2306.001 in contributing to the preservation of government-assisted affordable housing, as Oaks on North Plaza is currently assisted with a Section 8 HAP Contract;

WHEREAS, staff recommends the waiver be granted and staff will provide an update at the Board meeting as to whether a certified copy of the resolution was received by the Department prior to this item being considered by the Board;

WHEREAS, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements and compliance history associated with each application listed herein; and

WHEREAS, EARAC recommends each of the six applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

NOW, therefore, it is hereby

RESOLVED, a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan for Oaks on North Plaza (#19444), is hereby granted, provided a copy of the adopted resolution has been received by staff by 5 p.m. on the day prior to the date of the Board meeting;

FURTHER RESOLVED, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any compliance conditions as reflected in Exhibit A, if applicable, is hereby approved in the form presented at this meeting.

BACKGROUND

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs to be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2019 calendar year, the state received approximately $3 billion in Private Activity Bond authority, of which approximately $665 million is reserved for multifamily housing until August 15th of each year. After such date there may be more Private Activity Bond volume cap that goes towards multifamily housing.

Individual projects receive a Certification of Reservation from the BRB that allows for a statutory 150-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Certificate of Reservation is issued is what determines the QAP to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2019 which illustrates the volume of applications that pursue the 4% HTC program as a funding source. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming.

The Certificates of Reservation from the Bond Review Board for the developments described herein were issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated in their respective summaries, below.

19406 Primrose Village Apartments

Primrose Village Apartments, proposed to be located at the northeast corner of East Sugar Cane Drive and Mile 3 1/2 Road West in Weslaco, Hidalgo County, involves the new construction of 242 units. The

development will serve the general population, and the site is currently zoned appropriately. Of the 242 units, 233 units will be rent and income restricted at 60% of Area Median Family Income (AMFI) and nine units will be rent and income restricted at 50% AMFI. Additionally, the Housing Authority of the County of Hidalgo will provide Project Based Vouchers for 24 of the units. The Department received letters of support from State Senator Eddie Lucio, Jr. and State Representative Oscar Longoria, both of which are from 2016, when the application was initially submitted to the Department. Weslaco Housing Opportunities Corporation is serving as the bond issuer.

Recommended HTC Amount: $1,240,364

19411 Bridge at Canyon View

Bridge at Canyon View is proposed to be located at 4506 East William Cannon Drive, in Austin, Travis County, and involves the new construction of 215 units serving the general population. All of the units will be rent and income restricted at 60% of AMFI. The development site conforms to current zoning requirements. Austin Affordable PFC, Inc. is serving as the bond issuer.

There is a neighborhood risk factor associated with the proposed development site, relating to school performance, that was brought before the Board for consideration at the Board meeting of October 10, 2019, and the development site was found eligible based on the information and testimony presented.

Recommended HTC Amount: $1,620,343

19428 Riverstone Apartments

Riverstone Apartments is proposed to be located at 1430 Wonder World Drive in San Marcos, Hays County, and proposes the new construction of 336 units serving the general population. All of the units will be rent and income restricted at 60% of AMFI. The development site conforms to the current zoning requirements. The Capital Area Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: $2,349,942

19438 Legacy Senior Residences

The Legacy Senior Residences proposes the new construction of 157 units to serve the elderly population, located at 1001 University Boulevard in Round Rock, Williamson County. The site conforms to current zoning requirements. All of the units will be rent and income restricted at 60% of AMFI; however, the applicant represented in the application the income averaging minimum set-aside election. The Capital Area Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: $732,029

19439 Estates of Shiloh

The Estates of Shiloh proposes the acquisition and rehabilitation of 40 existing units and the new construction of 224 units. The property is located at 2649 Centerville Road in Dallas, Dallas County and will serve an elderly population. The existing seven buildings were originally built in two phases, the first in 1966/1967 and the second in 1974/1975. An additional four buildings are proposed to be constructed. The proposed development site conforms to the current zoning requirements. Of the 264 total units, four units will be rent and income restricted at 30% of AMFI, four units will be rent and income restricted at 50 % AMFI and 231 units will be rent and income restricted at 60% AMFI. The remaining 25 units will be market rate with no rent or income restrictions. The City of Dallas Housing Finance Corporation is serving as the bond issuer. The Department received a letter of support from the Greater Casa View Alliance. Staff notes that the applicant's portfolio is considered a Category 3 which required EARAC to recommend denial of the application. The Previous Participation and resulting Category designation was previously considered at the Board meeting of October 10, 2019, and the Board made a motion that EARAC could recommend approval despite the Category 3 status.

Recommended HTC Amount: $1,499,356

19444 Oaks on North Plaza

Oaks on North Plaza proposes the acquisition and rehabilitation of 62 units located at 9125 North Plaza in Austin, Travis County. The apartments were originally built in 1980 and will continue to serve the general population. All of the units will be rent and income restricted at 60% of AMFI. The property also has an existing Project Based Section 8 Housing Assistance Payments contract that is expected to continue for all 62 units. The site conforms to current zoning requirements. Austin Affordable PFC, Inc. is serving as the bond issuer.

Waiver Request: The applicant requested a waiver of 10 TAC §11.2(b)(6) of the Qualified Allocation Plan regarding the threshold requirement for Tax-Exempt Bond Developments to submit a Resolution of No Objection from the governing body of the municipality 14 calendar days before the Board meeting at which consideration of the Determination Notice will occur. Moreover, pursuant to Tex. Gov't Code §2306.67071(c) the Board may not approve an application for housing tax credits for a development financed through the private activity bond program unless the applicant has submitted a certified copy of such resolution. The applicant has represented that the city will not meet until October 31, 2019, to consider the resolution and staff received confirmation from the applicant, as of the date of this posting, that such resolution was adopted. If the certified copy of the resolution is not received by November 6, 2019, by 5 p.m, staff will recommend removal of this item from the Board agenda.

10 TAC §11.207(1) regarding Waiver of Rules requires that the waiver request establish how the need for the waiver was both not reasonably foreseeable and was not preventable by the Applicant. The Applicant cannot control the timing of the process required to get a resolution from the City. The applicant has indicated that the resolution was included on prior city council agendas, and was subsequently removed from consideration in order to work through some issues that arose. According to the applicant, they have been responsive to requests from interested parties to resolve those issues

which have delayed the city's action on the resolution. Staff notes that historically a waiver of the deadline to submit the No Objection resolution has only been utilized in rare situations where the transaction is ready to close, but for the required resolution. If the application was postponed to the December Board meeting, the applicant would likely not be able to close the transaction before the end of the year, which is when the purchase contract expires. Because the bonds will be publicly offered, there will be timing constraints with releasing the bond offering document, pricing the bonds (and obtaining favorable pricing given the holiday month) and obtaining the Attorney General opinion before December 20, 2019, after which date the Attorney General will not review bond documents for closing for the remainder of the year. Staff believes a delay to the December meeting when no waiver would be necessary would unduly delay the transaction, and jeopardize the ability to close within the considerably tight timeframe.

The waiver meets the requirement in 10 TAC §11.207(2) in that it serves the purpose described in §2306.001 by contributing to the preservation of government-assisted affordable housing, as Oaks on North Plaza is currently assisted with a Section 8 Housing Assistance Payment Contract.

Recommended HTC Amount: $483,704

EXHIBIT A
Previous Participation Results

Application Number	Development Name	Category	PPR Conditions
19406	Primrose Village	1	N/A
19411	Bridge at Canyon View	1	N/A
19428	Riverstone Apartments	1	N/A
19438	Legacy Senior Residences	1	N/A
19439	Estates of Shiloh	3	None
19444	Oaks on North Plaza	2	None

4% (Non-Competitive) Housing Tax Credit Program
2019 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
19410	18435	Eisenhower	El Paso	10/11/2018	Closed	66	66	$ 10,000,000	$ 380,508	$ 376,008
19602	18616	Park Yellowstone	Houston	12/6/2018	Closed	210	210	$ 16,000,000	$ 893,290	$ 879,975
19427	18441	Lakeway Apartment Homes	Austin ETJ	12/6/2018	Closed	180	169	$ 20,000,000	$ 1,203,960	$ 1,196,981
19408	18457	Mission Trail at Camino Real	San Marcos	1/17/2019	Closed	352	282	$ 45,000,000	$ 1,685,207	$ 1,683,222
19401		Stallion Ridge	Fort Worth	3/21/2019	Closed	204	193	$ 20,000,000	$ 1,292,387	$ 1,292,387
19416	18455	Alsbury Apartments	San Antonio	3/21/2019	Closed	240	240	$ 20,000,000	$ 1,392,094	$ 1,392,094
19413	18445	The Wurzbach	San Antonio	3/21/2019	Closed	161	160	$ 20,000,000	$ 837,177	$ 837,177
19402		Culebra Creek Apartments	San Antonio	3/21/2019	Closed	312	312	$ 41,000,000	$ 2,320,033	$ 2,320,033
19600		Lago de Plata	Corsicana	4/25/2019	Closed	150	148	$ 14,000,000	$ 723,820	$ 723,820
19603		Northgate Village	Dallas	5/23/2019	Closed	168	168	$ 20,000,000	$ 1,142,704	$ 1,142,704
19404		Legacy Ranch at Dessau East	Austin	5/23/2019	Closed	232	186	$ 31,000,000	$ 973,468	$ 973,468
19421	18402	Hampton Homes	Texarkana	5/23/2019	Closed	50	50	$20,000,000 (portfolio)	$ 192,386	$ 192,386
19422	18403	HATT Scatterred Sites	Texarkana	5/23/2019	Closed	42	42	-	$ 123,946	$ 123,946
19423	18404	Robison Terrace	Texarkana	5/23/2019	Closed	130	130	-	$ 460,949	$ 460,949
19424	18405	Williams Homes	Texarkana	5/23/2019	Closed	52	52	-	$ 179,313	$ 179,313
19425	18406	Bright Street	Texarkana	5/23/2019	Closed	20	20	-	$ 80,615	$ 80,615
19601	18603	McMullen Square	San Antonio	5/23/2019	Closed	100	100	$ 10,100,000	$ 426,577	$ 425,285
19403		Mesa West Apartments	San Antonio	5/23/2019	Closed	280	280	$ 35,000,000	$ 2,079,535	$ 2,079,535
19409	18454	Grim Hotel	Texarkana	5/23/2019	Closed	93	93	$ 15,000,000	$ 1,006,241	$ 1,006,241
19420		Pythian Manor	Dallas	6/27/2019	Closed	76	76	$ 8,300,000	$ 387,412	$ 387,412
19414	18433	Dewetter	El Paso	7/25/2019	Closed	98	98	$ 13,000,000	$ 971,651	$ 1,017,745
19415	18434	Kathy White	El Paso	7/25/2019	Closed	78	78	$ 11,000,000	$ 454,747	$ 478,404
						3,000	**2,859**	**$ 349,400,000**	**$ 19,208,020**	**$ 19,249,700**
19470	18456	Jackie Robinson Apartments	El Paso	1/17/2019	Approved	186	186	$ 20,000,000	$ 1,182,177	$ 1,182,177
18424	17413	Flora Lofts	Dallas	2/21/2019	Approved	52	52	$ 15,000,000	$ 754,702	$ 754,702
19412		Majestic Ranch	San Antonio	9/5/2019	Approved	288	288	$ 23,000,000	$ 1,698,636	$ 1,698,636
19417		Green Oaks Apartments	Houston	9/5/2019	Approved	177	175	$ 20,000,000	$ 995,271	$ 995,271
19419		Palldium Redbird	Dallas	9/5/2019	Approved	300	210	$ 30,000,000	$ 1,585,280	$ 1,585,280
19434		Limestone Ridge Senior	Austin ETJ	9/5/2019	Approved	225	223	$ 20,000,000	$ 1,470,110	$ 1,470,110
19430		Kyle Dacy	Kyle ETJ	9/5/2019	Approved	324	324	$ 50,000,000	$ 1,515,943	$ 1,515,943
19431	18458	Scharbauer Flats	Midland	9/5/2019	Approved	300	300	$ 40,000,000	$ 2,667,296	$ 2,667,296
19407		Norwood Estates	Austin	10/10/2019	Approved	228	228	$ 35,000,000	$ 1,467,918	$ 1,467,918
19418		Bridge at Loyola Lofts	Austin	10/10/2019	Approved	204	200	$ 30,000,000	$ 1,382,246	$ 1,475,411
19429	16453	Govalle Terrace	Austin	10/10/2019	Approved	97	96	$ 13,000,000	$ 829,570	$ 829,570
19436		Bridge at Granada	Austin	10/10/2019	Approved	258	233	$ 26,000,000	$ 1,441,515	$ 1,441,515
19437		Residences of Stillwater	Georgetown	10/10/2019	Approved	192	192	$ 35,000,000	$ 1,154,635	$ 1,154,635
19440		Ventura at Parmer Lane	Austin ETJ	10/10/2019	Approved	216	216	$ 34,000,000	$ 2,189,841	$ 2,189,841
19441		Decker Lofts	Austin ETJ	10/10/2019	Approved	262	257	$ 40,000,000	$ 1,822,502	$ 1,822,502
19433		Wayman Manor Apartments	Temple	10/10/2019	Approved	160	160	$ 20,000,000	$ 868,166	$ 863,123
19428		Riverstone	San Marcos	11/7/2019	Approved	336	336	$ 45,000,000	$ 2,349,942	$ 2,349,942
19406	17401	Primrose Village	Weslaco	11/7/2019	Approved	242	242	$ 20,000,000	$ 1,240,364	$ 1,240,364
19604		Ventura at Hickory Tree	Balch Springs	11/7/2019	Approved	216	216	$ 30,000,000	$ 1,886,974	$ 1,886,974
19411	17409	Bridge at Canyon View	Austin	11/7/2019	Approved	215	215	$ 25,000,000	$ 1,620,343	$ 1,620,343
19439		Estates at Shiloh	Dallas	11/7/2019	Approved	264	239	$ 25,000,000	$ 1,499,356	$ 1,499,356
19444	19605	Oaks on North Plaza	Austin	11/7/2019	Approved	62	62	$ 15,000,000	$ 489,428	$ 483,704
19438		Legacy Seniors	Round Rock	11/7/2019	Approved	157	157	$ 20,000,000	$ 732,029	$ 732,029
						4,961	**4,807**	**$ 631,000,000**	**$ 32,844,244**	**$ 32,926,642**
19607		Havens at Willow Creek	Houston ETJ	12/12/2019	Active	248	248	$ 18,000,000	$ 7,694,342	$ -
19452		Las Palmas	La Feria	12/12/2019	Active	36	35	$39,120,000 (portfolio)	$ 85,924	$ -
19445		Brush Country Cottages	Dilley	12/12/2019	Active	28	28	-	$ 87,570	$ -
19446		Chula Vista	San Diego	12/12/2019	Active	44	44	-	$ 153,301	$ -
19447		Cielo Lindo	Edcouch	12/12/2019	Active	34	34	-	$ 101,022	$ -
19448		La Estancia	Sebastian	12/12/2019	Active	32	32	-	$ 102,977	$ -
19449		La Posada I & II	Ela	12/12/2019	Active	74	74	-	$ 216,612	$ -
19450		La Reina	La Villa	12/12/2019	Active	30	30	-	$ 69,492	$ -
19451		La Sombra	Donna	12/12/2019	Active	50	50	-	$ 128,293	$ -
19453		Leuty Avenue	Justin	12/12/2019	Active	24	24	-	$ 81,046	$ -
19454		Los Laureles	Edcouch	12/12/2019	Active	23	23	-	$ 88,432	$ -
19455		Los Naranjos	Alton	12/12/2019	Active	30	30	-	$ 68,072	$ -
19456		Oak Haven	Donna	12/12/2019	Active	24	24	-	$ 63,040	$ -
19457		Raintree	Alamo	12/12/2019	Active	32	32	-	$ 82,925	$ -
19458		Seagraves Gardens	Seagraves	12/12/2019	Active	32	32	-	$ 89,792	$ -
19459		Silver Trail	Menard	12/12/2019	Active	24	24	-	$ 67,835	$ -
19460		The Village	Tomball	12/12/2019	Active	64	64	-	$ 161,539	$ -
19461		Valley View	Valley View	12/12/2019	Active	24	24	-	$ 77,060	$ -
19462		Villa Vallarta	Rio Grande City	12/12/2019	Active	40	40	-	$ 115,954	$ -
19463		Vista Verde	Cotulla	12/12/2019	Active	24	24	-	$ 81,980	$ -
19464		Willowick	Gainesville	12/12/2019	Active	60	60	-	$ 181,382	$ -
19465		Windmill	Giddings	12/12/2019	Active	28	28	-	$ 76,988	$ -
19466		Windwood I & II	Kingsland	12/12/2019	Active	68	68	-	$ 156,223	$ -
19468		The Walzem	San Antonio	12/12/2019	Active	200	200	$ 20,000,000	$ 1,333,427	$ -
19608		Reserve at San Marcos	San Marcos	12/12/2019	Active	376	320	$ 41,000,000	$ 1,844,071	$ -
19610		Fish Pond at Corpus Christi	Corpus Christi	12/12/2019	Active	112	111	$ 10,000,000	$ 675,744	$ -
19400	18423	Villas del San Xavier	San Marcos	12/12/2019	Active	156	156	$ 25,000,000	$ 1,051,705	$ -
19443		Spanish Park Apartments	Arlington	12/12/2019	Active	350	350	$ 35,000,000	$ 1,867,557	$ -
19467		Auro Crossing	Austin ETJ	12/12/2019	Active	256	256	$ 45,000,000	$ 2,287,808	$ -

19471		Austin Manor Apartment Homes	Austin ETJ	12/12/2019	Active	280	280	$	35,000,000	$	2,247,832	$ -
19472		Franklin Park	Austin	12/12/2019	Active	163	163	$	15,000,000	$	749,966	$ -
19432		St. Johns Square	San Antonio	1/16/2020	Active	252	54	$	50,000,000	$	473,449	$ -
19442		Richcrest Apartments	Houston	1/16/2020	Active	288	286		TBD	$	1,974,457	$ -
						3,506	**3,248**	**$**	**294,000,000**	**$**	**24,537,817**	**$ -**
19606		Pecan Grove	Seguin	6/27/2019	Pre-Application	198	198	$	26,000,000	$	1,388,840	$ -
19612		Scott Street Lofts	Houston	9/5/2019	Pre-Application	123	98	$	18,000,000	$	690,991	$ -
19611		Granada Terrace Apartments	South Houston	10/10/2019	Pre-Application	156	156	$	16,000,000	$	983,071	$ -
19613		333 Holly	The Woodlands	10/10/2019	Pre-Application	332	332	$	50,000,000	$	2,599,103	$ -
19614		The Pines	The Woodlands	10/10/2019	Pre-Application	152	152	$	30,000,000	$	1,388,448	$ -
19615		Oaks on Clark	San Antonio	10/10/2019	Pre-Application	80	80	$	12,000,000	$	520,610	$ -
						1,041	**1,016**	**$**	**152,000,000**	**$**	**7,571,063**	**$ -**
TBD	18619	Waters at Redbud	McKinney	N/A	Withdrawn	148	118	$	-	$	534,132	$ -
19405		Patriot Pointe	Arlington	5/23/2019	Withdrawn	184	184	$	-	$	1,150,227	$ -
19426		The Montage	San Antonio ETJ	11/7/2019	Withdrawn	216	216	$	20,000,000	$	1,445,547	$ -
19469		EMLI at Pecan Creek	Aubrey	11/7/2019	Withdrawn	254	254	$	20,000,000	$	1,484,333	$ -
19435		Echo East Apartments	San Antonio	12/5/2019	Withdrawn	192	192		TBD	$	1,231,341	$ -
						994	**964**	**$**	**40,000,000**	**$**	**5,845,580**	**$ -**
					TOTAL	**12,508**	**11,930**	**$**	**1,426,400,000**	**$**	**84,161,144**	**$ 52,176,342**

19406 Primrose Village Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 29, 2019

PROPERTY IDENTIFICATION	
Application #	**19406**
Development	**Primrose Village Apartments**
City / County	**Weslaco / Hidalgo**
Region/Area	**11 / Urban**
Population	**General**
Set-Aside	**General**
Activity	**New Construction**

RECOMMENDATION

TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$1,240,364	**$1,240,364**	**$5,125/Unit**	**$0.87**

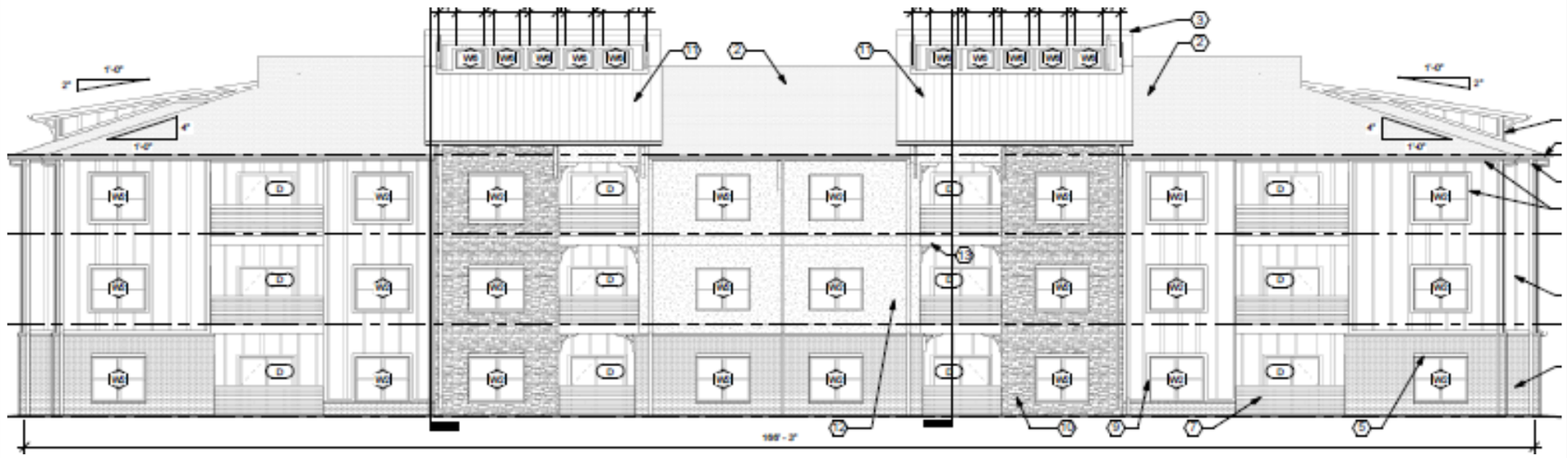
KEY PRINCIPAL / SPONSOR

George Pina - City of Weslaco Housing Authority

Sunny Philip - South Texas Collaborative for Housing Development, Inc.

Related Parties	Contractor - Yes	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	18	7%
2	144	60%
3	72	30%
4	8	3%
TOTAL	242	100%

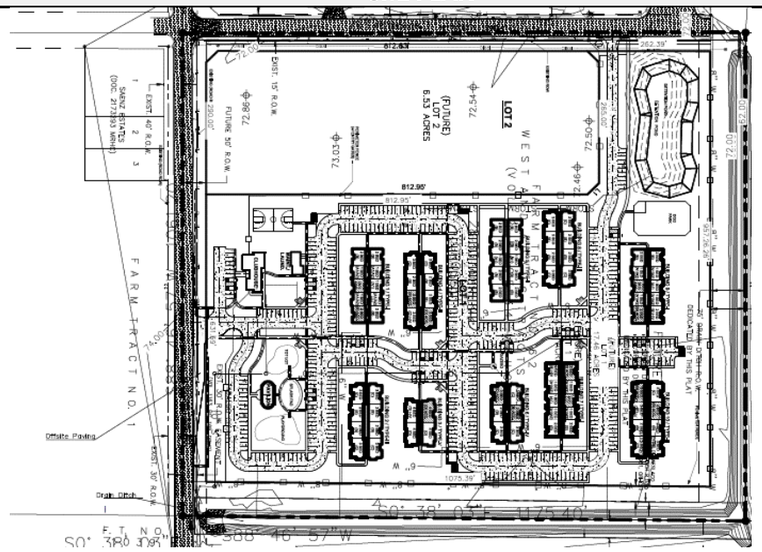
INCOME DISTRIBUTION

Income	# Units	% Total
30%	-	0%
40%	-	0%
50%	-	0%
60%	9	4%
MR	233	96%
TOTAL	242	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.18	**Expense Ratio**	42.5%
Breakeven Occ.	84.2%	**Breakeven Rent**	$672
Average Rent	$739	**B/E Rent Margin**	$67
Property Taxes	Exempt	**Exemption/PILOT**	0%
Total Expense	$3,543/unit	**Controllable**	$2,491/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			5.6%
Highest Unit Capture Rate	44%	2 BR/60%	136
Dominant Unit Cap. Rate	44%	2 BR/60%	136
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	24	10% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten	Applicant's Costs		
Avg. Unit Size	1,001 SF	**Density**	13.9/acre
Acquisition		$03K/unit	$628K
Building Cost	$62.99/SF	$63K/unit	$15,261K
Hard Cost		$79K/unit	$19,089K
Total Cost		$129K/unit	$31,315K
Developer Fee	$3,790K	(51% Deferred)	Paid Year: 8
Contractor Fee	$2,392K	**30% Boost**	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Berkadia Commercial Mortgage	40/40	4.00%	$19,700,000	1.12
Adjustment to Debt Per §11.302(c)(2)	40/40	4.00%	($1,100,000)	1.18
TOTAL DEBT (Must Pay)			**$18,600,000**	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
City of Weslaco	0/0	0.00%	$50	1.15
CASH FLOW DEBT / GRANTS			**$50**	

EQUITY / DEFERRED FEES	
Source	Amount
WNC & Associates	$10,790,096
STCHD	$1,925,307
TOTAL EQUITY SOURCES	$12,715,403
TOTAL DEBT SOURCES	$18,600,050
TOTAL CAPITALIZATION	**$31,315,453**

CONDITIONS

1 Receipt and acceptance before Determination Notice:

- Firm commitment from the Housing Authority for twenty-four (24) Project Based Vouchers (PBVs).

2 Receipt and acceptance by Cost Certification:

- Evidence that the units and buildings have met the requirements for use of Energy Star Utility Allowance.

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	Weslaco Housing Opportunities Corporation
Expiration Date	12/31/2019
Bond Amount	$20,000,000
Bond Structure	FHA/ Short-Term Cash Collateralized
% Financed with Tax-Exempt Bonds	76.1%

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Developer Experience
▫	Overall feasibility indicators
WEAKNESSES/RISKS	
▫	1.18 debt coverage
▫	High unit capture rate on 60% 2-bedroom units (56% of

AREA MAP

AERIAL PHOTOGRAPH(s)

19411 Bridge at Canyon View - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 31, 2019

PROPERTY IDENTIFICATION	
Application #	19411
Development	Bridge at Canyon View
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION

TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$1,620,343	$1,620,343	$7,536/Unit	$0.93

KEY PRINCIPAL / SPONSOR

LDG Multifamily Development
Chase Darst, Chris Dischiner,
Justin Hartz, Jason Trevino

Austin Affordable Housing
Corporation (General Partner)
Mike Gerber, President

Related Parties	Contractor - Yes	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	71	33%
2	54	25%
3	90	42%
4	-	0%
TOTAL	215	100%

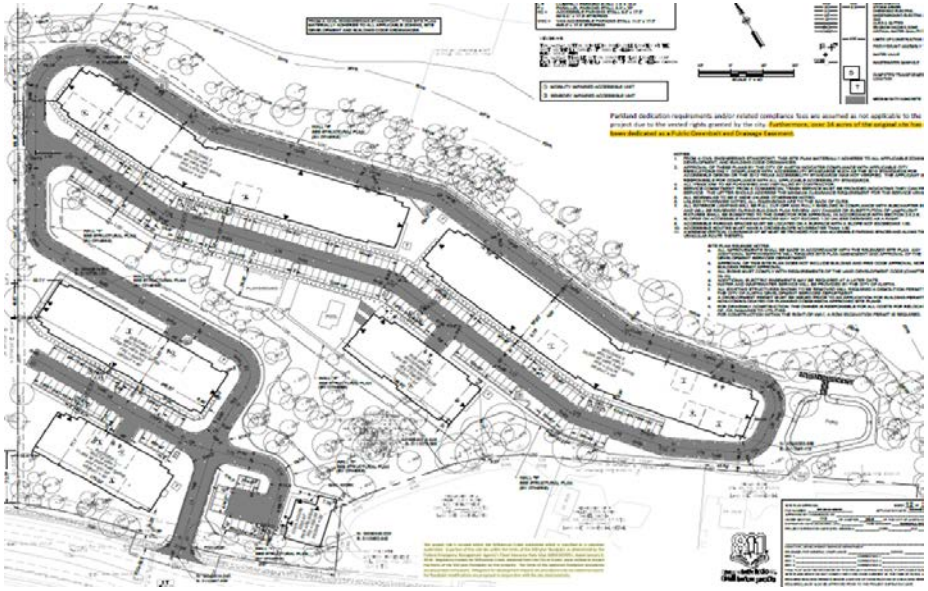
INCOME DISTRIBUTION

Income	# Units	% Total
30%	-	0%
40%	-	0%
50%	-	0%
60%	215	100%
MR	-	
TOTAL	215	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.18	Expense Ratio	36.1%
Breakeven Occ.	83.5%	Breakeven Rent	$1,059
Average Rent	$1,176	B/E Rent Margin	$117
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$4,794/unit	Controllable	$3,594/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			2.2%
Highest Unit Capture Rate	11%	3 BR/60%	90
Dominant Unit Cap. Rate	11%	3 BR/60%	90
Premiums (↑60% Rents)			
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY

Costs Underwritten	Applicant's Costs		
Avg. Unit Size	1,005 SF	Density	8.2/acre
Acquisition		$13K/unit	$2,886K
Building Cost	$92.84/SF	$93K/unit	$20,060K
Hard Cost		$119K/unit	$25,583K
Total Cost		$213K/unit	$45,891K
Developer Fee	$5,081K	(9% Deferred)	Paid Year: 2
Contractor Fee	$3,382K	30% Boost	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Red Stone	17/40	4.10%	$30,343,000	1.18
TOTAL DEBT (Must Pay)			$30,343,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Citi Community Capital	$15,066,173
LDG Multifamily, LLC	$482,148
TOTAL EQUITY SOURCES	$15,548,321
TOTAL DEBT SOURCES	$30,343,000
TOTAL CAPITALIZATION	$45,891,321

CONDITIONS

1 Receipt and acceptance by Cost Certification:

- 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.

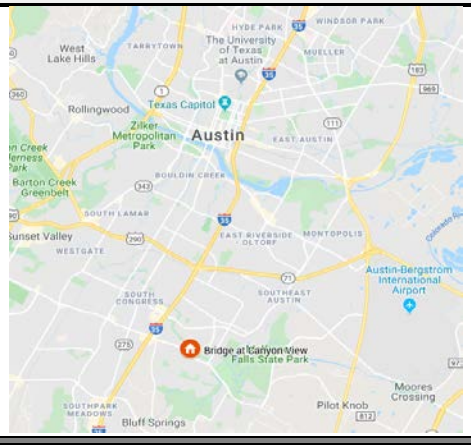
BOND RESERVATION / ISSUER

Issuer	Austin Affordable PFC
Expiration Date	12/31/2019
Bond Amount	$25,000,000
BRB Priority	Carryforward
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	**67.9%**

RISK PROFILE

STRENGTHS/MITIGATING FACTORS
▫ Positive financial indicators
▫ Low expense-to-income ratio
WEAKNESSES/RISKS
▫ Feasibility dependent on property tax exemption
▫ Poor performing middle school

AREA MAP



AERIAL PHOTOGRAPH(s)

19428 Riverstone Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 29, 2019

PROPERTY IDENTIFICATION	
Application #	**19428**
Development	**Riverstone Apartments**
City / County	**San Marcos / Hays**
Region/Area	**7 / Urban**
Population	**General**
Set-Aside	**General**
Activity	**New Construction**

RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$2,349,942	**$2,349,942**	**$6,994/Unit**	**$0.90**

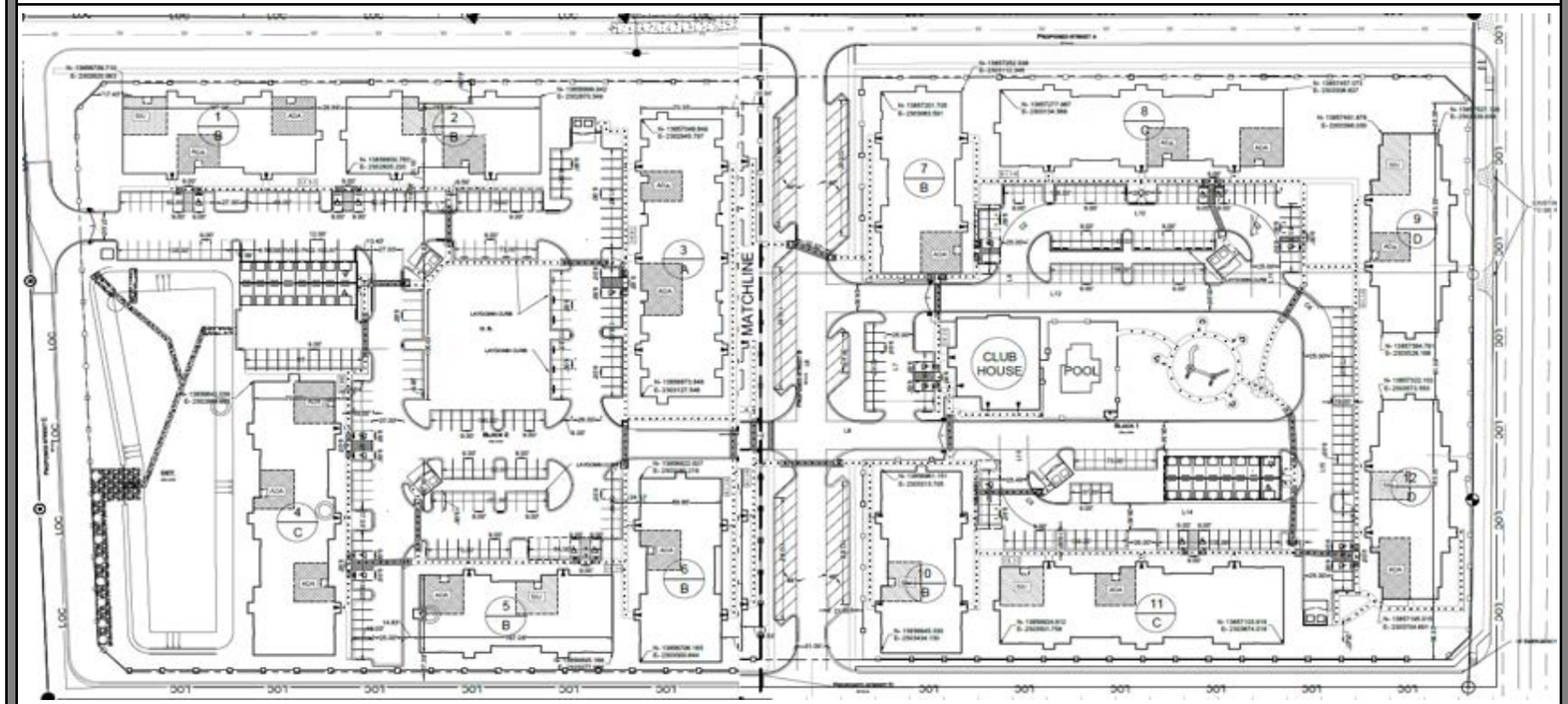
KEY PRINCIPAL / SPONSOR		
LDG / Chase Darst & Jason Trevino		
Related Parties	Contractor - No	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	36	11%	40%	-	0%
2	144	43%	50%	-	0%
3	132	39%	60%	336	100%
4	24	7%	MR	-	✓
TOTAL	336	100%	TOTAL	336	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten	Applicant's Pro Forma		
Debt Coverage	! 1.18	**Expense Ratio**	✓ 43.2%
Breakeven Occ.	✓ 84.5%	**Breakeven Rent**	$1,068
Average Rent	$1,171	**B/E Rent Margin**	✓ $103
Property Taxes	$1,000/unit	**Exemption/PILOT**	0%
Total Expense	$5,710/unit	**Controllable**	$3,419/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS				
Gross Capture Rate (15% Maximum)			✓	8.7%
Highest Unit Capture Rate	! 47%	3 BR/60%		132
Dominant Unit Cap. Rate	! 19%	2 BR/60%		144
Premiums (↑60% Rents)	N/A			N/A
Rent Assisted Units	N/A			

DEVELOPMENT COST SUMMARY			
Costs Underwritten	Applicant's Costs		
Avg. Unit Size	1,123 SF	**Density**	18.9/acre
Acquisition		$12K/unit	$3,877K
Building Cost	$84.80/SF	$95K/unit	$32,005K
Hard Cost		$116K/unit	$38,817K
Total Cost		$200K/unit	$67,073K
Developer Fee	$7,368K	(45% Deferred)	Paid Year: 7
Contractor Fee	$5,135K	**30% Boost**	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Red Stone	17/40	4.00%	$42,645,000	1.18
TOTAL DEBT (Must Pay)			$42,645,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Citi Community Capital	$21,147,367
LDG Multifamily	$3,280,664
TOTAL EQUITY SOURCES	$24,428,031
TOTAL DEBT SOURCES	$42,645,000
TOTAL CAPITALIZATION	$67,073,031

CONDITIONS

1 Receipt and acceptance by Cost Certification:

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

b: Certification that testing for asbestos and lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures 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.

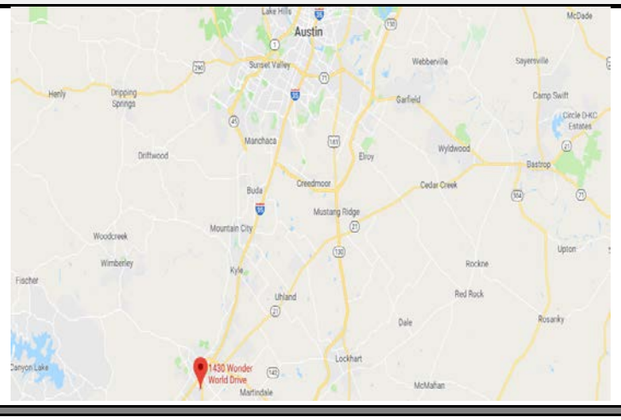
BOND RESERVATION / ISSUER

Issuer	Capital Area HFC
Expiration Date	1/17/2020
Bond Amount	$45,000,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	**78.4%**

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Experienced Developer
▫	99% average occupancy for Affordable Housing
▫	Feasibility Indicators
WEAKNESSES/RISKS	
▫	Unknown Cost of Utility Easement
▫	Nearby affordable properties not achieving 2019 rents

AREA MAP



AERIAL PHOTOGRAPH(s)

19438 Legacy Senior Residences - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 31, 2019

PROPERTY IDENTIFICATION	
Application #	**19438**
Development	**Legacy Senior Residences**
City / County	**Round Rock / Williamson**
Region/Area	**7 / Urban**
Population	**Elderly Limitation**
Set-Aside	**General**
Activity	**New Construction**

RECOMMENDATION

TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$732,029	**$732,029**	**$4,663/Unit**	**$0.90**

KEY PRINCIPAL / SPONSOR

Cornerstone Associates - Developer
Bobbi Jo Lucas, President

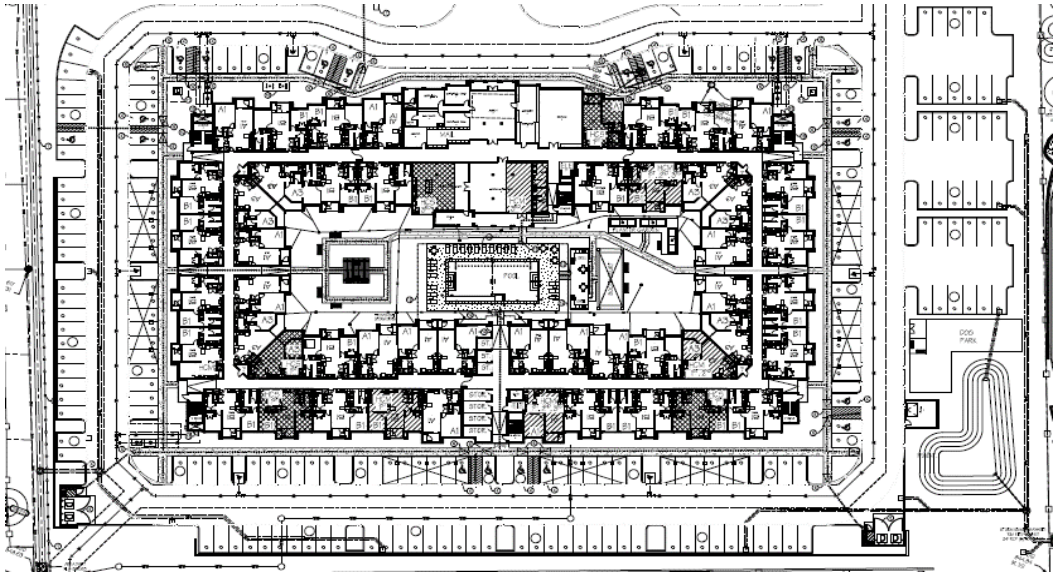
Capital Area Housing Finance Corp
Mark Mayfield, President

Robbye Meyer - Consultant

Related Parties	Contractor - Yes	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

SITE PLAN



UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	79	50%
2	78	50%
3	-	0%
4	-	0%
TOTAL	157	100%

INCOME DISTRIBUTION

Income	# Units	% Total
30%	-	0%
40%	-	0%
50%	-	0%
60%	157	100%
MR	-	
TOTAL	157	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.18	**Expense Ratio**	45.9%
Breakeven Occ.	85.0%	**Breakeven Rent**	$1,074
Average Rent	$1,171	**B/E Rent Margin**	$97
Property Taxes	$1,115/unit	**Exemption/PILOT**	0%
Total Expense	$6,065/unit	**Controllable**	$3,441/unit

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			5.7%
Highest Unit Capture Rate	11%	2 BR/60%	78
Dominant Unit Cap. Rate	8%	1 BR/60%	79
Premiums (↑60% Rents)			
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY

Costs Underwritten	Applicant's Costs		
Avg. Unit Size	824 SF	**Density**	27.8/acre
Acquisition		$16K/unit	$2,553K
Building Cost	$95.14/SF	$78K/unit	$12,307K
Hard Cost		$91K/unit	$14,229K
Total Cost		$178K/unit	$27,869K
Developer Fee	$2,520K	(79% Deferred)	Paid Year: 13
Contractor Fee	$1,960K	**30% Boost**	Yes

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Berkadia / FNMA MBS	15/35	3.74%	$18,250,000	1.18
TOTAL DEBT (Must Pay)			$18,250,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Riverside Capital	$6,587,602
Cornerstone - Deferred Developer Fee	$2,000,000
Cornerstone - Owner Equity	$1,031,735
TOTAL EQUITY SOURCES	**$9,619,337**
TOTAL DEBT SOURCES	**$18,250,000**
TOTAL CAPITALIZATION	**$27,869,337**

CONDITIONS

1 Receipt and acceptance before Determination Notice:

- Confirmation that the Uniform Relocation Act or any other relocation requirements that may apply have been addressed.

2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:

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

b: Certification that testing for asbestos and lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement

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.

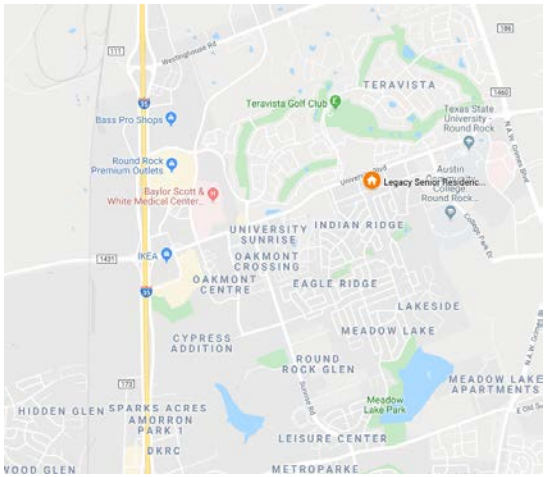
BOND RESERVATION / ISSUER

Issuer	Capital Area Housing Finance Corp
Expiration Date	**1/10/2020**
Bond Amount	**$20,000,000**
BRB Priority	**3**
Bond Structure	**Fannie Mae MBS**
% Financed with Tax-Exempt Bonds	**87.4%**

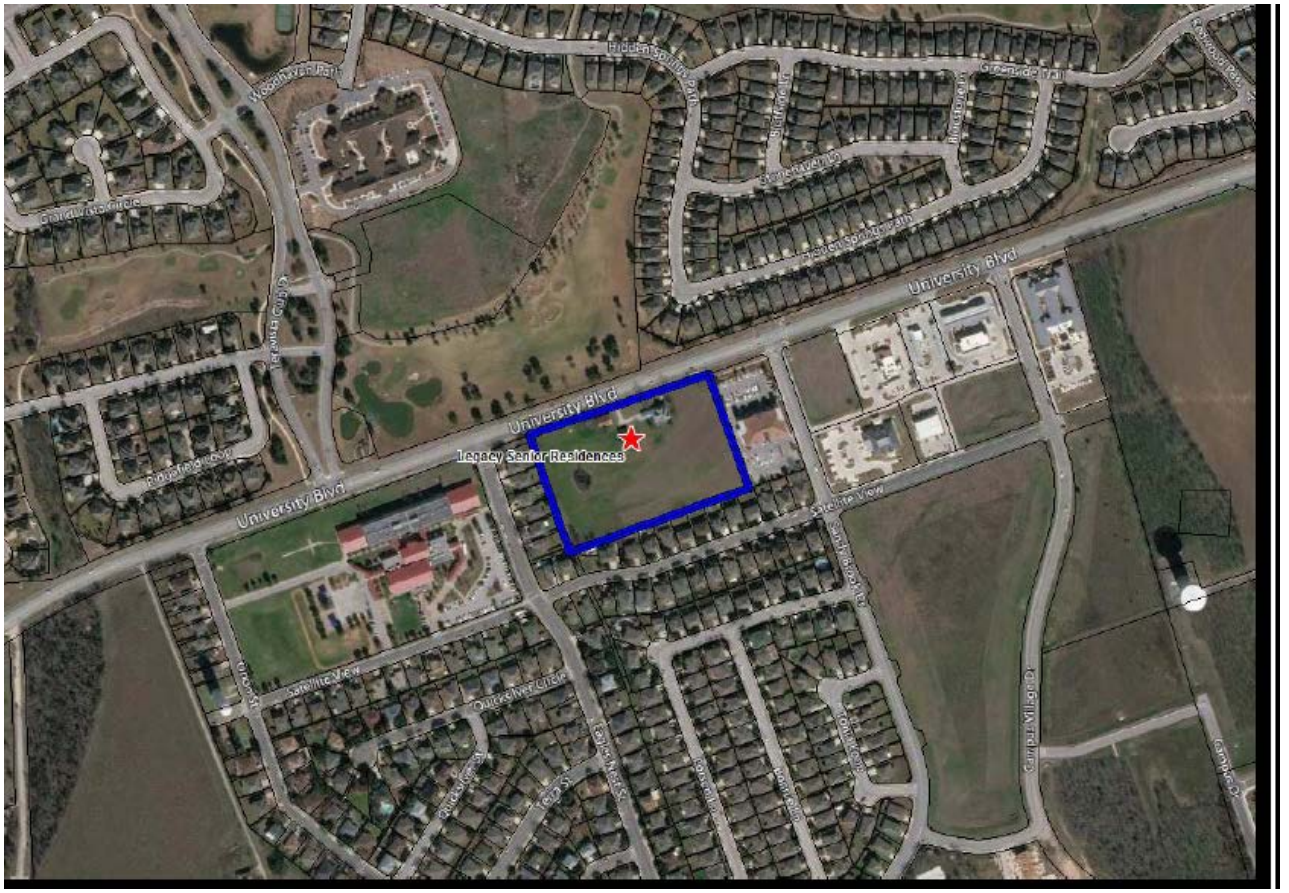
RISK PROFILE

STRENGTHS/MITIGATING FACTORS
▫ Positive financial indicators
▫ Favorable expense-to-income ratio
▫ Double access to property
WEAKNESSES/RISKS
▫ Small average unit size

AREA MAP



AERIAL PHOTOGRAPH(s)



19439 Estates at Shiloh - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 29, 2019

PROPERTY IDENTIFICATION	
Application #	19439
Development	Estates at Shiloh
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	Elderly Limitation
Set-Aside	General
Activity	New Construction 1967/1975

RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$1,499,356	$1,499,356	$5,679/Unit	$0.93

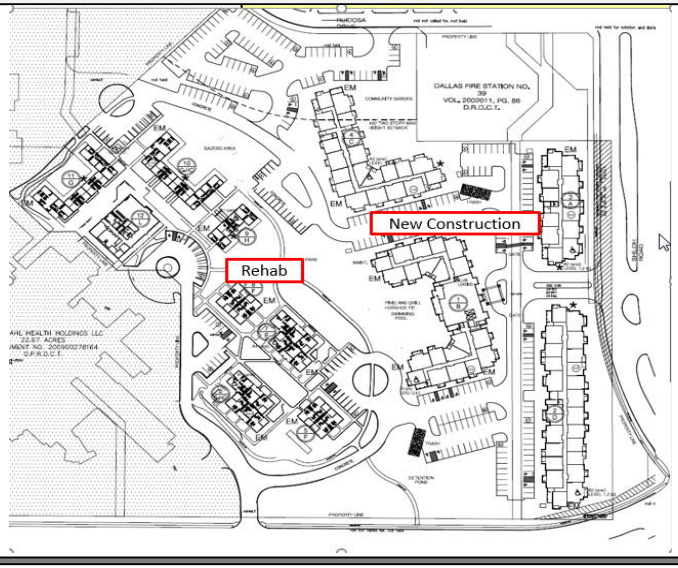
KEY PRINCIPAL / SPONSOR

Dallas Housing Finance Corp
General Housing Partners-Adrian Iglesias
Hill Tide Housing Investments-Bob Long
Audrey Martin-Consultant

Related Parties	Contractor - No	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

SITE PLAN



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	14	5%	30%	4	2%
1	131	50%	40%	-	0%
2	119	45%	50%	4	2%
3	-	0%	60%	231	88%
4	-	0%	MR	25	9%
TOTAL	264	100%	TOTAL	264	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten			Applicant's Pro Forma	
Debt Coverage	1.19		Expense Ratio	43.2%
Breakeven Occ.	84.2%		Breakeven Rent	$831
Average Rent	$913		B/E Rent Margin	$83
Property Taxes	Exempt		Exemption/PILOT	100%
Total Expense	$4,425/unit		Controllable	$3,110/unit

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			3.6%
Highest Unit Capture Rate	14%	2 BR/60%	113
Dominant Unit Cap. Rate	12%	1 BR/60%	117
Premiums (↑60% Rents)	Yes		$77/Avg.
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY

Costs Underwritten	Applicant's Costs		
Avg. Unit Size	812 SF	Density	17.4/acre
Acquisition		$13K/unit	$3,400K
Building Cost	$95.77/SF	$67K/unit	$17,748K
Hard Cost		$83K/unit	$22,016K
Total Cost		$167K/unit	$44,139K
Developer Fee	$4,996K	(10% Deferred)	Paid Year: 2
Contractor Fee	$3,273K	30% Boost	Yes

REHABILITATION COSTS / UNIT

Site Work	$9K	2%	Finishes/Fixtures	$13K	2%
Building Shell	$14K	3%	Amenities		
HVAC	$5K	1%	Total Exterior	$24K	55%
Appliances	$2K	0%	Total Interior	$19K	45%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Bellwether	15/35	4.05%	$24,210,000	1.19
TOTAL DEBT (Must Pay)			$24,210,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
City of Dallas-HOME/CDBG-Cash	35/35	1.00%	$3,801,000	1.19
Bond Reinvestment Proceeds	0/0	0.00%	$1,425,000	1.19
CASH FLOW DEBT / GRANTS			$5,425,000	

EQUITY / DEFERRED FEES	
Source	Amount
Monarch Private Capital	$14,017,580
Deferred Developer Fee	$486,674
Additional (Excess) Funds Req'd	$0
TOTAL EQUITY SOURCES	$14,504,254
TOTAL DEBT SOURCES	$29,635,000
TOTAL CAPITALIZATION	$44,139,254

CONDITIONS

- Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented; 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.

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	Dallas Housing Finance Corporation
Expiration Date	2/1/2020
Bond Amount	$25,000,000
BRB Priority	3
Bond Structure	Freddie Mac backed loan
% Financed with Tax-Exempt Bonds	**70.8%**

RISK PROFILE

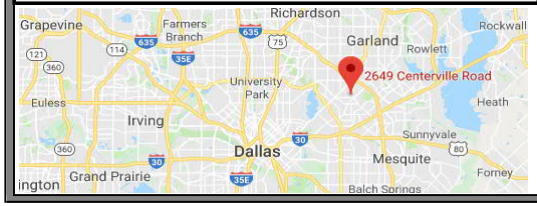
STRENGTHS/MITIGATING FACTORS

- Market rents likely, but not assumed
- Good feasibility indicators

WEAKNESSES/RISKS

- Feasibility relies on tax exemption

AREA MAP



AERIAL PHOTOGRAPH(s)

GREATER CASA VIEW ALLIANCE

October 3, 2019

TDHCA
Multifamily Finance Division
P.O. Box 13941
Austin, TX 78711-3941

Attention: Teresa Morales, Manager of Multifamily Bonds

RE: Letter of Support for Estates at Shiloh

Dear Ms. Morales,

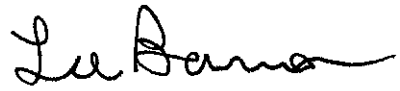
I am writing this letter on behalf of the Greater Casa View Alliance (GCVA) to voice support for The Estates at Shiloh, which is a senior living development that will be located near the northwest corner of Shiloh Road and Centerville Road in Far East Dallas. We have reviewed the development plans with Generation Housing Development and we believe that The Estates at Shiloh will be a significant benefit to the entire Far East Dallas area. It will fill a need for senior housing in an area where senior housing is in short supply. Additionally, the development will complement the on-going revitalization activities in the GCVA community.

The updated Comprehensive Housing Policy of the City of Dallas clearly establishes the need for additional rental units to support our aging population as well as low to moderate income residents. The Estates at Shiloh development will help to meet the Policy requirements in Far East Dallas!

You may not be aware of the Greater Casa View Alliance, but we are a 501(c)3 coalition of leaders from eleven plus Far East Dallas neighborhoods. We represent approximately 41,000 residents from Oates Drive to LBJ Freeway along the Ferguson Road corridor. Our board is comprised of neighborhood leaders that have consistently served their neighborhood associations, HOAs, or crime watch groups and are fully committed to the broader betterment of the entire Casa View and overall Far East Dallas area. As a united entity, this group serves as a bridge for all neighborhood to connect and create a single voice for the community.

Thank you for the opportunity to provide our support! Please contact me if you have any questions.

Sincerely,



Lee Barron
Co-Chair/Co-Founder of the Greater Casa View Alliance
214-734-5089

CC: District 9 City Council Representative Paula Blackmon

19444 Oaks on North Plaza - Application Summary

REAL ESTATE ANALYSIS DIVISION
October 30, 2019

PROPERTY IDENTIFICATION	
Application #	19444
Development	Oaks on North Plaza
City / County	Austin / Travis
Region/Area	7 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1980)

RECOMMENDATION

TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	$489,428	$483,704	$7,802/Unit	$0.98

KEY PRINCIPAL / SPONSOR

- Wes Larmore / The Related Companies, LP
- Michael Gerber / Austin Affordable Housing Corp.

Related Parties	Contractor - No	Seller - No

TYPICAL BUILDING ELEVATION/PHOTO

UNIT DISTRIBUTION

# Beds	# Units	% Total
Eff	-	0%
1	14	23%
2	41	66%
3	7	11%
4	-	0%
TOTAL	62	100%

INCOME DISTRIBUTION

Income	# Units	% Total
30%	-	0%
40%	-	0%
50%	-	0%
60%	62	100%
MR	-	
TOTAL	62	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.20	Expense Ratio	38.8%
Breakeven Occ.	85.4%	Breakeven Rent	$1,221
Average Rent	$1,359	B/E Rent Margin	$138
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	$6,025/unit	Controllable	$4,693/unit

SITE PLAN

MARKET FEASIBILITY INDICATORS

Gross Capture Rate (10% Maximum)			0.6%
Highest Unit Capture Rate	1%	2 BR/50%	40
Dominant Unit Cap. Rate	1%	2 BR/50%	40
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	62	100% Total Units	

DEVELOPMENT COST SUMMARY

Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	823 SF	Density	12.4/acre
Acquisition		$102K/unit	$6,324K
Building Cost	$50.05/SF	$41K/unit	$2,553K
Hard Cost		$55K/unit	$3,421K
Total Cost		$226K/unit	$14,010K
Developer Fee	$1,631K	(17% Deferred)	Paid Year: 3
Contractor Fee	$479K	30% Boost	Yes

REHABILITATION COSTS / UNIT

Site Work	$4K	8%	Finishes/Fixture	$20K	41%
Building Shell	$13K	27%	Amenities	$5K	10%
HVAC	$5K	10%	Total Exterior	$22K	45%
Appliances	$3K	5%	Total Interior	$28K	55%

DEBT (Must Pay)				
Source	Term	Rate	Amount	DCR
Wells Fargo Multifamily Capital	16/35	4.20%	$9,000,000	1.20
TOTAL DEBT (Must Pay)			$9,000,000	

CASH FLOW DEBT / GRANT FUNDS				
Source	Term	Rate	Amount	DCR
CASH FLOW DEBT / GRANTS			$0	

EQUITY / DEFERRED FEES	
Source	Amount
Wells Fargo Multifamily Capital	$4,739,825
Oaks on North Plaza Developer, LLC	269890.88
TOTAL EQUITY SOURCES	$5,009,716
TOTAL DEBT SOURCES	$9,000,000
TOTAL CAPITALIZATION	$14,009,716

CONDITIONS

1 Receipt and acceptance before Determination Notice:
- Evidence of the existing HAP Contract renewal or documentation from the third party administrator evidencing their approval of the contract renewal with rents increased to the current market rents presented in this application.

2 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
- Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.

3 Receipt and acceptance by Cost Certification:
- Certification from the Travis County Appraisal District that the property qualifies for a 100% property tax exemption.

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 Affordable PFC, Inc.**
Expiration Date	**1/12/2020**
Bond Amount	**$15,000,000**
BRB Priority	**Priority 3**
Close Date	**TBD**
Bond Structure	**Fannie Mae MBS**
% Financed with Tax-Exempt Bonds	**77.5%**

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	100% of units covered under project-based HAP
▫	Gross Capture Rate of 0.6% with unit capture rates ranging from 0.3% to 1.5%
▫	Renovation should help maintain occupancy
▫	Proximity to schools, medical services, recreation, shopping and potential employers
▫	Developer experience
WEAKNESSES/RISKS	
▫	Project relies on full property tax exemption for feasibility
▫	2BR/1BA units have no bathroom on 1st floor
▫	39 year old development may have less appeal
▫	Potential unforeseen deferred maintenance
▫	Small unit sizes

AREA MAP

AERIAL PHOTOGRAPH(s)

5b

BOARD ACTION REQUEST MULTIFAMILY

FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication 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 §§2306.67022 and .6724 and Internal Revenue Code §42(m)(1), the Department is required to adopt a qualified allocation plan (QAP); to establish the procedures and requirements relating to an allocation of Housing Tax Credits;

WHEREAS, the proposed qualified allocation plan, set forth in 10 TAC Chapter 11, was published in the September 23, 2019, issue of the *Texas Register* for public comment; and

WHEREAS, pursuant to Tex. Gov't Code §2306.6724(b) the Board shall adopt the QAP 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 repeal of 10 TAC Chapter 11, and a new 10 TAC Chapter 11 concerning the Housing Tax Credit Qualified Allocation Plan together with the preambles presented to this meeting, are hereby approved and recommended to the Governor; 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 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 delivered to the Governor, not later than November 15th for his review and approval, and to cause the Qualified Allocation Plan, as approved, approved with changes, or rejected by the Governor, to thereafter be published in the *Texas Register* for adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed 10 TAC Chapter 11 regarding the Housing Tax Credit Program Qualified Allocation Plan (QAP) at the Board meeting of September 5, 2019, to be published in the *Texas Register* for public comment. Staff has reviewed all comments received and provided a reasoned response to these comments. Below are the sections that received the most comment.

§11.1(d)(122)	Supportive Housing
§11.9(c)(7)	Proximity to Job Areas
§11.9(e)(2)	Cost of Development per Square Foot
§11.9(e)(5)	Extended Affordability
§11.101(a)(3)	Neighborhood Risk Factors
§11.302(e)(1)(B)(iii)	Acquisition Costs for Identity of Interest Transactions
§11.302(e)(7)	Developer Fee

Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 11, Qualified Allocation Plan (QAP). 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits ("LIHTC").

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

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

4. The repeal does not result in an increase in fees paid to the Department nor in a material decrease in fees paid to the Department. One administrative fee has been eliminated.

5. The repeal is not creating a new layer or type of regulation, but it is repealing and replacing by new rule for a regulation with certain revisions.

6. The 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 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 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 repeal and replacement as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there

would be no appreciable change to the economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held September 20, 2019 to October 11, 2019, to receive stakeholder comment on the repealed section. All public comment was analyzed, considered, and responded to by staff. No public comment was received on the repeal of 10 TAC Chapter 11.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 11, Qualified Allocation Plan

SUBCHAPTER A
§11.1 General
§11.2 Program Calendar for Housing Tax Credits
§11.3 Housing De-Concentration Factors
§11.4 Tax Credit Request and Award Limits
§11.5 Competitive HTC Set-Asides. (§2306.111(d))
§11.6 Competitive HTC Allocation Process
§11.7 Tie Breaker Factors
§11.8 Pre-Application Requirements (Competitive HTC Only)
§11.9 Competitive HTC Selection Criteria
§11.10 Third Party Request for Administrative Deficiency for Competitive HTC Applications

SUBCHAPTER B
§11.101 Site and Development Requirements and Restrictions

SUBCHAPTER C
§11.201 Procedural Requirements for Application Submission
§11.202 Ineligible Applicants and Applications
§11.203 Public Notifications (§2306.6705(9))

Attachment 2 Preamble, including required analysis, for new 10 TAC Chapter 11, Qualified Allocation Plan

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 11, Qualified Allocation Plan ("QAP"). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.67022 and to update the rule to: implement statutory changes to Tex. Gov't Code Chapter 2306 that have direct effects on the QAP; clarify how Applications will be treated in the Deficiency Process and Appeals Process; clarify and amend the definition of Supportive Housing; update the Program Calendar; apply policies that encourage the dispersion of HTC awards; specify when Applicants must select the Applications they wish to proceed with if they are eligible for awards in excess of $3 million; clarify when instances of *Force Majeure* pertaining to rainfall, material shortages, and labor shortages will be approved; revise how Supportive Housing gains additional points through competitive scoring; add additional Underserved Area scoring items; amend the Residents with Special Housing Needs scoring item; add proximity to jobs as a new scoring item that is mutually exclusive with proximity to the urban core; amend the readiness to proceed in disaster impacted counties scoring item to look back three years so that Applications in Hurricane Harvey counties are still eligible for these points; add additional scoring items under Extended Affordability; revise the requirements for Applications seeking points under Historic Preservation; require certain notifications be made to Residents in Developments where that Development falls within the 100 year floodplain; update provisions to Neighborhood Risk Factors and mitigation allowed for those factors; add to Ineligible Developments any Development located in the attendance zone of a school rated F in 2019 and Improvement Required in 2018 by the Texas Education Agency, unless that Development will be Elderly, Supportive Housing, or is a Development encumbered by a TDHCA Land Use Restriction Agreement; revise timelines associated with Tax-Exempt Bond Developments; specify provisions for termination for Applications seeking Tax-Exempt Bond or Direct Loan funds; rename the Property Condition Assessment requirements as Scope and Cost Review requirements, and to clarify what those requirements are; and revise certain Developer Fee provisions.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule 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 Tex. Gov't Code §2306.67022. The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, concerning the allocation of Low Income Housing Tax Credits ("LIHTC").

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree

that eliminates any existing employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, but will result in a decrease in fees paid to the Department. The proposed rule suggests a one-time adjustment to the Commitment and Determination Fee amounts from 4% to 2%.

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

6. The rule will not 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.

These additions, removals, and revisions to the QAP are necessary to ensure compliance with IRC §42 and Tex. Gov't Code §2306.67022.

7. The rule will not increase or 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 10 TAC §11.9(c)(7), Proximity to Job Areas, may help to encourage the Development of affordable multifamily housing in robust markets with strong and growing economies.

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. 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 rule for which the economic impact of the rule is projected to be $0. The rule places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private Applicants. 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 multifamily Development. Additionally, the 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 provide 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 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 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 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). Mr. Wilkinson has determined that, for each year of the first five years the rule 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 for all components of a complete 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 2020 rules do not result in an increased cost of filing an application as compared to the 2019 program rules. The 2020 rules may 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, Applicants for 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. Wilkinson 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.

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.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 20, 2019, and October 11, 2019, with comments received from: (1) State Representative Four Price, (2) State Senator Kel Seliger, (3) Mayor Ginger Nelson, City of Amarillo, (4) City of Houston Housing and Community Development Department, (5) City of San Antonio Neighborhood and Housing Services Department, (6) Nicole Ferrini, City of El Paso, (7) Housing Authority of the City of Austin, (8) Houston Housing Authority, (9) San Antonio Housing Authority, (10) Texas Affiliation of Affordable Housing Providers, (11) Rural Rental Housing Association of Texas, Inc., (12) Texas Coalition of Affordable Developers, (13) Texas Housing Group, (14) National Housing & Rehabilitation Association, (15) Eureka Holdings Acquisitions, LP, (16) Dominium, (17) True Casa Consulting, (18) National Church Residences, (19) The Commonwealth Companies, (20) Herman & Kittle Properties, Inc., (21) Alyssa Carpenter, (22) Pedcor Investments, LLC, (23) LEDG Capital, LLC, (24) Sierra Club, Lone Star Chapter, (25) LeadingAge Texas, (26) The NRP Group, LLC, (27) Saigebrook Development, (28) Texas Housers, (29) Megan Lasch, (30) S. Anderson Consulting, LLC, (31) McDowell Housing Partners, (32) Structure Development, (33) Coats Rose, P.C., (34) Purple Martin Real Estate, (35) Foundation Communities, (36) Brinshore Development, LLC, (37) SGI Ventures, Inc., (38) Tony Padua, (39) Brooks Hawkins, (40) Leon and Angela Truley, (41) Tiffani Neu, (42) Robert Meaney, (43) Kent Morrison, (44) Victor Martinez, (45) Alejandro L. Padua, (46) Sara E. Padua, (47) Amanda Powell, (48) Albert Martinez, (49) David Cordua, (50) Noah E. Niday, (51) Josh Hughes, (52) Andrea Pedroza, (53) Brandon and Kristi Solt, and (54) Brett and Jaclyn Siepka.

General Comments

COMMENT SUMMARY: Commenter (14) asks that TDHCA separate the requirements of 4% and 9% LIHTC, and that 4% LIHTC be required to meet only threshold requirements.

Commenter (35) asks that staff find a way to implement a LIHTC per Unit policy in a future QAP. Commenter (35) shares that, in the past five years, the average amount of tax credits per Unit has increased by 30%. In 2019, Commenter (35) notes that the median tax credit award per Unit for a Development was $15,000, but there were several Developments where the award was over $20,000 per Unit. Commenter (35) worries that some Applications may be inflating soft costs and building fewer Units compared to Developments that cost the same overall. Commenter (35) suggests that a maximum LIHTC per Unit, adjusted for project type and location, would ensure that more Units are built each year.

STAFF RESPONSE: In response to Commenter (14), staff would like to remind stakeholders that all TDHCA Multifamily Developments are subject to threshold requirements in 10 TAC Chapter 11 Subchapters B, C, D, and E, with some criteria being in Subchapter A.

In response to Commenter (35), staff believes that the idea of setting a maximum per Unit LIHTC award will require significant evaluation and discussion, and is best addressed through the planning efforts for the 2021 QAP.

Staff recommends no changes based on these comments.

§11.1(d)(41) – Development Site (21), (30)

COMMENT SUMMARY: Commenters (21) and (30) note that the current definition of Development Site does not make reference to ingress/egress commitments. Given the language seen in Site Control, 10 TAC §11.204(10), Commenters (21) and (30) ask that this definition clarify whether or not it includes ingress/egress easements.

STAFF RESPONSE: In response to the concerns of Commenters (21) and (30), staff has amended the definition of "Development Site" to read as follows:

> (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~~.~~, including access to that area or areas through ingress and egress easements.

§11.1(d)(122) – Supportive Housing (17), (32), (35)

COMMENT SUMMARY: Commenter (17) is generally supportive of the changes made to the definition of Supportive Housing, and notes that by allowing Supportive Housing Developments to carry debt, TDHCA will assist Texas cities in better addressing the challenges they are facing with homelessness.

However, Commenter (17) objects to the requirement in 10 TAC §11.1(d)(122)(E)(ii), which states that, if being financed with debt, the Development "must also be supported by project-based

rental or operating subsidies for all Units for the entire affordability period." Commenter (17) does not believe this requirement is realistic or good practice. Commenter (17) asks that the requirement only apply to, at a minimum, 25% of a Development's Units. Commenter (17) asks TDHCA to consider how vouchers are increasingly tied to tenants, not buildings, and questions whether it is sound policy to devote all Units in a Development to only a population in need of Supportive Housing.

Commenter (32) shares a similar concern to commenter (17), that it is very difficult, if not impossible, to devote enough vouchers to a Development to cover all Units. Commenter (17) also takes issue with the phrase "for the entire affordability period," since, if a HAP contract is secured for the Development, the maximum length of the contract is 15 years, with 5 year renewals typically available after that. Commenter (32) asks that this requirement be edited such that rental or operating assistance is available for some, not all, of the units, and that the "entire Affordability Period" requirement is removed.

Commenter (32) applauds the Department's focus on residents and services in the definition of Supportive Housing, the commenter believes that the requirement in 10 TAC §11.1(d)(122)(E)(ii)(V) that "a resident is or will be a member of the Development Owner or service provider board of directors." is logistically infeasible and places a burden on a resident who is more than likely struggling with difficult personal issues, given his or her living in a Supportive Housing Development.

Commenter (35) asks that the following changes be made to 10 TAC 11.1(d)(122)(E)(i) in order to allow Supportive Housing projects to access federal funds like National Housing Trust Fund and Capital Magnet Fund dollars and structure them as secured/foreclosable, repayable cash flow loans without having to go through the waiver process.

> (i) not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy) <u>unless a TDHCA MFDL Supportive Housing/Soft Repayment loan</u>. 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 Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

Commenter (35) also requests that staff reinsert the phrase "primarily on site" in 10 TAC 11.1(d)(122)(A), believing that Supportive Housing residents, who tend to have limited mobility options, should have access to services where they live.

STAFF RESPONSE: In response to Commenters' (17) and (32) objection to all Units needing to be supported by project-based rental or operating subsidies if the Supportive Housing Development

is to carry permanent debt, staff believes that that assurance of this continued support is important to a feasibility conclusion. Proposed Supportive Housing Developments are not limited to a single source of rental subsidy or operating support; in fact, it is common that a Development access a number of different sources throughout its operation. Staff believes that the definition is sufficiently flexible to allow for more than one form of operating assistance.

Staff recommends no changes based on these comments.

In response to Commenter (32)'s request that the phrase "for the entire Affordability Period" be removed, staff believes that it is important to REA staff that some assurance of secured subsidy be demonstrated by the Applicant, but agrees that this particular language is too stringent and has therefore amended the rule as follows:

> (E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:
>
> > (i) not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). 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 Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or
> >
> > (ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for all Units ~~for the entire affordability period~~, and meet all of the criteria in subclauses (I) through (VIII) of this clause:

In response to Commenter (32)'s concern about a resident of Supportive Housing serving as a member of the Development Owner or service provider board of directors, representation of the populations served on a provider's board is a long-standing method of promoting accountability and clear communications, and a best practice. Staff believes that many residents of Supportive Housing Developments are competent to fill this role. The requirement will not be removed.

Staff recommends no changes based on these comments.

In response to Commenter (35)'s request to amend the financing language for those Supportive Housing Developments that prefer to not have permanent foreclosable debt, staff does not believe that 10 TAC §11.1(d)(122)(E)(i) should carry additional exceptions to the rule on no debt, even if not doing so means that some Supportive Housing Developments will have to seek a waiver. Staff believes that allowing a Development to forego underwriting standards when there

is must-pay debt, even when federally sourced, would be to abnegate the Department's duty to administer the LIHTC and Direct Loan programs responsibly and to make exceptions to certain rules on case-by-case bases when circumstances call for it.

Staff recommends no changes based on these comments.

In response to Commenter (35)'s request that Supportive Housing services be primarily offered on-site, staff agrees but has made the following change to 10 TAC §11.1(122)(D), instead of subparagraph (A):

(D) Supportive services must meet the minimum requirements provided in clauses (i) –

(iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

§11.1(k) – Request for Staff Determination (35)

COMMENT SUMMARY: Commenter (35) believes that staff determinations issued prior to Application submission should be subject to the same appeals process as staff determinations after submittal. Commenter (35) asks that the last and following sentence of this section be deleted: "Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission."

STAFF RESPONSE: Staff agrees with the concern of Commenter (35) and has amended the rule as follows:

(k) Request for Staff Determinations. 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 the applicable rules. 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 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 a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and 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. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged. ~~Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission.~~

§11.3(b) — Two Mile Same Year Rule (5), (6), (13)

COMMENT SUMMARY: Commenters (5), (6), (13) state that the Two Mile Same Year Rule hinders the ability of larger Texas cities to produce an adequate supply of affordable housing. The Commenters share that this rule has created a "bottleneck" of proposed Developments in areas with high demand for housing. While Commenter (5) understands TDHCA's desire not to concentrate affordable housing in areas with poverty, commenter (5) asks TDHCA to consider how Developments in San Antonio are increasingly mixed-income, and therefore two tax credit awards can be near each other without concentrating poverty. Commenter (5) asks that cities be allowed to exempt themselves from the Two Mile Same Year Rule if approved by local officials.

STAFF RESPONSE: The Two Mile Same Year Rule is codified by Tex. Gov't Code Chapter 2306.6711(f). The exception in the proposed 2020 QAP is the direct result of Legislative action through SB493. Staff does not have authority to make the requested change for other cities.

Staff recommends no changes based on these comments.

§11.3(g) – Proximity of Development Sites (35)

COMMENT SUMMARY: Commenter (35) supports the policies in the QAP that seek to disperse the awarding of LIHTC; however, Commenter (35) believes that loopholes still exist and that, therefore, the best way to ensure dispersion is by increasing the distance in this rule from 1,000 feet to 5,000 feet.

STAFF RESPONSE: Staff appreciates Commenter (35)'s recommendation, but believes that this suggestion would represent sufficiently substantive changes from what was proposed that it could not be accomplished without republishing the QAP for public comment. Commenters that support this idea should raise it during the 2021 QAP planning process.

Staff recommends no changes based on these comments.

§11.4(c) – Increase in Eligible Basis (30% Boost)

COMMENT SUMMARY: Commenter (22) notes that this subsection requires that Applications in certain census tracts obtain a resolution "stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed for the construction of the new Development and referencing this rule." Commenter (22) asks that the phrase "allowed for the construction" be revised, as some city attorneys and staff members have

informed Commenter (22) that they are uncomfortable with this language, since it could imply that the Development is being permitted for construction. Commenter (22) proposes the following revision to 10 TAC §11.4(c) and, for the sake of consistency, asks that a similar change be made to 10 TAC §11.3(e), Limitations on Developments in Certain Census Tracts.

10 TAC §11.4(c)

> New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging that the Development is located in a census tracts that has more than 20% Housing Tax Credits Units per total households and 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~~ no objection to the Application.

10 TAC §11.3(e)

> …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~~ adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application.

STAFF RESPONSE: Because 10 TAC §11.3(e) is not a statutory requirement, staff agrees with Commenter (22) that it and 10 TAC §11.4(c) can be amended as requested by Commenter (22). Staff has made the following revisions in the QAP.

10 TAC §11.4(c)

> (1) The Development is located in a Qualified Census Tract (QCT) (as determined by the Secretary of HUD) that has less than 20% 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% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging that the Development is located in a census tracts that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically supported the Application for the proposed Development. ~~by vote specifically allowed the construction of the new Development and referencing this rule~~. Rehabilitation Developments located in a QCT with 20% 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% 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, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, 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

10 TAC §11.3(e)

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% 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 supported the Application for the Proposed Development, and ~~specifically allowed the Development and submits to the Department~~ adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. 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, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

§11.5 — Competitive HTC Set-Asides (5)

COMMENT SUMMARY: Commenter (5) asks that TDHCA assist the development community in San Antonio to identify developments that will qualify for the At-Risk Set-Aside.

STAFF RESPONSE: Following a 2020 QAP planning roundtable in the summer of 2019 that focused on TDHCA's preservation policy and in light of stakeholder input, TDHCA's Fair Housing, Data Management, & Reporting Division is beginning the work to design, build, and share a public database that identifies Developments within TDHCA's portfolio that are at-risk of losing their affordability restrictions. Staff expects to hold public meetings regarding this initiative in early 2020.

Staff recommends no changes based on these comments.

§11.7 – Tie Breaker Factors (21)

COMMENT SUMMARY: Commenter (21) asks if the second tie breaker factor, 10 TAC §11.7(2), includes Developments that received subsequent tax credit allocations that were not for Rehabilitation. Commenter (21) sites an example where a Development received a LIHTC allocation of $726 roughly two and half years after its initial allocation.

STAFF RESPONSE: Staff maintains that the rule should be read at face-value—if the same Development has received more than one award of tax credits, its "award year" is its most recent award year, whether or not the purpose of that subsequent award regardless of amount, which "resets the clock," was for Rehabilitation.

Staff recommends no changes based on these comments.

§11.8(b) – Pre-Application Threshold Criteria (21)

COMMENT SUMMARY: Commenter (21) believes that this subsection, and concomitantly 10 TAC §11.203, regarding Public Notifications, should be amended so that it is "entities" being notified, and not "persons" or "individuals" or "officials." Commenter (21) believes that statute clearly says that it is "entities" that are notified, and requests that this subsection and the section in Subchapter C, regarding Public Notifications, be amended so that the words "person," "individual," and "official" are replaced with "entity," which in effect would equate with "office." Thus, a letter addressed to the office, and not to the particular person who holds that office, would be sufficient and meet the requirements of these rules. Commenter (21) points to a situation in the 2019 Competitive HTC Application cycle where an Applicant addressed a letter to a person who was no longer in office at the time of the mailing, but the Application was not terminated by the Department because the Applicant was able to prove that the office received notification. Commenter (21) believes that this situation set a Departmental precedent regarding notifications. Finally, Commenter (21) believes that, because statute asks the Department to notify certain "persons" in Tex. Gov't Code Chapter 2306.1114 when an Application is received, this contrast sufficiently implies that statute is aware of the difference between "entity" and "person," and since Tex. Gov't Code Chapter 2306.6704 and 2306.6705, regarding Public Notifications for pre-Applications and full Applications, only mentions "entity," that suffices.

STAFF RESPONSE:

The Department agrees with the commenter that pre-application (and application) notices by the Applicant should only be required to be to the "entity." Staff has made the following revisions in the QAP.

§11.8(b)(1)(B) Notification Recipients.

> (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 included in the Public Notification Template provided in the Uniform 2020 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. Between the time of pre-application (if made) and full Application, ~~such officials may change and~~ the boundaries of an official's ~~their~~ jurisdiction~~s~~ may change. If there is a change in jurisdiction between pre-application and 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~~ entity constitutes notification.

§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 months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete 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% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official ~~person~~ holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity ~~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 beginning of the Application 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 beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the

Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(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. 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 individuals in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, ~~such individuals may change and~~ the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification.

§11.9(b)(2) – Sponsor Characteristics (18), (25)

COMMENT SUMMARY: Commenters (18) and (25) oppose the following language in 10 TAC §11.9(b)(2)(B): "A Principal of the HUB or Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse, of any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Nonprofit Organization)." The Commenters say that regional and national non-profits are unable to take advantage of the 2 point scoring item at 10 TAC §11.9(b)(2)(A) because of the narrow definition of Qualified Nonprofit. The Commenters ask that Qualified Nonprofits, as defined by IRC §42, be exempt from this prohibition when the Nonprofit is the Managing Member of the General Partnership, since these organizations provide service enriched and high quality housing for Texans.

STAFF RESPONSE: Because staff plans comprehensive discussion regarding this paragraph—Sponsor Characteristics—during the planning efforts for the 2021 QAP, changes will not be made for 2020.

Staff recommends no changes based on these comments.

§11.9(c)(4) – Opportunity Index (28)

COMMENT SUMMARY: Commenter (28) supports the addition of menu items under Opportunity Index for a proposed Development being located in the attendance zone of a general enrollment school rated A or B by TEA (10 TAC §11.9(c)(4)(B)(i)(XV) and (ii)(XIV)). However, Commenter (28) asks that the point value of this particular menu item be increased to eight points. Because school attendance is persistently tied to where one lives and because low-income families are unable to find housing options in high opportunity areas, it is critical that

TDHCA "use the QAP to strongly incentivize placing LIHTC properties in the attendance areas of good schools."

STAFF RESPONSE: Scoring items are allotted point values in the QAP in accordance with statutory and departmental housing goals. *See* Tex. Gov't Code §2306.6710; §2306.6725. Those scoring items specifically required by statute are often referred to as "above the line" scoring items, whereas those scoring items developed through Departmental and Governing Board policies are referred to as "below the line" scoring items. "Below the line" scoring items cannot exceed the point value of the lowest ranked "above the line" scoring item, which is Community Support from State Representative. *See* Texas Attorney General Opinion GA-0208. With the latter being worth eight points, the maximum value a "below the line" scoring item can have is seven points. Thus, staff cannot make this scoring item worth eight points.

Furthermore, Staff would like to remind Commenter (28) that the Opportunity Index scoring item is structured in such a way where Applicants must select multiple "menu items" to get the full seven points. Asking that one menu item count for all the points allowed under Opportunity Index would effectively negate the other features of a high opportunity area.

Staff recommends no changes based on these comments.

§11.9(c)(5) – Underserved Area (21)

COMMENT SUMMARY: Commenter (21) asks staff to clarify whether, for the scoring items that require evaluating when a census tract last received an award of LIHTC, subsequent small allocations of tax credits in *de minimis* amounts to the same Development should be taken into account. Commenter (21) also asks staff to make explicitly clear in rule what "most recent year of award" means as it pertains to the Site Demographics and Characteristics Report, which has two columns containing years of an award—"year" and "Board Approval."

STAFF RESPONSE: In response to Commenter (21)'s first request, staff responds as we did to the comment on 10 TAC §11.7(2): the rule should be read at face-value—if the same Development has received more than one award of tax credits, its "award year" is its most recent award year, whether or not the purpose of that subsequent award, regardless of amount, which "resets the clock," was for Rehabilitation.

In regards to Commenter (21)'s second request, staff notes that the scoring items that require referencing the property inventory tab of the Site Demographic Characteristics Report speak of when a Development was "awarded." The only time and place at which an award of LIHTC can be made is at a Board meeting. Furthermore, the "Board Approval" date is the only column that has data available for every Development.

Staff recommends no changes based on these comments.

§11.9(c)(7) – Proximity to Job Areas (1), (2), (3), (5), (11), (17), (19), (21), (28)

COMMENT SUMMARY: Commenter (5) supports the addition of §11.9(c)(7)(B), Proximity to Jobs, to the QAP, and believes that Proximity to Jobs is a flexible alternative to Proximity to the

Urban Core and will help to add affordable housing in needed areas. Commenter (21) expresses similar support and asks that no changes be made to the 2020 QAP to the distance or job number requirements, as developers are already proceeding based on the draft QAP, but states that these latter issues can be further explored during future roundtables for the 2021 QAP.

Commenters (1), (2), (3), (17) and (19) ask that staff lower the population requirement for 10 TAC §11.9(c)(7)(A)—Proximity to the Urban Core. Some suggest lowering the population maximum from 200,000 persons to 190,000, and some suggest 195,000. These commenters note that the city of Amarillo is the only other large city in the Department's Region 1/Urban service region besides Lubbock, which has a population above 200,000. Because Amarillo's population is 197,823, Developments within its municipal boundaries are not eligible for these points. Commenter (1) worries that this threshold is not only unreasonable and not equitable, but also arbitrary. Commenter (3) states that the 200,000 population requirement for Proximity to the Urban Core "puts Amarillo at an unfair disadvantage to Lubbock when applying for tax credit awards" with TDHCA; lowering the eligibility threshold to 190,000 would instill fairness into Region 1/Urban. Commenters (17) and (19) do not believe that the new scoring item, Proximity to Jobs, adequately counterbalances the Proximity to Urban Core points available to Applications in Lubbock.

Commenter (11) is opposed to this scoring item applying to rural subregions, given that rural communities are spread out and vary in concentration of businesses. Commenter (11) states that this scoring item should especially not apply to the At-Risk and USDA Set-Asides.

Commenter (21) asks that the Proximity to Jobs scoring item be treated similarly to how crime data from NeighborhoodScout is treated, in that any data obtained after October 1 but before the Pre-Application Final Delivery Date satisfies the data requirements of this scoring item. Commenter (21) believes that this requirement would satisfactorily prevent Applications' scoring on the Proximity to Jobs item from changing if the U.S. Census Bureau were to make updates to the OnTheMap dataset after the Pre-Application Final Delivery Date.

Commenter (28) "tentatively opposes" the new Proximity to Jobs scoring item, largely because it is given so much weight in the QAP (six points) relative to other items that Commenter (28) believes contributes more to fair housing, such as being in the attendance zones of high-performing schools. Moreover, Commenter (28) takes issue with this scoring item's not considering the type of jobs available to residents, fearing that it could incentivize Developments near areas of high industry with concomitant health hazards. Commenter asks that the point values for the Proximity to Jobs and Proximity to Urban Core scoring items be reduced to two or three points, maximum. Furthermore, Commenter (28) asks that for any proposed Development Site that triggers undesirable neighborhood characteristic issues, that particular Application is ineligible to receive Proximity to Jobs points and that mitigation under these circumstances is disallowed.

STAFF RESPONSE: Staff appreciates commenters (1), (2), (3), (17), and (19) highlighting how one particular aspect of the QAP may create competitive differences between Lubbock and Amarillo in this region. Staff agrees and has amended the rule as follows:

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over ~~200,000~~190,000 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 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is ~~200,000~~190,000 - 749,999. 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. (6 points)

In response to Commenter (11), staff respectfully disagrees and believes that by allowing the Proximity to Jobs scoring item to apply to rural subregions, the QAP can help to revitalize historic town plazas and can help to counteract the "donut hole" effect in some rural areas, by which some scoring items in the QAP inadvertently push Development away from town centers. That said, even if it is true that this scoring item does not work well in rural subregions, staff sees no reason to explicitly disallow it from applying; if true, then no Applicant will be able to claim points, and no harm will be done. Staff will further clarify, as seen below, that the scoring item does not apply to the USDA Set-Aside.

In response to Commenter (21), staff agrees that, for 10 TAC §11.9(c)(7)(B), there should be an eligible time during which Applicants must "pull" jobs data from OnTheMap if pursuing this scoring item, and that documentation of the data should be included in the Application. Staff has amended this particular subparagraph so that any data obtained after October 1 but before the Pre-Application Final Delivery Date satisfies the data requirements of this scoring item. Additionally, staff has clarified that the 2017 data must be used and staff will require that the point around which the 1 mile radius is drawn be specified using GPS coordinates. The subparagraph now reads as follows:

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) through (vi) of this subparagraph. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the ~~most recently available~~ 2017 data set (as of October 1 but before Pre-Application Final Delivery Date) will be used. The Development will use ~~either OnTheMap's selection tool to identify a point within the Development Site or~~ OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the

Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(i) The Development is located within 1 mile of 16,500 jobs. (6 points)

(ii) The Development is located within 1 mile of 13,500 jobs. (5 points)

(iii) The Development is located within 1 mile of 10,500 jobs. (4 points)

(iv) The Development is located within 1 mile of 7,500 jobs. (3 points)

(v) The Development is located within 1 mile of 4,500 jobs. (2 points)

(vi) The Development is located within 1 mile of 2,000 jobs. (1 point)

In response to Commenter (28), staff believes that, through a public engagement process that has involved many stakeholders, and in light of some of the findings from the 2017 TDHCA Resident Survey, there is broad support for trying to encourage the development of affordable housing near job centers. Much like the Proximity to the Urban Core scoring item, Proximity to Jobs potentially serves as a proxy for the many beneficial aspects that we tend to associate with a "good neighborhood," where people want to live, work, and play. Staff would like to see how the rules located at 10 TAC 11.101(a)(2), Undesirable Site Features, help to ensure that Developments are not located near hazardous materials or areas during the 2020 LIHTC Application cycle before further changing the rules regarding this scoring item.

Staff recommends no changes based on these comments.

§11.9(c)(8) – Readiness to Proceed in Disaster Impacted Counties (4), (10)

COMMENT SUMMARY: Commenter (4) states the compressed timeline associated with this scoring item strains municipal operations at some departments, such as Houston's Housing & Community Development and Planning & Public Work Departments. Commenter (4) requests that the deadline for closing all financing and fully executing the construction contract be extended from the end of November to the end of January. Commenter (10) states that this scoring item was meant to be a temporary measure to assist counties impacted by Hurricane Harvey, and having served that purpose, it should now be removed.

STAFF RESPONSE: In response to Commenter (4), staff notes that this scoring item was added into the 2018 QAP by the Office of the Governor, which believed that Applicants equipped to meet the compressed timeline required by this scoring item should be rewarded for that capacity. Staff believes the suggested revision would represent sufficiently substantive changes from what was proposed that it could not be accomplished without republishing the QAP for public comment. Commenters that support this idea should raise it during the 2021 QAP planning process.

Staff recommends no changes based on these comments.

§11.9(d)(2) — Commitment of Development Funding by Local Political Subdivision (4), (6), (13)

COMMENT SUMMARY: Commenters (4), (6), (13) believe that a local contribution involving HOME, CDBG, or other local funding to Developments should be weighted more heavily than a $500 in-kind contribution, which is not material to the financing of a Development. The Commenters ask that staff remove the monetary figure of this rule, which is currently $500 for Urban subregions and $250 for rural subregions, and replace it with a the requirement that, to receive the 1 point, the Development's potential award of LIHTC must be leveraged with "HOME, CDBG, CDBG-DR or other locally funded subsidy."

STAFF RESPONSE: Staff appreciates the suggestion from Commenters (4), (6), and (13), and understands how beneficial it is to leverage the limited resource of LIHTC with larger local contributions. If this rule were to be amended as the Commenters suggest, it would adversely impact the smaller communities surrounding large cities that do not receive HOME or CDBG allotments from HUD. Staff believes that these communities, and their residents, are just as deserving of affordable housing as the larger cities.

Staff recommends no changes based on these comments.

§11.9(d)(5) –Community Support from State Representative (14)

COMMENT SUMMARY: Commenter (14) states that HB 1973 from the 86th Regular Texas Legislative Session "gives TDHCA the discretion to set the maximum number of points that may be awarded for that applications [*sic*] with letters of support or opposition." As such, Commenter (14) asks that staff would lower the 25 point value for this scoring item to an amount that would less negatively impact a proposed Development that was unable to score well under this paragraph. Commenter (14) believes that the development of affordable housing should not rest on the opinions of elected officials.

STAFF RESPONSE: As explained above in response to a comment regarding 10 TAC §11.9(c)(4), staff would like to remind stakeholders that scoring items are allotted point values in the QAP in accordance with statutory and departmental housing goals. *See* Tex. Gov't Code §2306.6710; §2306.6725. . Those scoring items specifically required by statute are referred to as "above the line" scoring items, whereas those scoring items developed through Departmental and Governing Board policies are referred to as "below the line" scoring items. Both 10 TAC §11.9(d)(2)—Commitment of Development Funding by Local Political Subdivision—and 10 TAC §11.9(d)(5)—Community Support from State Representative—are "above the line" scoring items, and their respective point values in the QAP correspond to their relative ranking in the list of required scoring items of statute. Thus, staff cannot change the point value of 10 TAC §11.9(d)(5). *See* Texas Attorney General Opinion GA-0208.

Staff recommends no changes based on these comments.

§11.9(d)(5)(A) – Letter from a State Representative

STAFF CORRECTION: Staff has become aware of accidental language in this paragraph that is inconsistent with other rule language and with Tex. Gov't Code Chapter 2306. Staff has amended this subparagraph as follows:

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2; §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, 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, relating to Competitive HTC Deadlines. Letters received by the Department ~~setting forth that the~~ from State Representatives ~~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 of 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.

§11.9(d)(7) — Concerted Revitalization Plan (4), (5), (6), (13)

COMMENT SUMMARY: Commenters (4), (5), (6), (13) state that the requirements of 10 TAC §11.9(d)(7)(A)(iii)(III), which specifies that the goals of a CRP "must have a history of sufficient, documented and committed funding to accomplish its purposes on its established timeline," is too prescriptive and compromises local control. The Commenters share that, for cities, the funding mechanisms for many of pending CRPs are tied to future Capital Improvement Project cycles, the actual commitments of which are not dispersed until a future fiscal year depending on the project. The Commenters therefore ask staff to remove the word "committed" as an adjective of "funding," thereby allowing cities more flexibility in regards to this scoring item.

STAFF RESPONSE: In response to Commenters (4), (5), (6), and (13), staff disagrees that it is too prescriptive to expect to see "committed funding" associated with a Concerted Community Revitalization Plan (CRP). Indeed, IRC Notice 2016-77 strongly suggests that a LIHTC Development

is not to precede, but to follow the implementation of the "components" of a CRP. While the IRS has left undefined what exactly constitutes a CRP, the general parameters are readily accepted by stakeholders across the country—robust investment in "a distinct area that was once vital and has lapsed into a condition requiring concerted revitalization" (10 TAC §11.9(d)(7)(A)(i)). Staff and the Governing Board have consistently maintained during previous cycles that the LIHTC Development is but one piece of a revitalization effort already underway, and such an effort cannot be underway if funding is not yet "committed" and "flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed" (10 TAC §11.9(d)(7)(A)(iii)(III)).

Staff recommends no changes based on these comments.

§11.9(e)(1) – Financial Feasibility (35)

COMMENT SUMMARY: Commenter (35) notes that the rule, as currently written, precludes Supportive Housing Developments with no permanent debt (as required by 10 TAC §11.1(d)(122)(E)(i)) from scoring the maximum points under this scoring item, since the maximum points can only be attained through a letter provided by a 3rd party permanent lender. Commenter (35) asks that the rule allow for a third party construction lender's letter to count for the maximum amount of points.

STAFF RESPONSE: Staff appreciates Commenter (35)'s calling attention to this inadvertent omission. While staff wishes to maintain that it should be a letter from the Third Party permanent lender that makes an Application eligible for the full 26 points, staff did not intend to prevent Supportive Housing Developments that have no need of a permanent lender from attaining the full amount of points. Staff has made an exception for those Supportive Housing Developments that will have no permanent debt, and the rule now reads as follows:

> (1) Financial Feasibility. (§2306.6710(b)(1)(A)) 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 twenty-four (24) points. If the letter is from the Third Party permanent lender<u>, or if the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i),</u> and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

§11.9(e)(2) – Cost of Development per Square Foot (10), (11), (35)

COMMENT SUMMARY: Commenter (10) asks staff to adjust the costs per square foot in this scoring item to be aligned with actual cost data, now that it is available. Proposing a 20% deduction from actual cost data presented at the June 2019 QAP roundtable, commenter (10) requests $83.10 for new construction Eligible Building Costs and $89.04 for those in high-cost areas.

Commenter (11) asks that the competitive cost thresholds for Rehabilitation be raised to $115 per square foot, sharing that Developers are pushed by this scoring item to cut costs in order to score the full amount of points. Commenter (11) also states that this low threshold sometimes requires Applicants to voluntarily limit the acquisition basis, which reduces the acquisition credit.

Commenter (35) believes that the some of the additional space allotted to Supportive Housing Developments for the purposes of calculating NRA in this scoring item should allowed to be unconditioned space, such as outdoor common porches, patios, and interior courtyards. Commenter (35) shares that these spaces support social gathering, and that allowing this space to count as NRA is an important component of calculating eligible basis and therefore ensuring the financial feasibility of a Supportive Housing Development. Commenter (35) requests the following edits:

> (2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included 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 voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. 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 ~~conditioned~~ Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

STAFF RESPONSE: In response to both commenters (10) and (11), staff does not believe that the analysis of actual cost data of previous LIHTC awards warrants increasing the cost benchmarks set in this scoring item. First, staff would like to reiterate that this is a competitive scoring item meant to encourage the efficient use of a limited resource. Second, staff would like to reiterate that these cost limitations do not apply to the entire and actual cost of a proposed Development, but rather to the "voluntary Eligible Building Cost" or the "voluntary Eligible Hard Cost." By "voluntary," the rule signals its true purpose—limiting this competitive resource so that the Department can maximize its efficiency. Third, as REA staff stated at the June 2019 roundtable at which costs were discussed, staff has not seen any Applications submitted that scored well on this item but that appeared under-sourced in their credit allocation; that is, every deal underwritten has been financially feasible, which suggests that these cost limitations are not unreasonable.

Fourth and lastly, a close analysis of the cost data presented at the June 2019 roundtable suggests that the cost limitations are set correctly. New Construction Hard Costs averaged $134.27 per square foot in 2018; Acquisition & Rehabilitation Hard Costs averaged $123.56 per square foot

in 2018. The cost limitation for a high cost New Construction Development that results in the most points is $109.20. While this is lower than the actual cost data, staff points to the remarks above and also notes that almost all Developments secure a 30% basis boost in their Eligible Basis. The cost limitation for Acquisition & Rehabilitation is currently higher than what the actual data reveals, being at $141.96 per square foot for Eligible Hard Costs.

Staff recommends no changes based on these comments.

In response to Commenter (35), staff agrees and has amended the rule as follows:

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included 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 voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. 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 ~~conditioned~~ Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

§11.9(e)(5) — Extended Affordability (5), (10), (12), (27), (28), (29), (35), (37)

COMMENT SUMMARY: Commenters (5), (28), and (35) support the increased Affordability Periods incentivized through competitive scoring, but commenter (5) asks TDHCA to add language that "ensure[s] the quality of these developments will be maintained over these extended periods" and to explore opportunities for re-syndication at 30 or 35 years.

Commenter (28) would like to remind the Department that TDHCA once incentivized Affordability Periods of 55 years, and that TDHCA should consider mandating, instead of incentivizing, a 55 year Affordability Period. Commenter (28) believes that by doing so, TDHCA ensures that the billions of dollars of investments it makes remain affordable and available long-term to our most vulnerable Texans. Commenter (28) notes that, currently, 12 states require or incentivize Affordability Periods of at least 55 years. In a similar vein, Commenter (35) notes that the LIHTC program is a precious and substantial public resource, and that with good stewardship from developers, a 45 year Affordability Period is reasonable.

Commenters (10), (12), (27), (29), (32) ask that staff remove the 40-year and 45-year Affordability Period scoring items, and revert to previous year's standard of only incentivizing a 35-year Affordability Period.

Commenters (10), (12) argue that Compliance periods beyond 35 years run counter to national averages, complicate Owners' ability to recapitalize Developments, increase construction costs, and require updating underwriting standards to ensure the long-term financial viability of a Development. Commenters (10) and (27) state that the more pressing issue is preserving existing

affordable Units, and should be addressed separately. Commenter (10) believes that extended affordability periods are best addressed through local requirements, not by TDHCA. Commenters (10) and (27) offer a list of suggestions that can be discussed during the 2021 QAP planning efforts that would make preservation of affordable housing easier, from a Departmental rule perspective.

Commenter (12) commissioned a report by Novogradac & Company LLP to study extended affordability rules in other states' QAPs, and found that, outside of Texas, 26 states have some form of extended use requirement. According to Commenters (12) and (27), a 45-year Affordability Period is not an industry standard. Commenter (12) claims that TDHCA does not yet offer the needed tools to make Developments with 45-year Affordability Periods viable, especially compared to other states. Commenter (12) further shares that current policies in the QAP, such as the Right of First Refusal process, complicate existing Developments' ability to preserve their affordability through re-syndication.

Commenters (12), (32), (37) request more planning from staff before committing to a longer extended Affordability Period and ask that planning efforts for the 2021 QAP focus on preservation strategies. Commenters (27), (29), (32), (37) share that they are not opposed to extending Affordability Periods, but prefer more time evaluating and discussing the implications of doing so. Commenter (27) is especially concerned about how a 45-year Affordability Period will affect the Department's underwriting standards, which has not yet been discussed with stakeholders. Commenter (32) is concerned about how standard financing mechanisms may conflict with a 45 year Affordability Period, since the maximum amortization period is 40 years.

STAFF RESPONSE: Staff would like to acknowledge the concerns of Commenters (10), (12), (27), (29), (32), and (37). However, staff believes that their concerns can be best addressed during future planning efforts for the 2021 and subsequent QAPs.

Staff recommends no changes based on these comments.

§11.9(e)(7) – Right of First Refusal (28), (35)

COMMENT SUMMARY: Commenters (28) and (35) note that in the staff draft of the 2020 QAP, staff had moved Right of First Refusal from Subchapter A, where it has been a scoring item for the Competitive Housing Tax Credit, to Subchapter C, where it was proposed to be a mandatory aspect of all future Developments, whether Competitive LIHTC Developments or Tax-Exempt Bond Developments. Because Commenter (28) believes that ROFR is integral to the long-term preservation of affordable housing in Texas, Commenter (28) asks that the Department make ROFR a threshold requirement for all LIHTC Developments instead of a competitive scoring item. Commenter (35) also asks that ROFR become a threshold requirement for all LIHTC Developments, whether 4% or 9%.

STAFF RESPONSE: Staff is unable to make Right of First Refusal a threshold requirement for all LIHTC Developments because of statute. ROFR requirements are encouraged to be incentivized in the QAP by Tex. Gov't Code Chapter 2306.6725(b)(1). Section 2306.6725 is titled "Scoring of Applications." Because scoring only applies to Competitive Housing Tax Credits, staff believes

that the Department would be overstepping its authority if it were to make ROFR a threshold requirement.

Staff recommends no changes based on these comments.

§11.101(a)(1) – Floodplain (28)

COMMENT SUMMARY: Commenter (28) does not support the Department devoting funding to New Construction or Rehabilitation Developments located in the 100-year floodplain. If the Department continues to allow Developments in the floodplain, then Commenter (28) asks that the Department require Development Owners to provide flood insurance to residents that covers their personal property.

STAFF RESPONSE: The Underwriting and Loan Policy rules, specifically §11.302(g)(1)(B), addresses this comment, which states "…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."

Staff recommends no changes based on these comments.

§11.101(a)(2) – Undesirable Site Features (28)

COMMENT SUMMARY: Commenter (28) asks that the Department add proximity to highways, interstates, and other major roadways that are heavily trafficked to the list of Undesirable Site Features. Commenter (28) suggests 1,000 feet as the distance that triggers this rule. Commenter (28) cites research that suggests residents near roadways "suffer higher rates of asthma, reduced lung function, heart disease, cancer, and other health issues associated with car and truck pollution."

STAFF RESPONSE: Staff does not believe including a new Undesirable Site Feature, as suggested by the commenter, could be done without requiring additional public comment. However, the Department is sensitive to any environmental factors that could be considered an Undesirable Site Feature and would recommend that this be a topic of discussion among industry stakeholders for purposes of the 2021 QAP.

Staff recommends no changes based on these comments.

§11.101(a)(3)(B)(i) – Neighborhood Risk Factors (poverty) (16), (28)

COMMENT SUMMARY: Commenter (16) states that this rule does not allow re-syndications for Developments if they are located in census tracts with poverty rates above 40%. Commenter (16) asks for an exemption for Acquisition and Rehabilitation Developments.

Commenter (28) opposes allowing mitigation of high poverty through a local resolution. Commenter (28) prefers the mitigation required under the 2019 QAP, which directed the Applicant to prove to staff that the poverty rate is decreasing and that the locality is making significant investments in the area near the proposed Development. Commenter (28) asks the Department to bear in mind that the "goal of the QAP is to ensure that LIHTC properties are built in high-opportunity areas and in a manner that addresses the years of discriminatory policies and

affordable housing production in Texas that have disparately impacted low-income renters of color."

STAFF RESPONSE: In response to commenter (16), this section requires disclosure if a development site is located in a census tract with a poverty rate above 40%. The rule also provides for mitigation if such disclosure is required. While the various forms of mitigation that could be provided were modified in the 2020 Draft QAP, the rule as drafted allows for a resolution from the governing body to be submitted in order to mitigate the poverty rate with no distinction between new construction and acquisition and rehabilitation developments.

In response to commenter (28), the various forms of mitigation previously allowed to address the poverty rate were challenging for staff to review and, depending on the type of information submitted, it could have been seen as subjective and open to interpretation, rather than objective. Staff believes that local governments would be able to better discern whether there are plans in place to revitalize certain areas or if certain areas are gentrifying. Local governments can take those considerations into account before adopting such resolution, if they so choose, along with any other information they deem appropriate.

Staff recommends no changes based on these comments.

§11.101(a)(3)(B)(iv) – Neighborhood Risk Factors (schools) (4), (5), (6), (7), (8), (10), (13), (15), (20), (22), (23), (26), (27), (28), (30), (31), (32), (33), (34), (36), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), and (54)

COMMENT SUMMARY: Commenters (28), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), and (54) ask that staff not change the proposed rules regarding Site eligibility if the school for which a proposed Development is zoned received a TEA Accountability Rating of F in 2019 and Improvement Required in 2018. These commenters note that, because the schools are already distressed, the Department should not further distress these schools with more low-income students from low-income housing. Several of these commenters believe that families and their children would have better chances of academic success if low-income housing was built near better schools. Commenter (39) argues that, without the current proposed rule language, the Department increases the likelihood of low-income children remaining stuck in the cycle of poverty. Commenter (45) states that, because Texas is such a large state, housing funds should be focused in "areas with passing school ratings, not making areas that have failing grades even worse." Commenter (46) cites the Harvard Moving to Opportunity Project, in which evidence was found that low-income families who moved to low-poverty neighborhoods reduces the intergenerational persistence of poverty. Commenter (28) notes that "the purpose of the QAP is to promote our State's policy to place affordable rental housing in neighborhoods where people with more housing choice—like those of us participating in this commenting process—want to live."

Commenter (28) opposes the exemption from the Neighborhood Risk Factor pertaining to failing schools for "a Development encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period." Commenter (28) believes that, if a Development wants to secure additional federal funding, it should still be required to mitigate its being in the attendance zone of a failing school. Commenter (28) states that the Department's policy, in effect, is to say

that children living in TDHCA-supported Developments should continue to attend poorly performing schools and no mitigation is required. Commenter (28) asks that these Developments still be required to provide mitigation.

Commenters (7), (8), (9), (20), (23), (26), (33), (34) ask that staff eliminate the proposed language in the 2020 QAP regarding ineligible Sites due to school ratings of Improvement Required in 2018 and F in 2019. Commenter (7) states that this disproportionately impacts Public Housing Authorities, whose properties tend to be located in Qualified Census Tracts (QCTs). Many commenters reference analysis performed by Commenter (32) suggesting that approximately 66% of F rated schools are located in QCTs in Texas' five largest cities. Thus, this rule "will severely limit the ability to preserve PHA-owned affordable housing through the 4% HTC/bond programs." Commenters (20), (26), (30), (34) worry that this may prevent the use of Tax Exempt Bonds in Qualified Census Tracts. Given that 4% LIHTC Developments are dependent on the basis boost available in QCTs in order to make the transactions financially feasible, Commenters (30) and (32) fear that an unintended consequence of this rule is preventing the construction of affordable housing where it is needed most. Commenters (30), (31), (32) ask that, at the very least, Tax-Exempt Bond Developments be exempt from this rule's requirements.

Commenters (4), (5), (6) ask that the Department allow for mitigation if a school is rated Improvement Required in 2018 and F in 2019 through two means: first, if the independent school district has an open-enrollment policy; and second, if there is a passing open-enrollment charter school. In both instances the Applicant can commit to providing transportation to and from the school to the Development.

Commenters (7) and (34) state that this rule is contrary to the Department's preservation goals, and ask the Department to consider the unique characteristics of neighborhoods surrounding a proposed Development, not just schools. Commenters (7), (34), (36) also request that any existing Developments going through HUD's RAD conversion process be exempt from 10 TAC §11.101(a)(3)(B)(iv), regarding ineligibility due to a school's TEA ratings. Commenter (36) extends the list of Developments that should also be exempt, including those using CDBG-DR Funds, those located in "target zones," and those existing affordable housing Developments seeking Rehabilitation.

Commenters (8) and (33) worry that this proposed rule "will preclude development in revitalization areas in the inner cities," with Commenter (15) stating that this redlines entire communities. Commenter (8), along with Commenters (10) and (22), also states that Tex. Gov't Code 2306.6715 allows Applicants to appeal a determination regarding an Application's satisfaction of threshold criteria. Therefore, Commenters (8), (10), and (22) believe that Applicants have the right to appeal this staff determination of ineligibility, "even if that is specifically related to the eligibility of a site" (Commenter 8).

Commenters (8) and (15) further conclude that this ineligibility requirement regarding poorly rated schools is in "direct conflict" with the concerted community revitalization requirements of IRC §42, and therefore "redlines" certain areas.

Commenter (15) believes this restriction prevents the development of decent, safe, and affordable housing needed to improve students' educational performance. Commenter (26)

references their own after-school care program, called Homework First, which allows developers to work with schools to improve and promote student educational performance.

STAFF RESPONSE: Staff thanks Commenters (28), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), and (54) for their civic activism, and would like to reiterate that the Department is committed to enacting policies that allow for housing choice among low income households and families.

In response to the many Commenters that ask that a Development be allowed to mitigate its being located within the attendance zone of a school rated Improvement Required in 2018 and F in 2019 by TEA, staff would like to begin by first responding to the analysis conducted by Commenter (32), which also constituted the basis of reasoning from other Commenters. While staff appreciates these Commenters' attempt to map the implications of the rule in question, staff has found several flaws in the analysis conducted.

For the sake of clarity, staff cites the basis for this rule below, which stems from 10 TAC §11.101(b)(1)(C), regarding Ineligible Developments:

> "(C) Ineligibility of Developments within Certain School Attendance Zones. Except for Developments that are encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units, any Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation."

To reiterate, only when a proposed Development is not an existing TDHCA Development, an Elderly Development, or a Supportive Housing Development will that Development be rendered ineligible if it falls within the attendance zone of a school rated Improvement Required in 2018 and F in 2019. Moreover, despite being an item rendering a development site ineligible, an applicant would be able to appeal the determination by staff to terminate the Application based on the ineligibility and such appeal could be brought before the Board if the Applicant chose.

The first inaccuracy in the analysis conducted by Commenter (32) and cited by other Commenters is that it is based on schools that have only received an F rating for 2019. But schools that have received an F rating for only one year are not ineligible, as is seen by a clear reading of 10 TAC §11.101(b)(1)(C) and §11.101(a)(3)(B)(iv). Staff notes that the 2020 Draft QAP that was presented to the Rules Committee of the Department's Governing Board was initially drafted to state that regardless of development type or population served, any school within the attendance zone that achieved a 2019 F rating would be considered ineligible. However, through testimony and discussions at the Rules Committee meeting, this provision was modified to what was released for public comment – that schools with a D rating for 2019 and Improvement Required for 2018 or schools with an F rating for 2019 and Met Standard in 2018 would require disclosure but allows for exceptions as noted in the text excerpt above.

The rules are only triggered when the school is F in 2019 **and** Improvement Required in 2018. Thus, the calculations generated by Commenter (32) significantly overstates the number of schools that will purportedly render ineligible Qualified Census Tracts. The data submitted suggests that it is 402 schools, or 4% of all schools in Texas, that are affected by this rule, but according to staff's analysis, based on a correct application of the rule, it is actually only 102 schools, or 1%.

The second inaccuracy is that, in light of the mistaken analysis, these Commenters not only overstate the number of "ineligible schools," but then also overstate "ineligible census tracts," in the five largest metros in Texas. Austin does not have 10 ineligible schools in QCTs, but two; Houston does not have 32, but two; Fort Worth is not 15, but three; Dallas is not 11, but one; San Antonio is not 31, but nine. Indeed, staff believes that, based on their internal mapping and analysis, the more common reality in major cities is that QCTs do **not** tend to have schools located in them rated Improvement Required in 2018 and F in 2019. In fact, this is a very rare occurrence. Another very significant concern with the Commenter's assumption is that they equate an ineligible school located within a QCT, as the QCT being an ineligible tract. This rule does not preclude an entire QCT from being eligible, but rather only the specific attendance zones of the ineligible school within those QCTs. Moreover, these commenter's imply that location in a QCT is the only avenue by which a 4% application can obtain the boost in eligible basis. For clarification, location in a Difficult to Development Area (DDA) also qualifies a 4% application eligible for such boost.

In response to commenters (4), (5), and (6) who recommended that for those sites that trigger ineligibility based on a school that is 2019 F rated and 2018 Improvement Required be allowed to mitigate by committing to providing transportation to and from a school in an open enrollment district or open enrollment charter school (which staff presumes would have the desired acceptable ratings), staff notes that such provision was included in the 2019 QAP as possible mitigation; however, there were no applications submitted that chose this option. Staff removed this option from the 2020 Draft QAP based on concerns over how, if selected, the Department would monitor for the requirement and how it should underwrite the long-term expense of providing transportation.

In response to Commenter (28)'s request that existing TDHCA Developments seeking additional LIHTC funds for Rehabilitation not being exempt from having to mitigate poor performing schools, staff believes the policy objectives of the Department should be in preserving and improving the housing in areas in which the Department has previously invested. Moreover, the changes that have been proposed to make new construction developments in areas with poor performing schools also furthers the policy objectives of the Department in creating dispersion and driving the production of new units in areas with good schools. For the 2020 program year, staff will evaluate the number of existing TDHCA developments seeking additional LIHTC funds that are in areas with poor performing schools that would otherwise render them ineligible or require mitigation to see if changes to this provision should be considered for purposes of the 2021 QAP.

While staff does not recommend any changes to this section based on the comments received, staff has removed the sentence that states schools with a 2019 rating of F and 2018 Improvement

Required are ineligible since that sentence is already mentioned under §11.101(b)(1)(C) of this section.

§11.101(a)(3)(D) – Mitigation of Neighborhood Risk Factors (10)

COMMENT SUMMARY: Commenter (10) asks that the following sentence be removed from this subparagraph: "If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting." Commenter (10) believes that this prevents a holistic analysis of an issue and states that there are instances where it is appropriate to present new information, particularly in light of staff reviews and questions.

STAFF RESPONSE: The rules require the applicant to submit a Neighborhood Risk Factor Packet to address the Neighborhood Risk Factor(s) that are applicable to their proposed development site, along with any mitigation they believe to be appropriate and address the specific Neighborhood Risk Factor. After the packet is submitted and reviewed by staff, any follow-up questions are asked and, in response, additional information may be provided by the applicant that they believe will address those questions. After review of all of the information, if the application is terminated based on this ineligibility criteria, pursuant to the rule, the applicant will be allowed to appeal to the Executive Director. At such time, the applicant may provide any information that might substantiate their appeal. If the Executive Director finds the information insufficient to substantiate eligibility, the applicant would be allowed to have the matter heard before the Board; however, given the opportunities prior to reaching this point to present information relative to the matter the applicant should not be allowed to present new information that was not able to be reviewed and taken into account by staff and the Executive Director. In doing so, it would not be representative of an efficient process such that a recommendation of eligibility could have been decided without the need for an appeal or Board determination. Moreover, it does not provide the Board with comfort in knowing the information was reviewed by staff and does not conflict with any other requirements in the rule or other aspects of the application.

Staff recommends no changes based on these comments.

§11.101(b)(4) – Mandatory Development Amenities (24)

COMMENT SUMMARY: Commenter (24) urged the Department to make a commitment to energy efficiency by explicitly mandating compliance with the statewide energy code, which requires all new construction be in compliance with the 2015 IECC. Commenter (24) also asks that the Department mandate that all fans, electrical fixtures, and appliances be Energy Star certified and that all plumbing fixtures be WaterSense certified.

Commenter (24) takes issue with the phrase "Energy-Star or equivalently rated" in this paragraph, expressing concern that the allowance for equivalency may undermine efforts to improve energy efficiency.

STAFF RESPONSE: As it relates to the comment on compliance with the 2015 IECC, this was previously in the rules but was removed several years ago. Staff does not believe that where

there is an existing state law that such mandate then needs to be reiterated in the Department's rules. While staff understands that adherence to 2015 IECC may be different for new construction developments compared to rehabilitation developments, this section is providing applicants with the flexibility in the event 2015 IECC may not apply and is responding to stakeholder comments from roundtable discussions and comments received over the years. Moreover, where a developer chooses to use something that is "equivalently rated," the Department will be looking for confirmation that it is indeed equivalently rated. Similarly, the same would be expected where "equivalently qualified" plumbing fixtures are used instead of EPA WaterSense.

Staff recommends no changes based on these comments.

§11.101(b)(6)(B)(iii) – Energy and Water Efficiency Features (24), (28), (35)

COMMENT SUMMARY: Commenter (24) notes that LED lighting is already required by the state of Texas' adopted building code (2015 IECC), so questions why there is a point incentive for providing LED lighting under this clause. Similarly, Commenters (28), (35) suggested LED lighting be mandatory. Commenters (28), (35) suggested having an energy-star or equivalently rating ceiling fan be mandatory for all bedrooms and living rooms, citing having such fans in all bedrooms is a basic and already an industry standard amenity. As it relates to the EPA WaterSense toilets, showerheads and faucets added under this item, Commenters (28), (35) suggested these move to the Mandatory Development Amenities section stating they are easy, cost effective and extremely impactful. Commenter (24) asks that an additional scoring item be added worth two points for installing 20 SEER HVAC. Commenter (24) also asks that staff add a scoring item that incentivizes the installation of rooftop PV solar systems. Commenters (28), (35) provided a list of items that they requested be added to this section that included photovoltaic/solar hot water ready, FloorScore certified vinyl flooring, resilient floor or Green Label certified carpet, specifications of R-rating systems for insulation and specific compound levels for interior paints, all of which are more detailed in their specific comments attached hereto. Commenters (28), (35) also suggested that since an Energy-Star rated refrigerator is already mandatory, the fact that this section includes the same, but with an icemaker does not make it a green amenity and suggested the item instead be moved to Mandatory Development Amenities.

STAFF RESPONSE: In response to the commenters, staff believes that making the suggested changes that would move some of the options into the mandatory amenity section is a change that would require additional public comment that could not be received considering the current rule-making timeline. In response to those comments that suggested items be added to the list of energy and water efficiency features, staff believes to do so would require additional research to better understand the cost savings and benefits and believes more attention is needed to be placed on this section outside of the rule-making process in order to make the section more meaningful, achievable for properties, adequately addresses the needs of the property and achieves policy objectives for the state in how it administers the housing tax credit program. It is worth nothing that this section was created at the direction of the Rules Committee of the Department's Governing Board and during a compressed timeline. Expanding this section further should be done in a less compressed timeframe where there is an opportunity for dialogue.

Staff recommends no changes based on these comments.

§11.201(2)(B) – Non-Lottery Applications (for Tax-Exempt Bond Developments) (10), (22)

COMMENT SUMMARY: Commenters (10) and (22) are concerned about the proposed timelines associated with Tax-Exempt Bond Developments that submit Applications for non-Competitive Tax Credits to the Department. The Commenters ask that Priority 3 Applications be allowed to submit an Application 30 days prior to the issuance of the Certificate of Reservation. Alternatively, Commenter (10) asks that staff remove language in 10 TAC §11.201(6) that states that non-Competitive Housing Tax Credit Applications received during the Competitive Tax Credit round may not be reviewed or underwritten in time for the May, June, or July Board agendas.

STAFF RESPONSE: There were changes to Texas Government Code 1372 during the 86th Legislative session that affected Tax-Exempt Bond and 4% Housing Tax Credit (HTC) applications. Specifically, SB 1474 lengthened the time under the Certificate of Reservation that a 4% HTC applicant has to close from 150 days to 180 days. Under the 2019 QAP, applicants were effectively allowed 180 days to close by allowing applications to be submitted 30 days before the reservation was issued. Applications are individually tracked by staff based on submission date, which vary month to month, to ensure the reservations are issued by the date prescribed in the rule. For those that are not, the rule allows for termination. Given the volume of 4% HTC applications submitted, which has increased substantially over the past year, the Department does not have the capacity to individually track the submission/reservation dates associated with each application. Given the new provision of 180 days to close, the proposed rule would allow applicants to submit an application the day the reservation is issued, get to a Board meeting 90 days later, and still provide 90 days for the applicant to close on the financing before the bond reservation expires. Moreover, given the changes (financing structure, organizational structure, etc.) that applicants frequently make to their applications after they are submitted, having the clock start on the Certificate of Reservation will help ensure aspects of the application are solidified when they are submitted.

In response to commenter (10) as it relates to requests for 4% applications to be placed on May, June, or July Board agendas, the applicant, for the most part, drives the timing associated with when the reservation gets issued. Despite the fact that applicants have submitted applications regardless of this provision in the past, the Department has used its best efforts to place 4% applications on their requested Board meeting agenda. Moreover, to staff's knowledge, no 4% applicant has had to secure another bond reservation solely because the Department was unable to review the application in a sufficient timeframe. Staff notes that the language in §11.201(6)(B) was modified in the draft to state that applications "may not be reviewed or underwritten" instead of "will not be prioritized for review or underwriting."

Staff recommends no changes based on these comments.

§11.204(6)(A) – Experience Requirement (17), (21), (30), (37)

COMMENT SUMMARY: Commenter (17) asks that, for the purposes of meeting the 150 Unit experience requirement, the construction of motel, hotel or extended-stay units count. Commenter (17) believes that such experience applies directly to the construction of Supportive Housing Development, and notes that this experience is more valuable than single-family experience.

Commenters (21), (30), (37) ask why changes are being made to this subparagraph, and suggest that the requirement that this experience of developing 150 Units in the previous 10 years seems arbitrary. Commenter (21) asks that the 10 year requirement be deleted. Commenter (30) suggests that THE DEPARTMENT should maintain a database of Developers' experience, and once granted, it should be kept in perpetuity.

STAFF RESPONSE: In response to commenter (17), broadening the type of experience to include construction of hotels, motels, etc. is something that staff would need to better evaluate that is not achievable given the current rule-making timeline and something that could garner additional public comment that would need to be submitted. In response to the other commenters, staff understands the comments raised regarding the timeframe of the experience and recommends that an experience certification issued by the Department from 2014 through 2019 fulfill the experience requirement. Staff proposes that this be a topic for discussion with industry stakeholders throughout the upcoming program year in preparation for the 2021 QAP.

Staff recommends the following changes to this section:

"**(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 ~~2017~~2014 through 2019, 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. ~~in the ten years preceding submission.~~ Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25(h)(1)of this title (relating to Experience). Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:…"

§11.302(e)(1)(B)(iii) – Acquisition Costs for Identity of Interest Transactions (10), (14), (18)

COMMENT SUMMARY: Commenters (10) and (18) ask that staff remove the requirement for a secondary review of the original appraisal by another licensed appraiser that is not related to the original appraiser or Development team. Commenters (10) and (18) alternatively ask that TDHCA publish a list of approved appraisers. The Commenters are concerned that the Uniform Standards of Professional Appraisal Practice (USPAP) does not allow an appraiser to review and comment

on another appraisal, and instead requires that the second appraiser conduct their own appraisal. The Commenters state that having to engage two appraisers simultaneously adds unnecessary costs to the transaction. The Commenters also state that this may be infeasible during the Competitive Housing Tax Credit round, given its tight timeline. Commenter (14) states that TDHCA's current underwriting process and an arm's-length appraisal requirement would better serve TDHCA's interest not to over-source Developments' financing.

STAFF RESPONSE: Staff appreciates the feedback from Commenters (10) and (18), but emphasizes that a secondary review of the original appraisal or a second appraisal is only required in a very limited set of circumstances if the proposed Development : 1) is an identify of interest transaction, per 10 TAC §11.302(e)(1)(B); 2) will be financed using tax-exempt mortgage revenue bonds, per §11.302(e)(1)(B)(iii)(V); 3) currently has project-based rental assistance or rent restrictions that will remain in place after the Acquisition, per §11.302(e)(1)(B)(iii)(V); and 4) the Applicant asks that REA staff underwrite an "as-is" value of the Development that exceeds the original acquisition cost. Only when all four conditions are present must an Applicant secure a secondary review of the Appraisal required by 10 TAC §11.302(e)(1)(B)(ii)(II)(-a-). Given the very narrow circumstances, staff maintains that it is reasonable to request additional review of the proposed as-is value in order to maintain the integrity of the underwriting process. Additionally given that the appraisal is provided by the Applicant, prudent review of the appraisal is a fiduciary function.

Staff recommends no changes based on these comments.

STAFF CORRECTION: In drafting responses to public comment on this particular rule, staff believes clarity could be added by moving a sentence from 10 TAC §11.302(e)(1)(B)(i)(II) to §11.302(e)(1)(B)(iii)(V). This subparagraph has been amended by staff as follows:

(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 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 ~~(60 months for Developments meeting the requirements of subclause (iii)(V) of this subparagraph)~~, 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:

(-a-) an appraisal that meets the requirements of §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% 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% 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. The annual return may not be applied for any period of time during which the existing residential or non-residential buildings are occupied or otherwise producing revenue.

(iii) For Identity of Interest transactions, the acquisition cost used for underwriting will be:

(I) the original acquisition cost evidenced by clause (B)(ii)(I) of this subparagraph plus costs identified in item (B)(ii)(II)(-b-) of this subparagraph; or,

(II) the "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph if less than the value identified in subclause (I); or,

(III) if applicable, the transfer value approved by USDA; or,

(IV) if applicable, the appraised land value for transactions where all existing buildings will be demolished.; or,

(V) if applicable, for Developments that will be financed using tax-exempt mortgage revenue bonds that currently have project-based rental assistance or currently have rent restrictions that will remain in place on the property after the acquisition and the current owner has owned the property for at least 60 months prior to the first day of the Application Acceptance Period ~~meets clause (e)(1)(B)(i) of this paragraph~~, the Underwriter shall only restrict the acquisition costs if it exceeds the "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph. The appraisal used for this purpose must be reviewed by a licensed or certified appraiser by the Texas Appraisal Licensing and Certification Board that is not related to the original appraiser or anyone on the Development Team and in accordance with USPAP Standard 3. If the reviewing appraiser disagrees with the appraised value determined by the appraiser, the Underwriter will determine the acquisition cost to be used in the analysis.

§11.302(e)(7) – Developer Fee (14), (16)

COMMENT SUMMARY: Commenters (14) and (16) disagree with the proposed Developer Fee on acquisition costs if there is an identity of interest in the transaction. Commenter (14) says that it is reasonable for the 9% LIHTC, it is unreasonable for the 4% LIHTC, given that a larger Developer Fee generates more eligible basis, which generates more funding for Developments seeking Rehabilitation. Commenter (14) asks TDHCA to recognize how the Developer Fee on Acquisition and Rehabilitation transactions is often used as a source of gap financing, and states that because there is no ceiling on 4% LIHTCs, there is no harm in allowing Developers to take the full Developer Fee on Acquisition basis on related party transactions. Commenter (16) asks that staff raise the allowable Developer Fee attributable to acquisition costs from 5% to 15%, with the requirement that two-thirds be deferred. Commenter (16) provides a comparison of the sources and uses between the two Developer Fees (5% and 15%), and states that the higher Developer Fee makes more Rehabilitation financially feasible.

Commenter (16) also asks if there is a mistake in subparagraph (C), given the repeated phrase of "Rehabilitation/New Construction," when this subparagraph only applies "in the case of a transaction requesting acquisition Housing Tax Credits."

STAFF RESPONSE: Staff reminds Commenters that, in previous years' rules no Developer Fee was allowed on acquisition costs in an identity of interest transaction. For the 2020 QAP, staff has proposed an increase to the allowed Developer Fee in this situation, from 0% to 5%.

The purpose of a Developer Fee, as defined in 10 TAC §11.1(d)(36) is compensation for work actively performed for Developer Services. The 15% Developer Fee applicable to other parts of the Application is not needed on the Acquisition costs of an existing Development when the proposed Development Owner, or Affiliate of the Owner, already owns the existing

Development. There are transactional costs associated with the formation of a new general partnership or limited liability corporation and the subsequent transfer of the existing Development to that new entity. The proposed 5% Developer Fee allowed on the acquisition cost is sufficient to pay these cost in an Identity of Interest sale. Staff disagrees that the purpose of the Developer Fee is to serve as additional financing for rehabilitation expenses or to serve as gap financing. Regardless of the lack of ceiling on 4% LIHTC, the Department is obligated under Section 42(m)(2) to award no more credits than are necessary for the transaction. Increasing Developer fee for the purposes of being awarded more tax credits for whatever reason, including generating gap financing by deferral of the larger fee, is in direct conflict with the provisions of Section 42(m)(2).

Staff recommends no changes based on these comments.

In response to Commenter (16), staff agrees that any mention of "New Construction" should be removed from 10 TAC §11.302(e)(7)(C), regarding Developer Fee involving acquisition Housing Tax Credits. Additionally, staff has added the appropriate conjunctions at the end of each clause. This subparagraph is amended as follows:

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer Fee in calculating Rehabilitation~~/New Construction~~ Housing Tax Credits will not exceed 15% of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee for Developments proposing 50 Units or more and 20% of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee for Developments proposing 49 Units or less; and

(ii) no Developer Fee attributable to an identity of interest acquisition of the Development will be included; or~~and~~

(iii) ~~if applicable~~ for Developments meeting the requirements of 10 TAC §11.302(e)(1)(B)(iii)(V), the allocation of eligible Developer Fee in calculating Rehabilitation~~/New Construction~~ Housing Tax Credits will not exceed 5 percent of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee.

§11.306 – Scope and Cost Review Guidelines (11)

COMMENT SUMMARY: Commenter (11) asks that the phrase "comprehensive description" needs either to be eliminated or further defined. Commenter (11) worries that this language will push report providers to provide unnecessary, excessive information about a Development that needs Rehabilitation.

STAFF RESPONSE: Staff believes that the Governing Board of TDHCA has recently expressed keen interest in better understanding the costs associated with a proposed Development seeking Rehabilitation. Staff therefore thinks it is reasonable to expect report providers to describe in detail the scope of work and the capital needs of a proposed Rehabilitation because this will allow staff to underwrite more accurately the proposed transactions. Staff believes the proposed §11.306 – Scope and Cost Review Guidelines provides sufficient direction for providers to complete the report.

Staff recommends no changes based on these comments.

STATUTORY AUTHORITY. The adoption is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

Chapter 11, Housing Tax Credit Program Qualified Allocation Plan

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 Post Award and Asset Management Requirements, Compliance Monitoring, and Incomes and Rents rules) 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 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 2 of this title (relating to Enforcement), 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 subchapter does not apply to 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 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 is not a rule and 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 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.**

(c) Competitive Nature of Program. Applying for Competitive Housing Tax Credits is a technical process that must be followed completely and correctly. Any person who desires to request any reasonable accommodation for any aspect of this process is directed to §1.1 of this Title (relating to Reasonable Accommodation Requests to the Department). As a result of the highly competitive nature of applying for Housing Tax Credits, an Applicant should proceed on the assumption that deadlines are fixed and firm as further provided for in subsection (f) of this section.

(d) Definitions. The capitalized terms or phrases used herein are defined below. 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 at least75% of the original building remains at 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 Deficiency--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 pre-application; or to assist staff in evaluating the Application or pre-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 or pre-application. Administrative Deficiencies may be issued at any time while the Application or pre-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, closing out of a Contract, or resolving of any issues related to compliance. A matter may begin as an Administrative Deficiency but later be determined to have constituted a Material Deficiency. If an Applicant claims points for a scoring item, but provides supporting documentation that would support fewer points for that item, staff would treat this as an inconsistency and issue an Administrative Deficiency which will result in a correction of the claimed points to align with the provided supporting documentation. If the supporting documentation is not provided for claimed points, the 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 in some circumstances may be terminated upon foreclosure or deed in lieu of foreclosure. The Department reserves the right to extend the Affordability Period for 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 Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) nine percent for 70% present value credits, pursuant to Code, §42(b); or

(ii) fifteen basis points over the current Applicable Percentage for 30% present value credits, unless fixed by Congress, pursuant to Code, §42(b) for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based on:

(i) the percentage indicated in the Agreement and Election Statement, if executed; or

(ii) the percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Means any Person or a group of Persons and any Affiliates of those Persons who file an Application with the Department requesting funding or a tax credit allocation subject to the requirements of this chapter or 10 TAC Chapters 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.

(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 eight 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 two feet deep and three feet wide and high enough to accommodate five 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 (relating to Carryover for Competitive Housing Tax Credits Only 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 Development.

(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 and Part 93, 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.

(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.

(24) Competitive Housing Tax Credits (HTC)--Tax credits available from the State Housing Credit Ceiling.

(25) Compliance Period--With respect to a building financed, in part with proceeds of Housing Tax Credits, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to Code, §42(i)(1).

(26) Continuously Occupied--The same household has resided in the Unit for at least 12 months.

(27) Contract--See Commitment.

(28) Contract Rent--Net rent based upon current and executed rental assistance contract(s), typically with a federal, state or local governmental agency.

(29) Contractor--See General Contractor.

(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-member body. A member of a multi-member body is not acting in concert and therefore does not exercise control in that role, but 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 individuals and entities are set forth in subparagraphs (A) - (E) of this paragraph. Multiple Persons may be deemed to have Control simultaneously.

(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 50% or more interest in the corporation, and any individual who has Control with respect to such stockholder;

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

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

(D) For limited liability companies, all managers, managing members, members having a 50% 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; or

(E) For 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.

(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, and as described in §11.302(d)(4) of this chapter.

(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, and as described in §11.302(i)(2) of this chapter.

(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.

(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).

(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.

(36) Developer Fee--Compensation in amounts defined in §11.302(e)(7) of this chapter (relating to Total Housing Development Costs, Developer Fee in the 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.

(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 or Affiliate; and

(J) Any other customary and similar activities determined by the Department to be Developer Services.

(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 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))

(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.

(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))

(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~~.~~, including access to that area or areas through ingress and egress easements.

(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.

(43) Direct Loan--Funds provided through the HOME Program, Neighborhood Stabilization Program, National Housing Trust Fund, Tax Credit Assistance Program Repayment Funds (TCAP RF) or State Housing Trust Fund or other program available through the Department for multifamily development. The terms and conditions for Direct Loans will be determined by provisions in Chapter 13 of this title (relating to Multifamily Direct Loan Rule) and the NOFA under which they are awarded, the Contract, or the loan documents. The tax-exempt bond program is specifically excluded.

(44) Economically Distressed Area--An area that is in a census tract that has a median household income that is 75% 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. 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.

(45) Effective Gross Income (EGI)--As provided for in §11.302(d)(1)(D) of this chapter. 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.

(46) Efficiency Unit--A Unit without a separately enclosed Bedroom.

(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.

(48) Eligible Hard Costs--Hard Costs includable in Eligible Basis for the purposes of determining a Housing Credit Allocation.

(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 §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines) as it relates to a specific Development.

(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.

(51) Existing Residential Development--Any Development Site which contains existing residential Units at any time as of the beginning of the Application Acceptance Period.

(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; or

(B) The date which is 15 years after the close of the Compliance Period.

(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.

(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) or (B) of this paragraph:

(A) Any subcontractor, material supplier, or equipment lessor receiving more than 50% of the contract sum in the construction contract will be deemed a prime subcontractor; or

(B) If more than 75% 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.

(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.

(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.

(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.

(58) Gross Capture Rate--Calculated as the Relevant Supply divided by the Gross Demand, and as described in §11.302(i)(1) of this chapter.

(59) Gross Demand--The sum of Potential Demand from the Primary Market Area (PMA) and demand from other sources, as described in §11.303(d)(9)(E)(ii) of this chapter.

(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.

(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.

(62) HTC Development (also referred to as "HTC Property")--A Development subject to an active LURA for Housing Tax Credits allocated by the Department.

(63) HTC Property--See HTC Development.

(64) Hard Costs--The sum total of Building Costs, Site Work costs, Off-Site Construction costs and contingency.

(65) Historically Underutilized Businesses (HUB)--An entity that is certified as such under and in accordance with Tex. Gov't Code, Chapter 2161.

(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.

(67) Housing Credit Allocation--An allocation of Housing Tax Credits by the Department to a Development Owner as provided for in Code.

(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.

(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 the definition of General Partner in 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.

(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 §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 satisfying the qualifications in §11.303(c) of this chapter, and 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. 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 have been paid, as provided for in §11.302(d)(3) of this chapter.

(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 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. If the construction does not use studs, NRA is measured to the outside of the material to which the drywall is affixed. Remote Storage of no more than 25 square feet per Unit may be included in NRA. For Developments using Multifamily Direct Loan funds the Remote Storage may only be included

in NRA if the storage area shares a wall with the residential living space. 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.

(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 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) 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 Scope and Cost Review.

(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) Primary Market--Sometimes referred to as "Primary Market Area." The area defined by the Market Analyst as described in §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) Primary Market Area (PMA)--See Primary Market.

(98) Principal--Persons that will be capable of exercising Control pursuant to §11.1(d) of this chapter (relating to the definition of Control) over a partnership, corporation, limited liability company, trust, or any other private entity.

(99) 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.

(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) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the Applicable Fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(102) Qualified Contract Price (QC Price)--Calculated purchase price of the Development as defined within Code, §42(h)(6)(F) and as further delineated in §10.408 of this Title (relating to Qualified Contract Requirements).

(103) Qualified Contract Request (Request)--A request containing all information and items required by the Department relating to a Qualified Contract.

(104) Qualified Entity--Any entity permitted under Code, §42(i)(7)(A) and any entity controlled by such a qualified entity.

(105) Qualified Nonprofit Development--A Development which meets the requirements of Code, §42(h)(5), includes the required involvement of a Qualified Nonprofit Organization, and is seeking Competitive Housing Tax Credits.

(106) Qualified Nonprofit Organization--An organization that meets the requirements of Code §42(h)(5)(C) 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), including having a Controlling interest in the Development.

(107) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the construction of Units 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 requirements. Developments using Multifamily Direct Loan funds are required to follow the applicable federal requirements.

(108) 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 any Development Units 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.

(109) 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 in an Application submitted prior to the subject, based on the Department's evaluation process described in §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.

(110) Report--See Underwriting Report.

(111) Request--See Qualified Contract Request.

(112) Reserve Account--An individual account:

(A) Created to fund any necessary repairs or other needs for a Development; and

(B) Maintained by a First Lien Lender or Bank Trustee.

(113) Right of First Refusal (ROFR)--An Agreement to provide a series of priority rights to negotiate for the purchase of a Property by a Qualified Entity or a Qualified Nonprofit 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.

(114) Rural Area--

(A) A Place that is located:

(i) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(ii) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an Urban Area; or

(iii) within the boundaries of a local political subdivision that is outside the boundaries of an Urban Area.

(B) For areas not meeting the definition of a Place, the designation as a Rural Area or Urban Area is assigned in accordance with §11.204(5)(A) of this chapter (relating to Required Documentation for Application Submission) or as requested in accordance with §11.204(5)(B).

(115) Scope and Cost Review (SCR)--Sometimes referred to as "Physical Needs Assessment," "Project Capital Needs Assessment," or "Property Condition Report." The SCR 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 SCR must be prepared in accordance with §11.306 of this chapter (relating to Scope and Cost Review Guidelines), as it relates to a specific Development.

(116) Scoring Notice--Notification provided to an Applicant of the score for their Application after Staff review. More than one Scoring Notice may be issued for an Application.

(117) Single Room Occupancy (SRO)--An Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate Transitional Housing. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.

(118) Site Control--Ownership or a current contract or series of contracts that meets the requirements of §11.204(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) Site Work--Materials and labor for the horizontal construction generally including excavation, grading, paving, underground utilities, and site amenities.

(120) 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), and Treasury Regulation §1.42-14.

(121) 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) Supportive Housing--A residential rental Development and Target Population meeting the requirements of subparagraphs (A) through (E) of this paragraph.

(A) Be intended for and targeting occupancy for households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living;

(B) Be owned and operated by an Applicant or General Partner that must:

(i) have supportive services provided by the Applicant, an Affiliate of the Applicant, or a Third Party provider if the service provider is able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three years prior to the beginning of the Application Acceptance Period, or Application Submission Date for Multifamily Direct Loan Applications;

(ii) secure sufficient funds necessary to maintain the Supportive Housing Development's operations throughout the entire Affordability Period; and

(iii) provide evidence of a history of fundraising activities reasonably deemed to be sufficient to address any unanticipated operating losses; and

(iv) provide a fully executed guaranty agreement whereby the Applicant or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period.

(C) Where supportive services are tailored for members of a household with specific needs, such as:

(i) homeless or persons at-risk of homelessness;

(ii) persons with physical, intellectual, and/or developmental disabilities;

(iii) youth aging out of foster care;

(iv) persons eligible to receive primarily non-medical home or community-based services;

(v) persons transitioning out of institutionalized care;

(vi) persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing;

(vii) Persons with Special Housing Needs including households where one or more individuals have alcohol and/or drug addictions, Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, or is a veteran with a disability; or

(viii) other target populations that are served by a federal or state housing program in need of the type and frequency of supportive services characterized herein, as represented in the Application and determined by the Department on a case-by-case basis.

(D) Supportive services must meet the minimum requirements provided in clauses (i) – (iv) of this subparagraph:

(i) regularly and frequently offered to all residents, primarily on-site;

(ii) easily accessible and offered at times that residents are able to use them;

(iii) must include readily available resident services and/or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living; and

(iv) a resident may not be required to access supportive services in order to qualify for or maintain tenancy in a rent restricted Unit that the household otherwise qualifies for; and,

(E) Supportive Housing Developments must meet the criteria of either clause (i) or (ii) of this subparagraph:

(i) not financed, except for construction financing, with any debt containing foreclosure provisions or debt that contains must-pay repayment provisions (including cash-flow debt). Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted from Subchapter D of this chapter (relating to Underwriting and Loan Policy). 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 Underwriting Report resulting in the addition of debt prohibited under this definition will result in the revocation of IRS Form(s) 8609, and may not be made for Developments that have Direct Loans after a LURA is executed, except as a part of an approved Asset Management Division work out arrangement; or

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for all Units ~~for the entire affordability period~~, and meet all of the criteria in subclauses (I) through (VIII) of this clause:

(I) the Application includes documentation of how resident feedback has been incorporated into design of the proposed Development;

(II) the Development is located less than ½ mile from regularly-scheduled public transportation, including evenings and weekends;

(III) at least 10% of the Units in the proposed Development meet the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 for persons with mobility impairments;

(IV) multiple systems will be in place for residents to provide feedback to Development staff;

(V) a resident is or will be a member of the Development Owner or service provider board of directors;

(VI) the Development's Tenant Selection Criteria will include a clear description of

any credit, criminal conviction, or prior eviction history that may disqualify a potential resident. The disqualification cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non federally required criteria);

(VII) the Development will have a comprehensive written eviction prevention policy that includes an appeal process; and

(VIII) the Development will have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan will be readily accessible to residents.

(123) 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 (relating to Compliance Monitoring), and published on the Department's web site (www.tdhca.state.tx.us).

(124) 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, although the Application may request that any other populations required for targeting, preference, or limitation by a federal or state fund source are identified.

(125) 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), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(126) 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) Third Party--A Person who is not:

(A) An Applicant, General Partner, Developer, or General Contractor;

(B) An Affiliate to the Applicant, General Partner, Developer, or General Contractor;

(C) Anyone receiving any portion of the administration, contractor, or Developer Fee from the Development; or

(D) In Control with respect to the Development Owner.

(128) 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) Transitional Housing--A Supportive Housing Development funded with HOME, NSP, or TCAP_RF, and not layered with Housing Tax Credits 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 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.

(130) U.S. Department of Agriculture (USDA)--Texas Rural Development Office (TRDO) serving the State of Texas.

(131) 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) Underwriter--The author(s) of the Underwriting Report.

(133) Underwriting Report--Sometimes referred to as the Report. A decision making tool prepared by the Department's Real Estate Analysis Division that contains a synopsis of the proposed Development and that reconciles the Application information, including its financials and market analysis, with the underwriter's analysis. The Report allows the Department and Board to determine whether the Development will be financially feasible as required by Code §42(m), or other federal or state regulations.

(134) Uniform Multifamily Application Templates--The collection of sample resolutions and form letters, produced by the Department, as may be required under this chapter or Chapters 12 and 13 of this title (relating to Multifamily Housing Bond Rules and Multifamily Direct Loan Rule, respectively) that may be used, (but are not required to be used), to satisfy the requirements of the applicable rule.

(135) Uniform Physical Condition Standards (UPCS)--As developed by the Real Estate Assessment Center of HUD.

(136) 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) 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. A powder room is the equivalent of a half-bathroom, but does not by itself constitute a change in Unit Type.

(138) 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% occupancy level for at least 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) 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 subparagraph (A) within the definition of Rural Area in 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 §11.204(5) of this chapter.

(140) Utility Allowance--The estimate of tenant-paid utilities made in accordance with Treasury Regulation, §1.42-10 and §10.614 of this Title (relating to Utility Allowances).

(141) 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.

(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, 2019, 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 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. Deadlines, with respect to both date and time, 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. 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.

(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 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, 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

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. 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 considering 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 their handling of actions regarding such resolution(s) are 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, 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 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 the applicable rules. 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 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 a term or definition, a common usage of the particular term, or other issues relevant to a rule or requirement. All such requests and 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. An Applicant may appeal a determination for their Application, using the Appeal Process provided for in §11.902 of this chapter, if the determination provides for a treatment that relies on factors other than the explicit definition. A Board determination may not be appealed. A staff or Executive Director determination not timely appealed cannot be further appealed or challenged. ~~Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission.~~

§11.2. Program Calendar for 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 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.

Deadline	Documentation Required
01/03/2020	Application Acceptance Period Begins. Public Comment period starts.
01/08/2020	Pre-Application Final Delivery Date (including waiver requests).
02/14/2020	Deadline for submission of Application for .ftp access if pre-application not submitted.
02/28/2020	End of Application Acceptance Period and Full Application Delivery Date. (including Quantifiable Community Participation documentation; Environmental Site Assessments (ESAs), Scope and Cost Reviews (SCRs); 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).
04/01/2020	Market Analysis Delivery Date pursuant to §11.205 of this chapter.
05/01/2020	Deadline for Third Party Request for Administrative Deficiency.

Deadline	Documentation Required
Mid-May 2020	Scoring Notices Issued for Majority of Applications Considered "Competitive."
06/19/2020	Public comment to be included in the Board materials relating to presentation for awards are due in accordance with 10 TAC §1.10.
June 2020	On or before June 30, publication of the list of Eligible Applications for Consideration for Award in July.
July 2020	Final Awards.
Mid-August	Commitments are Issued.
11/02/2020	Carryover Documentation Delivery Date.
11/30/2020	Deadline for closing under §11.9(c)(8) (if applicable) (not subject to an extension under 10 TAC §11.2(a) pursuant to the requirements of 10 TAC §11.9(c)(8)).
07/01/2021	10% Test Documentation Delivery Date.
12/31/2022	Placement in Service.
Five business days after the date on the Deficiency Notice (without incurring point loss)	Administrative Deficiency Response Deadline (unless an extension has been granted).

(b) Tax-Exempt Bond and Direct Loan Development Dates and Deadlines. This section reflects key dates for all multifamily development programs except for the Competitive Housing Tax Credit Program. 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 business days provided; however, that the Applicant requests an extension prior to the date of the original deadline. Other deadlines may be found in 10 TAC Chapters 12 and 13 or a NOFA.

(1) Full Application Delivery Date. The deadline by which the Application must be received by 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 §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 6, 2019, Applicants that receive an advance notice regarding a Certificate of Reservation 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 13, 2019, Applicants that participated in the Texas Bond Review Board Lottery must submit the complete tax credit Application, including all required Third Party Reports, to the Department.

(4) Administrative Deficiency Response Deadline. Such deadline shall be five business days after the date on the deficiency notice ~~without incurring a penalty fee pursuant to §11.901 of this chapter (relating to Fee Schedule)~~, unless extended as provided for in 10 TAC §11.201(7) related to the Deficiency Process.

(5) Third Party Report Delivery Date (Environmental Site Assessment (ESA), Scope and Cost Review (SCR), 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 §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 pursuant to §11.201(2) of this chapter.

(6) Resolutions Delivery Date. Resolutions required for Tax-Exempt Bond Developments must be received by the Department no later than 14 calendar days before the Board meeting at which consideration of the award will occur. If the Direct Loan Application is made in conjunction with an Application for Housing Tax Credits, or Tax-Exempt Bond Developments, the Resolution Delivery Date for those programs will apply to the Direct Loan Application.

(7) Challenges to Neighborhood Organization Opposition Delivery Date. Challenges must be received by the Department no later than 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).

(1) 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 §2306.6711(f), the lower scoring Application will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(2) This subsection does not apply if an Application is located in an area that, within the past five years, meets the requirements of Tex. Gov't Code §2306.6711(f-1), which excludes any municipality with a population of two million or more where a federal disaster has been declared by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the governing body of the municipality containing the Development has by vote specifically authorized the allocation of housing tax credits for the Development in a resolution submitted by the Full Application Delivery Date as identified in §11.2(a) of this chapter, and the municipality is authorized to administer disaster recovery funds as a subgrant recipient, for the disaster identified in the federal disaster declaration.

(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 Competitive HTC Deadlines Program Calendar) or Resolutions Delivery Date in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines), 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) A Development serves the same Target Population as the proposed Development, regardless of whether the Development serves general, Elderly, or Supportive Housing; and

(B) A 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

(C) The Development in subparagraph B has not been withdrawn or terminated from the Housing Tax Credit Program.

(2) Paragraph (1) of this subsection does not apply to a proposed 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, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, 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% 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 supported the Application for the Proposed Development, and ~~specifically allowed the Development and submits to the Department~~ adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application. 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, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, as applicable.

(f) Additional Phase. An Application proposing an additional phase of an existing tax credit Development that is under common or Affiliate ownership, or Control serving the same Target Population or Applications proposing Developments that are adjacent to an existing tax credit Development that is under common Affiliate ownership or Control 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% for a minimum six 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%, 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.

(g) Proximity of Development Sites. (Competitive HTC Only) In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by 1,000 feet or less, the lower scoring Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

(h) One Award per Census Tract Limitation (Competitive HTC Only). If two or more Competitive HTC Applications are proposing Developments in the same census tract in an urban subregion, the lower scoring Application(s), including consideration of tie breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn. This subsection does not apply to Applications submitted under the USDA Set-Aside (10 TAC §11.5(2)) or the At-Risk Set-Aside (10 TAC §11.5(3)).

§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 posting the agenda for the last Board meeting in June, 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, staff will first select the Application(s) that will enable the Department to comply with the state and federal non-profit set-asides, and will then select 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 reviewed unless the Applicant withdraws an Application that is eligible for an award and has been reviewed. 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% 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 annual release of the Internal Revenue Service notice regarding the 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 reduce the Applicant's request to the maximum allowable under this subsection through the underwriting process. Regardless of the credit amount requested or any subsequent changes to the request made by staff, the Board may not award to any individual Development more than $2 million in a single Application Round. (§2306.6711(b))

(c) Increase in Eligible Basis (30% Boost). Applications will be evaluated for an increase of up to but not to exceed 30% in Eligible Basis provided they meet the criteria identified in paragraphs (1) - (3) of this subsection, or if required under 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% 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% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging that the Development is located in a census tracts that has more than 20% Housing Tax Credits Units per total households and stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically supported the Application for the proposed Development and referencing this rule. ~~by vote specifically allowed the construction of the new Development and referencing this rule.~~ Rehabilitation

Developments located in a QCT with 20% 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% 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, regarding Competitive HTC Deadlines, or Resolutions Delivery Date in §11.2(b) of this chapter, regarding Tax-Exempt Bond and Direct Loan Development Dates and Deadlines, 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% 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) For Competitive Housing Tax Credits, Development meets one of the criteria described in subparagraphs (A) - (F) of this paragraph pursuant to Code, §42(d)(5)(B)(v):

(A) The Development is located in a Rural Area;

(B) The Development is entirely Supportive Housing and is in accordance with 10 TAC §11.1(d)(122)(E) related to the definition of Supportive Housing;

(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 10% of the proposed low income Units for households at or below 30% of AMGI. These Units may not be used to meet any scoring criteria, or used to meet any Multifamily Direct Loan program requirement;

(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% 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) 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% 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% of the State Housing Credit Ceiling for each calendar year shall be allocated to Rural Developments which are financed through USDA. If an Application in this Set-aside involves Rehabilitation it will be attributed to and come from the At-Risk Development Set-aside; if an Application in this set-aside involves New Construction it will be attributed to and come from the applicable Uniform State Service Region and will compete within the applicable 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 are eligible to participate 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 participate 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% of the State Housing Credit Ceiling for each calendar year will be allocated under the At-Risk Development Set-aside and will be deducted from the State Housing Credit Ceiling prior to the application of the regional allocation formula required under §11.6 of this chapter (relating to Competitive HTC Allocation Process). Through this Set-aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments identified as At-Risk Developments. (§2306.6714) Up to 5% 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 the benefit of 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 from any of the programs provided in subclauses (I) to (VIII) of this clause. Applications participating in the At-Risk Set-Aside must include evidence of the qualifying subsidy.

(I) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(II) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(III) Section 202, Housing Act of 1959 (1 2 U.S.C. Section 1701q);

(IV) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(V) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(VI) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(VII) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(VIII) Section 42, Internal Revenue Code of 1986.

(ii) Any stipulation to maintain affordability in the contract granting the subsidy or any HUD-insured or HUD-held mortgage as described in §2306.6702(a)(5)(A)(ii)(a) will be

considered to be nearing expiration or nearing the end of its term if the contract expiration will occur or the term will end within two 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) will be considered eligible if the HUD-insured or HUD-held mortgage is eligible for prepayment-.

(iii) Developments with existing Department LIHTC 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 requirements under clause (i) or (ii) or (iii) of this subparagraph:

(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

(ii) Units to be Rehabilitated or Reconstructed must have been proposed to be disposed of or demolished, or already disposed or demolished, by a public housing authority or 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) in the two-year period preceding the Application for housing tax credits; or

(iii) 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

(iv) Notwithstanding any other provision of law, an At-Risk Development described by Tex. Gov't Code §2306.6702(a)(5)(B) that was previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of Units reserved for public housing as a condition of eligibility for the credits under Tex. Gov't Code §2306.6714 (a-1)(2) are later converted under RAD.

(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)(i) 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 (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 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 -of July 31 of the year the Application is submitted, and must be included with the application.

(ii) For Developments qualifying under Tex. Gov't Code §2306.6702(a)(5)(B), only a portion of the subsidy must be retained for the proposed Development, but no less than 25% of the proposed Units must be public housing units supported by public housing operating subsidy. (§2306.6714(a-1). If less than 100% 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 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 allocation formula together with other policies and purposes set out in Tex. Gov't Code, Chapter 2306 and the Department shall provide 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 competitive ranking 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. The Department will publish on its website on or before December 1, 2019, initial estimates of Regional Allocation Formula percentages 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 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 reviews will be conducted in the order described in subparagraphs (A) through (F) of this paragraph 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 set of reviews 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 Set-Aside requirement.

(B) At-Risk Set-Aside Application Selection (Step 2). The second set of reviews 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 (relating to At-Risk Set-Aside) 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.

(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. 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.

(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 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% 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 Regional Allocation Formula (RAF) for Elderly Developments within an urban subregion of that service region. Therefore, certain Applications for Elderly Developments may be excluded from receiving an award 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 2020 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% 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.

(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. If credits are returned through any process, those credits will first be made available in the set-aside or subregion from which they were originally awarded. 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. Where sufficient credit becomes available to award an Application on the waiting list later 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 extent possible so that available resources are allocated by December 31. (§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. The Department's Governing Board may impose a deadline that is earlier than the Placed in Service Deadline and may impose conditions that were not placed on the original allocation. 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 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 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. In order for rainfall, material shortages, or labor shortages to constitute Force Majeure, the Development Owner must clearly explain and document how such events could not have been reasonably foreseen and mitigated through appropriate planning and risk management. Staff may use Construction Status reports for the subject or other Developments in conducting their review and forming a recommendation to the Board.

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

(E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;

(F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and

(G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

§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 proposed to be located in a census tract with a poverty rate below the average poverty rate for all awarded Competitive HTC Applications from the past three years (with Region 11 adding an additional 15% to that value and Region 13 adding an additional 5% to that value). The poverty rate for each census tract will come from the most recent American Community Survey data. 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.

(2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development 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 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 of the Site presented at Pre-Application, if a pre-application is submitted, or the Site presented at full Application, whichever is closest.

§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 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 §11.901 of this 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 Competitive HTC Deadlines Program Calendar). 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) relating to Competitive HTC Deadlines Program Calendar.

(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 HTC pre-application in the form prescribed by the Department which identifies at a minimum:

(A) Site Control meeting the requirements of §11.204(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 Neighborhood Risk Factors under §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) 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; and

(ii) The Development Site is located within the attendance zones of an elementary school, a middle school, or a high school that ~~-~~is rated D for 2019 and Improvement Required for 2018, or that is rated F for 2019.

(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 and that a reasonable search for applicable entities has been conducted. (§2306.6704)

(A) The Applicant must list in the pre-application all Neighborhood Organizations on record with the county or state whose boundaries include the entire proposed Development Site as of the beginning of the Application Acceptance Period.

(B) Notification Recipients. No later than the date the 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 included in the Public Notification Template provided in the Uniform 2020 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. Between the time of pre-application (if made) and full Application, ~~such officials may change and~~ the boundaries of ~~their~~ an official's jurisdictions may change. If there is a change in jurisdiction between pre-application and 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 ~~entity~~entity~~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) - (VIII) 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.);

(VI) The approximate total number of Units and approximate total number of Low-Income Units;

(VII) The residential density of the Development, i.e., the number of Units per acre; and

(VIII) Information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(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 that the proposed Development will serve a 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

(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, and other criteria established in a

manner consistent with Chapter 2306 and Code §42. 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 (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.

(B) Unit, Development Construction, and Energy and Water Efficiency Features (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 §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features) 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 five (5) 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 each of the General Partner of the Applicant, Cash Flow from operations, and Developer Fee which taken together equal at least 50% and no less than 5% for any category. For HUD 202 Rehabilitation projects which prohibit for-profit ownership, ownership will not be required for a HUB, only for Cash Flow and/or Developer Fee; the total ownership percentage must still equal 50%, even if it is only attributable to one of the two categories.

(i) The HUB or Qualified Nonprofit Organization must 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.

(ii) 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. A Principal of the HUB or Nonprofit Organization cannot be a Related Party to or Affiliate, including the spouse of, any other Principal of the Applicant or Developer (excluding another Principal of said HUB or Nonprofit Organization). Selecting this item because of the involvement of a Nonprofit Organization does not make an Application eligible for the Nonprofit Set-Aside. (1 point)

(c) Criteria to serve and support Texans most in need.

(1) Income Levels of Residents. (§§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 (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 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 40 % of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 30% of all Low-Income Units at 50% or less of AMGI (13points); or

(iv) At least 20% of all Low-Income Units at 50 %or less of AMGI (11 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 60% of all Low-Income Units at 50% or less of AMGI in a Supportive Housing Development proposed by a Qualified Nonprofit (16 points);

(ii) At least 20% of all Low-Income Units at 50% or less of AMGI (15 points);

(iii) At least 15% of all Low-Income Units at 50% or less of AMGI (13 points); or

(iv) At least 10% of all Low-Income Units at 50% or less of AMGI (11 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 and Rent restriction for all Low-Income Units for the proposed Development will be 54% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (13 points); or

(iii) The average income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (11 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 and Rent restriction for all Low-Income Units for the proposed Development will be 55% or lower (15 points);

(ii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 56% or lower (13 points); or

(iii) The Average Income and Rent restriction for all Low-Income Units for the proposed Development will be 57% or lower (11 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. If selecting points from §11.9(c)(1)(A) or §11.9(c)(1)(B), these levels are in addition to those committed under paragraph (1) of this subsection. If selecting points from §11.9(c)(1)(C) or §11.9(c)(1)(D), these levels are included in the income average calculation under paragraph (1) of this subsection. These units must be maintained at this rent level throughout the Affordability Period regardless of the Average Income calculation.

(A) At least 20% of all Low-Income Units at 30% or less of AMGI for Supportive Housing Developments proposed by a Qualified Nonprofit (13 points);

(B) At least 10% of all Low-Income Units at 30% or less of AMGI or, for a Development located in a Rural Area, 7.5% of all Low-Income Units at 30% or less of AMGI (11 points); or

(C) At least 5% of all Low-Income Units at 30% or less of AMGI (7 points).

(3) Resident Services. (§2306.6710(b)(1)(G) and §2306.6725(a)(1)) A Development may qualify to receive up to eleven (11) points.(A) The Applicant certifies that the Development will provide a combination of supportive services, which are listed in §11.101(b)(7) of this chapter, appropriate for the proposed 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 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)

(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 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) of this subparagraph.

(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 (but not limited to) 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 one of the foregoing criteria in subparagraph (A) of this paragraph 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.

(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 (XV) 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 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-) 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 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 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, but are not limited to, 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, but are not limited to, 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)

(XV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (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 (XIV) 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 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, minor emergency center, or a doctor with a general practice that takes walk-in patients. 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, but are not limited to, 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, but are not limited to, swimming pools or splash pads, tennis courts, golf courses, softball fields, or basketball courts. (1 point)

(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)

(XIV) Development Site is located in the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year. (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 meets the criteria described in subparagraphs (A) - (H) of this paragraph. 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)and (B) of this paragraph. Years are measured by deducting the most recent year of award on the property inventory of the Site Demographic Characteristics Report from

January 1 of the current year. 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 that has been awarded funds by the Texas Water Development Board in the previous five years ending at the beginning of the Application Acceptance Period (1 point);

(C) The Development Site is located entirely within a census tract that does not have another Development that was awarded less than 30 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (4 points);

(D) For areas not scoring points for subparagraph (C) above, the Development Site is located entirely within a census tract that does not have another Development that was awarded less than 20 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report (3 points);

(E) For areas not scoring points for subparagraphs (C) or (D) of this paragraph, the Development Site is located entirely within a census tract that does not have 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);

(F) 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 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 100,000 or more, and will not apply in the At-Risk Set-Aside. (5 points)

(G) The Development Site is located entirely within a census tract where, according to American Community Survey 5-year Estimates, the population share of persons below 200% federal poverty level decreased by 10% or more and where the total number of persons at or above 200% federal poverty level had increased by 15% or more between the years 2010 and 2017. This measure is referred to as the Affordable Housing Needs Indicator in the Site Demographic Characteristics Report. (3 points); or

(H) An At-risk or USDA Development placed in service 25 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. If the Application involves multiple sites, the age of all sites will be averaged for the purposes of this scoring item. (3 points).

(6) Residents with Special Housing Needs. (§42(m)(1)(C)(v)) An Application may qualify to receive two (2) points by serving Residents with Special Housing Needs.

The Development must commit at least 5% of the total Units to Persons with Special Housing Needs. The Units identified for this scoring item may not be the same Units identified previously for the Section 811 PRA Program. For purposes of this subparagraph, Persons with Special Housing Needs is defined as a household where one or more individuals have alcohol and/or drug addictions, is a Colonia resident, a Person with a Disability, has Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking), HIV/AIDS, homeless, veterans, , and farmworkers. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development Owner agrees to specifically market Units to Persons with Special Housing Needs. In addition, the Department will require an initial minimum twelve-month period during which Units must either be occupied by Persons with Special Housing 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 Housing Needs, but will be required to continue to specifically market Units to Persons with Special Housing Needs. (2 points)

(7) Proximity to Job Areas. An Application may qualify to receive up to six (6) points if the Development Site is located in one of the areas described in subparagraphs (A) or (B) of this paragraph, and the Application contains evidence substantiating qualification for the points. Points are mutually exclusive and, therefore, an Applicant may only select points from subparagraph (A) or (B).

(A) Proximity to the Urban Core. A Development in a Place, as defined by the US Census Bureau, with a population over ~~200,000~~190,000 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 750,000 or more, or within 2 miles of the main municipal government administration building if the population of the city is ~~200,000~~190,000 - 749,999. 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. (6 points)

(B) Proximity to Jobs. A Development may qualify for points under this subparagraph if it meets one of the criteria in clauses (i) through (vi) of this subparagraph. The data used will be based solely on that available through US Census' OnTheMap tool. Jobs counted are limited to those based on the work area, all workers, and all primary jobs. Only the ~~most recently available~~ 2017 data set (as of October 1 but before Pre-Application Final Delivery Date) will be used. The Development will use ~~either OnTheMap's selection tool~~

~~to identify a point within the Development Site or~~ OnTheMap's function to import GPS coordinates that clearly fall within the Development Site, and the OnTheMap chart/map report submitted in the Application must include the report date. This scoring item will not apply to Applications under the At-Risk or USDA Set-Aside.

(i) The Development is located within 1 mile of 16,500 jobs. (6 points)

(ii) The Development is located within 1 mile of 13,500 jobs. (5 points)

(iii) The Development is located within 1 mile of 10,500 jobs. (4 points)

(iv) The Development is located within 1 mile of 7,500 jobs. (3 points)

(v) The Development is located within 1 mile of 4,500 jobs. (2 points)

(vi) The Development is located within 1 mile of 2,000 jobs. (1 point)

(8) Readiness to proceed in disaster impacted counties. An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within three years preceding December 1, 2019, that provides a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as "priority." (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 construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

(C) Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were not indicated as a priority Application, if they ultimately receive an award. The period of the extension begins on the date the Department publishes a list or log showing an Application without a priority designation, and ends on the earlier of the date a log is posted that shows the Application with a priority designation, or the date of award.

(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, relating to Competitive HTC Deadlines. Such resolution(s) must specifically identify the Development whether by legal description, address, Development name, Application number or other verifiable method. A municipality or county should consult its own staff and legal counsel as to whether its handling of their actions regarding

such resolution(s) are consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (FHAST) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds. Resolutions received by the Department setting forth that the municipality and/or county objects to or opposes the Application or Development will result in zero points awarded to the Application for that Governing Body. Such resolutions will be added to the Application posted on the Department's website. Once a resolution is submitted to the Department it may not be changed or withdrawn. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(A) Within a municipality, the Application will receive:

(i) Seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development.

(B) Within the extraterritorial jurisdiction of a municipality, the Application may receive points under clause (i) or (ii) of this subparagraph and under clause (iii) or (iv) of this subparagraph:

(i) Eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(ii) Seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; and

(iii) Eight and one-half (8.5) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(iv) Seven (7) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(C) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(i) Seventeen (17) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(ii) Fourteen (14) points for a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(2) Commitment of Development Funding by Local Political Subdivision. (§2306.6725(a)(5)) The source of the funding cannot be the Applicant, Developer, or an Affiliate of the Applicant. 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. (1 point)

(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)(I); §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 30 days prior to the beginning of the Application 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 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% 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;

(iii) presentation of information and response to questions at duly held meetings where such matter is considered; and

(iv) notification regarding deadlines for submission of responses to Administrative Deficiencies.

(C) Point Values for Quantifiable Community Participation. An Application may receive points based on the values in clauses (i) - (vi) of this subparagraph. Points will not be cumulative. Where more than one written statement is received for an Application, the average of all statements received in accordance with this subparagraph will be assessed and awarded.

(i) nine (9) points for explicit support from a Neighborhood Organization that, during at least one of the three prior Application Rounds, provided a written statement that qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(ii) eight (8) points for explicitly stated support from a Neighborhood Organization;

(iii) six (6) points for explicit neutrality from a Neighborhood Organization that, during at least one of the three prior Application Rounds provided a written statement, that

qualified as Quantifiable Community Participation opposing any Competitive Housing Tax Credit Application and whose boundaries remain unchanged;

(iv) four (4) points for statements of neutrality from a Neighborhood Organization or statements not explicitly stating support or opposition, or an existing Neighborhood Organization provides no statement of either support, opposition or neutrality, which will be viewed as the equivalent of neutrality or lack of objection;

(v) four (4) points for areas where no Neighborhood Organization is in existence, equating to neutrality or lack of objection, or where the Neighborhood Organization did not meet the explicit requirements of this section; or

(vi) zero (0) points for statements of opposition meeting the requirements of this subsection.

(D) Challenges to opposition. Any written statement from a Neighborhood Organization expressing opposition to an Application may be challenged if it is contrary to findings or determinations, including zoning determinations, of a municipality, county, school district, or other local Governmental Entity having jurisdiction or oversight over the finding or determination. If any such statement is challenged, the challenger must declare the basis for the challenge and submit such challenge by the Challenges to Neighborhood Organization Opposition Delivery Date May 1, 2020. The Neighborhood Organization expressing opposition will be given seven 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. Should the Neighborhood Organization's statements be found to be contrary to findings or determinations of a local Government Entity, or should the Neighborhood Organization not respond in seven calendar days, then the Application shall be eligible for four (4) points under subparagraph (C)(v) of this subsection.

(5) Community Support from State Representative. (§2306.6710(b)(1)(J); §2306.6725(a)(2; §2306.6710(g)) Applications may receive up to eight (8) points for express support, zero points for neutral statements, or have deducted up to eight (8) points for express opposition.

(A) Letter from a State Representative. To qualify under this subparagraph, 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, relating to Competitive HTC Deadlines. Letters received by the Department ~~setting forth that the~~from State Representative~~s 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 of 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.

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, relating to Local Government Support. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

(I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

(I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or

(III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development; and

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(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 or there is a qualifying Neighborhood Organization that has given no statement or a statement of neutrality (as described in clauses (4)(C)(iv) or (v) of this subsection), 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 formed under Tex. Local Gov't Code ch. 375 whose boundaries, as of the Full Application Delivery Date as identified in §11.2(a) of this chapter, (relating to Competitive HTC Deadlines, Program Calendar for Competitive Housing Tax Credits), include the Development Site.

(D) Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered. If the Department receives input that could reasonably be suspected to implicate issues of non-compliance under the Fair Housing Act, staff will refer the matter to the Texas Workforce Commission for investigation, but such referral will not, standing alone, cause staff or the Department to terminate the Application. Staff will report all such referrals to the Board and summarize the status of any such referrals in any recommendations.

(7) Concerted Revitalization Plan. An Application may qualify for up to seven (7) 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 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 two, 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 two 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) - (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. 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, 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; or

(-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 be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

(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) Up to seven (7) points will be awarded based on:

(I) A letter from the appropriate local official for the municipality (or county if the Development Site is completely outside of a municipality) providing documentation of measurable improvements within the revitalization area based on the 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 (4 points); and

(II) A resolution by the municipality (or county if the Development Site is completely outside of a municipality) that explicitly identifies the proposed Development 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 Applications shall be eligible for the additional points, unless the resolutions address the respective and distinct areas described in the plan (2 points); and

(III) s The development is in a location that would score at least five (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). (1 point)

(B) For Developments located in a Rural Area:

(i) 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 SCR 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 Neighborhood Risk Factors. (4 points)

(ii) 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 (2 points); and

(iii) The development is in a location that would score at least five (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). (1 point)

(e) Criteria promoting the efficient use of limited resources and applicant accountability.

(1) Financial Feasibility. (§2306.6710(b)(1)(A)) 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 twenty-four (24) points. If the letter is from the Third Party permanent lender, or if the Development is Supportive Housing and meets the requirements of 10 TAC §11.1(d)(122)(E)(i), and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

(2) Cost of Development per Square Foot. (§2306.6710(b)(1)(F); §42(m)(1)(C)(iii)) For the purposes of this scoring item, Eligible Building Costs will be defined as Building Costs voluntarily included 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 voluntary Eligible Hard Costs will include general contractor overhead, profit, and general requirements. 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 ~~conditioned~~ Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

(A) A high cost development is a Development that meets one or more of the following conditions:

(i) the Development is elevator served, meaning it is either an 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% 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 or Adaptive Reuse 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 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than $81.90 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 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than $109.20 per square foot, and the Development meets the definition of high cost development.

(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 per square foot;

(ii) the voluntary Eligible Building Cost per square foot is less than $87.36 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 per square foot; or

(iv) the voluntary Eligible Hard Cost per square foot is less than $114.66 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 per square foot; or

(ii) the voluntary Eligible Hard Cost is less than $120.12 per square foot.

(E) Applications proposing 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 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 per square foot, located in an Urban Area, and that qualify for 5 or more 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 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 Final Delivery Date. Applications that meet all of the requirements described in subparagraphs (A) - (H) of this paragraph will qualify for six (6) points:

(A) The total number of Units does not increase by more than 10% 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 Neighborhood Risk Factors as described in 10 TAC §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) 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 is rated D for 2019 and Improvement Required for 2018, or a school that is rated F for 2019.

(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 5% of the total Units are restricted to serve households at or below 30% 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% 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 9% of the Total Housing Development Cost (3 points); or

(iii) if the Housing Tax Credit funding request is less than 10% of the Total Housing Development Cost (2 points); or

(iv)if the Housing Tax Credit funding request is less than 11% 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% 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)) An Application may qualify to receive up to four (4) points for this item.

(A) Development Owners that agree to extend the Affordability Period for a Development to 45 years total. (4 points)

(B) Development Owners that agree to extend the Affordability Period for a Development to 40 years total. (3 points)

(C) Development Owners that agree to extend the Affordability Period for a Development to 35 years total. (2 points)

(6) Historic Preservation. (§2306.6725(a)(6)) An Application may qualify to receive five (5) points if at least 75% of the residential Units shall reside within the Certified Historic Structure. The Development must receive 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 and evidence that the Texas Historic Commission received the request for determination of preliminary eligibility and supporting information on or before February 1 of the current year (5 points).

(7) Right of First Refusal. (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application may qualify to receive (1 point) for Development Owners that will agree to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period in accordance with Tex Gov't Code, §2306.6726 and the Department's rules including §10.407 of this title (relating to Right of First Refusal) and §10.408 of this title (relating to Qualified Contract Requirements).

(8) Funding Request Amount. The Application requests no more than 100% of the amount of LIHTC available within the subregion or set-aside as determined by the regional allocation formula on or before December 1, 2019. (1 point)

(f) Factors Affecting Scoring and Eligibility in current and future Application 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 Application Round or that it should be assigned a penalty deduction in the following year's competitive Application Round of no more than two points for each submitted Application (Tex. Gov't Code §2306.6710(b)(2)) because it meets the conditions for any of the items listed in paragraphs (1) - (4) of this subsection. 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 need for an extension 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 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. 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), (2), (3), or (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% Test deadline(s) or has requested an extension of the Carryover submission deadline or the 10% 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 Applicant or Affiliate, in the Competitive HTC round immediately preceding the current 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.

(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 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 has a noncompetitive score relative to other Applications in the same Set-Aside or subregion or will not be eligible for an award through the collapse as outlined in 10 TAC §11.6(3), not reviewing the matter further. 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, relating to Appeals Process. 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.

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 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 federal or local requirements they must also be met. Applicants requesting funds from the Supportive Housing/Soft Repayment set-aside must also meet the federal environmental provisions under 24 CFR §93.301(f)(1)(vi). Applicants requesting funds from all other direct loan set-asides, must meet the federal environmental provisions under 24 CFR Part 58, as in effect at the time of execution of the Contract between the Department and the Owner. 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 100 year floodplain. Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal funding assistance from HUD or USDA are exempt from this requirement, but must state in the Tenant Rights and Resource Guide that part or all of the Development Site is located in a floodplain, and that it is encouraged that they consider getting appropriate insurance or take necessary precautions. Rehabilitation (excluding Reconstruction) Developments requesting funds in the Supportive Housing/Soft Repayment set-aside are not eligible for the exemption. However, where existing and ongoing federal assistance is not applicable such Rehabilitation (excluding Reconstruction) Developments will be allowed in the 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. Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (VA) may be granted an exemption; 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 chapter may be granted an exemption, 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 specifies 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. Pre-existing zoning does not meet the requirement for a local ordinance. If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes. If Department staff identifies what it believes would constitute an undesirable site feature not listed in this paragraph or covered under subparagraph (K) of this paragraph, staff may issue a Deficiency.

(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 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 covering the area within 500 feet of the Development Site;

(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) 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 due to information that was not included in the Application, it will provide the Applicant with written notice and an opportunity to respond..

(3) Neighborhood 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 chapter. 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. An Applicant 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 Neighborhood Risk Factors become available while the Tax- Exempt Bond Development or Direct Loan only 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 by staff and may result in staff issuing a Deficiency. 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, staff will issue a Material Deficiency 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. Additional mitigating factors to be considered by staff besides those allowed in subparagraph (C) of this paragraph, despite the existence of the 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.

(B) The Neighborhood Risk Factors include those noted in clauses (i) - (iv) of this subparagraph and additional information as applicable to the neighborhood risk factor(s) disclosed as provided in subparagraphs (C) and (D) of this paragraph must be submitted in the Application. In order to be considered an eligible Site despite the presence of Neighborhood Risk Factors, an Applicant must demonstrate actions being taken that would lead staff to conclude that there is a high probability and reasonable expectation the risk factor will be sufficiently mitigated or significantly improved prior to placement in service and that the risk 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 Neighborhood Risk Factor disclosed.

(i) the Development Site is located within a census tract that has a poverty rate above 40% for individuals (or 55% 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) 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 zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating by the Texas Education Agency. 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 2019 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 2018 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. Sixth grade centers will be considered as part of the middle school rating. Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the ~~application or pre-application~~Application ~~a~~Acceptance ~~p~~Period or date the pre-application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units are exempt and are not required to provide mitigation for this subparagraph. ~~Except for a Development encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units, a Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation.~~

(C) Should any of the neighborhood risk factors described in subparagraph (B) of this paragraph exist, the Applicant must submit the Neighborhood Risk Factors Report that contains the information described in clauses (i) - (viii) of this subparagraph and mitigation pursuant to subparagraph (D) of this paragraph if such information pertains to the Neighborhood Risk Factor(s) disclosed so staff may conduct a further Development Site and neighborhood review. The Neighborhood Risk Factors Report cannot be supplemented or modified unless requested by staff through the deficiency process.

(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) A copy of the TEA Accountability Rating Report for each of the schools in the attendance zone containing the Development that achieved a D rating in 2019 and a 2018 Improvement Required rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating, along with 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. The actual campus improvement plan does not need to be submitted unless there is 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 neighborhood risk factors should be relevant to the risk factors that are present in the neighborhood. Mitigation must include documentation of efforts underway at the time of Application, and may include the measures described in clauses (i) - (iv) of this subparagraph or such other mitigation as the Applicant determines appropriate to support a finding of eligibility. If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting. 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) mitigation for Developments in a census tract that has a poverty rate that exceeds 40% must be in the form of a resolution from the Governing Body of the appropriate municipality or county containing the Development, referencing this rule and/or acknowledging the high poverty rate and authorizing the Development to move forward.

(ii) evidence by the most qualified person that 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 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. The data and 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 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. The data must include incidents reported during the entire 2018 and 2019 calendar year. Violent crimes reported through the date of Application submission may be requested by staff as part of the assessment performed under subparagraph (C) of this paragraph. A written statement from the most qualified person (i.e. Chief of Police or Sheriff (as applicable) or the police officer/detective for the police beat or patrol area containing the proposed Development Site), including a description of efforts by such enforcement agency addressing issues of crime and the results of their efforts must 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 there is crime data that reflects a favorable downward trend in crime rates. For Rehabilitation or Reconstruction Developments, to the extent that the high level of criminal activity is concentrated at the Development Site, documentation may be submitted to indicate such issue(s) could be remedied by the proposed Development. Evidence of such remediation should go beyond what would be considered a typical scope of work and should include a security plan, partnerships with external agencies, or other efforts to be implemented that would deter criminal activity. Information on whether such security features have been successful at any of the Applicant's existing properties should also be submitted, if applicable.

(iii) evidence of mitigation efforts to address blight or abandonment may include new construction in the area already underway that evidences public and/or private investment. Acceptable mitigation to address extensive blight should include a plan, whereby it is contemplated such blight and/or infestation will have been remediated within no more than two 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 each of the schools in the attendance zone that has a 2019 TEA Accountability Rating of D and 2018 Improvement Required Rating or a 2019 TEA Accountability Rating of F and a 2018 Met Standard Rating may include satisfying the requirements of subclauses (I) - (III) of this clause.

(I) Documentation from a person authorized to speak on behalf of the school

district 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 should include actual data from progress already made under such plan(s) to date demonstrating favorable trends and should speak to the authorized persons assessment that the plan(s) and the data supports a reasonable conclusion that the school(s) will have an acceptable rating by the time the proposed Development places into service. The letter may, 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 an A, B, or C Rating 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 Applicant provides evidence that it has entered into agreement with the applicable school district or elementary school that has not achieved ~~Met Standard~~a rating of A, B, or C, 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 achieved a rating of A, B or C, 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 rating of A, B or C, 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 A, B or C rating and they elect to end the agreement prior to the achievement of such rating, the Development will not be considered to be in violation of its commitment to the Department.

(III) The Applicant has committed that until such time the school(s) achieves a rating of A, B, or C 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 augment classroom performance. Up to 20% 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 when mitigation described in subparagraph (D) of this paragraph is not provided in the Application, despite the existence of one or more Neighborhood Risk Factors, the Applicant must explain how the use of Department funds at the Development Site is consistent with the goals in clauses (i) - (iii) of this subparagraph. If the Board grants an Appeal of staff's determination of Site eligibility, the Board shall document the reasons for a determination of eligibility.

(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 risk 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) no mitigation was provided, or in staff's determination the mitigation was considered unsatisfactory and the Applicant has requested a waiver of the presence of 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 requesting multifamily funding by the Department.

(1) Ineligible Developments. A Development shall be ineligible if any of the criteria in subparagraphs (A)-- -(C) of this paragraph apply.

(A) General Ineligibility Criteria.

(i) Developments such as hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities that are usually classified as transient housing (as provided in Code §42(i)(3)(B)(iii) and (iv));

(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 proposes population limitations that violate §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% two-Bedroom Units.

(C) Ineligibility of Developments within Certain School Attendance Zones. ~~Except for Developments that are encumbered by a TDHCA LURA on the first day of the application or pre-application acceptance period (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units, any~~ Any Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation. Developments that are encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or at the time of Pre-application (if applicable), an Elderly Development, or a Supportive Housing SRO Development or Supportive Housing Development where all Units are Efficiency Units are exempt.

(2) Development Size Limitations. The minimum Development size is 16 Units. Competitive Housing Tax Credit or Multifamily Direct Loan-only Developments involving New Construction or Adaptive Reuse in Rural Areas are limited to a maximum of 80 total Units. Tax-Exempt Bond Developments involving New Construction or Adaptive Reuse in a Rural Area are limited to a maximum of 120 total Units. Rehabilitation 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 and Rehabilitation amounts identified in subparagraphs (A), (B) or (C) of this paragraph.

(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 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 20 years old, based on the placed in service date, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work; or

(C) For all other Developments, the minimum Rehabilitation will involve at least $30,000 per Unit in Building Costs and Site Work.

(4) Mandatory Development Amenities**.** (§2306.187) New Construction, Reconstruction or Adaptive Reuse Units must include all of the amenities in subparagraphs (A) - (N) of this paragraph. Rehabilitation (excluding Reconstruction) Developments must provide the amenities in subparagraphs (D) - (N) of this paragraph unless stated otherwise. Supportive Housing Developments are not required to provide the amenities in subparagraph (B), (E), (F), (G), or (M) of this paragraph; however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents. 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 submitted with the request for amendment that the amenity has not been 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 or equivalently rated dishwasher (not required for USDA; Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(F) Energy-Star or equivalently rated refrigerator;

(G) Oven/Range;

(H) Blinds or window coverings for all windows;

(I) At least one Energy-Star or equivalently rated ceiling fan per Unit;

(J) Energy-Star or equivalently rated lighting in all Units;

(K) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(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 spaces per Unit for non- Elderly Developments and one 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 or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work); and

(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, the Texas Accessibility Standards, 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;

(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 residents and made available throughout normal business hours and maintained throughout the Affordability Period. 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) - (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) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) through (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This 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; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) through (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification . Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether

nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) 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 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. This space 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);

(III) 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 selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space 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 (2 points);

(IV) 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 (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 points);

(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 (at least one item for every 40 Units). Choose from the following: 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. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: 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 five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or

(V) Two Children's Playscapes Equipped for five 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, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;

(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);

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (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);

(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);

(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 (2 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) Business center with workstations and seating internet access, 1 printer 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);

(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(IX) 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 residents; and seating (3 points);

(X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);

(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, one bicycle for every five 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);

(XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);

(XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point);

(XV) Community car vacuum station (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, Development Construction, and Energy and Water Efficiency 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 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 and Supportive Housing Developments will start with a base score of five (5) points. At least two (2) points must be selected from clause (iii), Energy and Water Efficiency Features, of this subparagraph (B).

(i) Unit Features

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) 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);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) 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 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48” upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for

Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) 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) Thirty year roof (0.5 point);

(III) Greater than 30% 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);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) 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); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) through (-d-) of 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.

(-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-) Leadership in Energy and Environmental Design (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/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. 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 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points);

(7) Resident Supportive Services**.** The supportive services include those listed in subparagraphs (A) - (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 points; Direct Loan Applications not layered with Housing Tax Credits must include enough services to meet a minimum of four 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 (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. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the QAP in subsequent years provide different services than those listed in subparagraphs (A) – (E) of this paragraph, the Development Owner may request an Amendment as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the 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) 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) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));

(ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

(C) Adult Supportive Services

(i) Four 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 English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(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);

(iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include 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);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (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 resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(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

(i) partnership with local law enforcement and/or local first responders 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.) (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) (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 service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (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 part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or

more of weekly resident supportive services at the Development (2 points);

(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) - (F) of this paragraph and any other applicable state or federal rules and requirements. The accessibility requirements are further identified in the Certification of Development Owner as provided in the Application.

(A) The Development shall comply with the accessibility requirements under Federal law and as further defined in Chapter 1, Subchapter B of this title (relating to Accessibility Requirements). (§§2306.6722; 2306.6730)

(B) Regardless of building type, all Units accessed by the ground floor or by elevator (affected units) must comply with the visitability requirements in clauses (i) – (iii) of this subparagraph. Design specifications for each item must comply with the standards of the Fair Housing Act Design Manual. Buildings occupied for residential use on or before March 13, 1991 are exempt from this requirement. 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 clause (iii) of this subparagraph.

(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 (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).

(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.

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 §11.901 of this chapter (relating to Fee Schedule).

(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 §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 from the date the fee was originally required to be submitted, 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 checks or original Carryover Allocation Agreements are physically delivered to the Department, it is the Applicant's responsibility to be within the Department's doors by the appointed deadline. All Applications and all related materials are to be delivered electronically pursuant to the Multifamily Programs Procedures Manual. 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 are fully readable by the Department.

(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 the Application from being received by the Department prior to the deadline the Application may be terminated.

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

(2) Filing of Application for Tax-Exempt Bond Developments. Applications must be submitted to the Department as described in either subparagraph (A) or (B) of this paragraph. Applications will be required to satisfy the requirements of this chapter and applicable Department rules that coincide with the year the Certificate of Reservation is issued. Those Applications that receive a Traditional Carryforward Designation will be subject to the QAP and applicable Department rules in place at the time the Application is received by the Department, unless determined otherwise by staff.

(A) Lottery Applications. For Applicants participating in the TBRB lottery for private activity bond volume cap and 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 §11.2(b) of this chapter (relating to Tax-Exempt Bond and Multifamily Loan Development Dates and Deadlines). The complete Application, including all required Third Party Reports, accompanied by the Application Fee described in §11.901 of this

chapter must be submitted no later than the Applications Associated with Lottery Delivery Date described in §11.2(b) of this chapter.

(B) Non-Lottery Applications.

(i) 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 the Application Fee described in §11.901 of this chapter and the complete Application, with the exception of the Third Party Reports, prior to the issuance of the Certificate of Reservation by the TBRB. The Third Party Reports must be submitted on the fifth day of the month and the Application may be scheduled for a Board meeting at which the decision to issue a Determination Notice would be made approximately 90 days following such submission deadline. If the fifth day falls on a weekend or holiday, the submission deadline shall be on the next business day.

(ii) An Application designated as Priority 3 will not be accepted until after the TBRB has issued a Certificate of Reservation and may be submitted on the fifth day of the month. Priority 3 Application submissions must be complete, including all Third Party Reports and the required Application Fee described in §11.901 of this chapter, before they will be considered accepted by the Department and meeting the submission deadline for the applicable Board meeting date.

(iii) If, as of November 15, an Applicant is unable to obtain a Certificate of Reservation from the current program year because there is no private activity bond volume cap, an Applicant may submit a complete Application without a bond reservation, provided that, a copy of the inducement resolution is included in the Application, and a Certificate of Reservation is issued as soon as possible by BRB staff in January 2021. The determination as to whether a 2020 Application can be submitted and supplemented with 2021 forms and certifications, will be at the discretion of staff. Applicants are encouraged to communicate with staff any issues and timing considerations unique to a Development as early in the process as possible.

(C) The Department will require at least 90 days to review an Application, unless Department staff can complete its evaluation in sufficient time for an earlier 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.

(D) Department staff may choose to delay presentation to the Board in instances where an Applicant is not expected to close within a reasonable timeframe following the issuance of a Determination Notice. Applications that receive a Traditional Carryforward Designation will be subject to closing within the same general timeframe as would be typical of the Certificate of Reservation. This will be a condition of the award and reflected in the Determination Notice.

(3) Certification of Tax Exempt Bond Applications with New Docket Numbers. Applications that receive an affirmative Board Determination, but for which closing on the bonds does not

occur prior to the Certificate of Reservation expiration date, and which subsequently have that docket number withdrawn from the TBRB, may have their Determination Notice reinstated. In the event that the Department's Board has not yet approved the Application, the Application will continue to be processed and ultimately provided to the Board for consideration. The Applicant would need to receive a new docket number from the TBRB and meet the requirements described in subparagraphs (A) - (C) of this paragraph:

(A) The Application must remain unchanged with regard to: 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) and 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 conclusions or program review then the Applicant may be allowed to submit the certification and subsequently have the Determination Notice re-issued. Notifications under §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 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 months from the date the original application was withdrawn from the TBRB. The new docket number must be from the same program year as the original docket number or, for Applications that receive a new docket number from the program year that is immediately succeeding the program year of the original docket number, the requirements in clauses (i) and (ii) of this subparagraph must be met:

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

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

(C) if there are changes to the Application as referenced in subparagraph (A) of this paragraph or if such changes in the rules pursuant to subparagraph (B)(ii) of this paragraph are of a material nature the Applicant will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its

entirety for a new Determination Notice to be issued. If there is public opposition but the Application remains the same pursuant to subparagraph (A) of this paragraph, a new Application will not be required to be submitted; however, the Application must be presented before the Board for consideration of the re-issuance of the Determination Notice.

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

(5) Evaluation Process. 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 conducted based upon the likelihood that an Application will be competitive for an award based upon the region, 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 and its relative position to other Applications, 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. 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 §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 §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 §11.101(a)(3) (relating to Neighborhood 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 §11.902 of this chapter (relating to Appeals Process); in such cases the corresponding deadlines are based on the date on which the log is posted to the Department's website. The Department may also provide a scoring notice reflecting such score to the Applicant which will also trigger appeal rights and corresponding deadlines pursuant to Tex. Gov't. Code §2306.6715 and §11.902 of this chapter (relating to Appeals Process).

(6) Order of review of Applications under various Programs. This paragraph identifies how ties or other matters will be handled when dealing with de-concentration requirements, capture rate calculations, and general order of review 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 associated with the Traditional Carryforward Designation is submitted to the Department; and

(ii) for all other Developments, the date the Application is considered received by the Department; and

(iii) notwithstanding the foregoing, after July 31 of the current program year, a Tax-Exempt Bond Development with a Certificate of Reservation from the TBRB will take precedence over any Housing Tax Credit Application from the current Application Round on the waiting list.

(B) General Review Priority. Order of reviews of 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 may not be reviewed or underwritten 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.

(7) Deficiency Process. The purpose of the 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 an efficient and effective review of the Application. Deficiencies may be Administrative or Material, in either case they will be treated similarly in that Applicants may receive a deficiency notice and have an opportunity to respond. Applicants are encouraged to utilize manuals 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 and eligibility requirements. Any Application that staff identifies as having insufficient support information will be directed to cure the matter via the 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. 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 in the Application. It is the Applicant's responsibility to ensure that e-mails sent from TDHCA staff to the Applicant or contact are not electronically blocked or redirected by a security feature as they will be considered to be received once they are sent. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period and may also be sent in response to reviews on post-award submissions. Responses are required to be submitted electronically as a PDF or multiple PDF files. A review of the response provided by the Applicant may reveal that issues initially identified as an Administrative Deficiency are actually determined to be beyond the scope of an Administrative Deficiency process, meaning they are Material Deficiencies 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 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 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, 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 a deficiency to address the matter 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 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. Extensions relating to Administrative Deficiency deadlines may only be extended up to five days if documentation needed to resolve the item is needed from a Third Party or the documentation involves Third Party signatures needed on certifications in the Application. A Deficiency response may not contain documentation that did not exist prior to submission of the pre-application or Full Application, as applicable.

(B) Deficiencies for Competitive HTC Applications. Unless an extension has been timely requested and granted prior to the deadline, if 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 five (5) points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. 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 the Applicant's right to appeal.

An Applicant may not change or supplement any part of an Application in any manner after the filing deadline or while the Application is under consideration for an award, and may not add any set-asides, increase the requested credit amount, revise the Unit mix (both income levels and Bedroom mixes), or adjust their self-score except in response to a direct request from the Department to do so as a result of an Administrative Deficiency. (§2306.6708(b); §2306.6708) To the extent that the review of 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 or a Scoring Notice may be issued.

(C) Deficiencies for Tax-Exempt Bond Developments. Unless an extension has been requested prior to the deadline, 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 fifth 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. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved, the Application will be terminated and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee pursuant to §11.901 of this chapter. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission.

(D) Deficiencies for Direct Loan Applications. 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 fifth 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. If, during the period of time when the Application is suspended from review Direct Loan funds in the set aside become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of this chapter (relating to Multifamily Direct Loan Rule). Applicants should be prepared for additional time needed for completion of staff reviews as described in paragraph (2)(B) of this section. If, on the fifth business day following the date of the suspension notice, there are deficiencies that remain unresolved and the Direct Loan funds are not oversubscribed, the Application will be terminated, and the Applicant will be provided notice to that effect. Should an Applicant still desire to move forward with the Development, staff will require a completely new Application be submitted, along with a new Application Fee, as applicable, pursuant to rule. All of the deficiencies noted in the original deficiency notice must be incorporated into the re-submitted Application. Staff will proceed with a new

review of the Application, but it will not be prioritized over other Applications that are under review or were submitted prior to its re-submission, and will obtain a new received date pursuant to §13.5(c) of this chapter.

(8) Limited Reviews. If, after the submission of the Application, an Applicant identifies an error in the Application that could likely be the subject of a Deficiency, the Applicant may request a limited 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 review may only cover the specific issue and not the entire Application. If the limited review results in the identification of an issue that requires correction or clarification, staff will request such through the Deficiency process as stated in paragraph (7) of this section, if deemed appropriate. A limited 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 §11.2 of this chapter and no later than May 1 of the current year for Competitive HTC Applications. The Neighborhood Organization expressing opposition will be given seven 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 by staff will be provided to a fact finder, chosen by the Department, for review and a determination. The fact finder will not make determinations as to the accuracy of the statements presented, but only regarding 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. The items listed in this section include those requirements in Code, §42, 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, federal statutes or regulations, or a specific program NOFA. 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. 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. Failure to provide disclosure may be cause for termination.

(1) Applicants. An Applicant may be considered ineligible if any of the criteria in subparagraphs (A) - (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 in a state or Federal program, including those 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 15 years preceding the received date of Application or Pre-Application submission (if applicable);

(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 (relating to Previous Participation and Executive Award Review and Advisory Committee);

(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, and for which no repayment plan has been approved by the Department;

(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 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 12 months prior to the submission of the Application, and through the date of final allocation due to a failure to meet contractual obligations, and the Person is on notice that such Deobligation results in ineligibility under this chapter;

(K) Has provided 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 for which the federal affordability requirements were prematurely terminated and the affordability requirements have not been re-affirmed or Department funds repaid;

(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 10 years, or plans to or is negotiating to terminate, their relationship with any other affordable housing development. 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 a determination of a person's fitness to be involved as a Principal with respect to an Application, which may include a staff recommendation, using the factors described in clauses (i) – (v) of this subparagraph as considerations:

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

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

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

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

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

as described in the Application; or

(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;

(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);

(ii) if the Application is represented or communicated about by a Person that would prompt the violations covered by Tex. Gov't Code §2306.6733; or

(iii) the Applicant proposes to replace in less than 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) 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 months from the first day of the Application Acceptance Period. For Tax-Exempt Bond Developments and Direct Loan Applications, notifications must not be older than three months prior to the date the complete 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% or a 5% increase in density (calculated as units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official~~person~~ holding any position or role described in paragraph (2) of this section change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity~~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 beginning of the Application 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 beginning of the Application Acceptance Period and whose boundaries include the proposed Development Site as of the submission of the Application, and the Applicant must certify that a reasonable search for applicable entities has been conducted.

(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. 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 ~~individuals~~ in office at the time the Application is submitted. Note that between the time of pre-application (if made) and full Application, ~~such individuals may change and~~ the boundaries of their jurisdictions may change. Meetings and discussions do not constitute notification.

(A) Neighborhood Organizations on record with the state or county as of 30 days prior to the beginning of the Application 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) - (viii) of this subparagraph.

(i) the Applicant's name, address, individual contact name, and phone number;

(ii) the Development name, address, city and county;

(iii) a statement indicating the program(s) to which the Applicant is applying with the Texas Department of Housing and Community Affairs;

(iv) whether the Development proposes New Construction, Reconstruction, Adaptive Reuse or Rehabilitation;

(v) the physical type of Development being proposed (e.g. single family homes, duplex, apartments, high-rise etc.);

(vi) the total number of Units proposed and total number of Low-Income Units proposed;

(vii) the residential density of the Development, i.e., the number of Units per acre; and

(viii) information on how and when an interested party or Neighborhood Organization can provide input to the Department.

(B) The notification may not contain any false or misleading statements. Without limiting the generality of the foregoing, the notification may not create the impression that the proposed Development will target, provide a preference, or serve a Target Population exclusively, unless such population limitation, 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

(C) 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 threshold documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. 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.

(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. Any person signing the Certification acknowledges that they have the authority to release all materials for publication on the Department's website, that the Department may publish them on the Department's website and 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 expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment by the Department. If any such representations, undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall 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 residents of the Development, including enforcement by administrative penalties for failure to perform (consistent with Chapter 2, Subchapter C of this title relating to Administrative Penalties), 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% 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 meeting the definition of Control. 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 §11.202 of this chapter (relating to Ineligible Applicants and Applications).

(3) Engineer/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, and including Tex. Gov't Code §2306.6722 and §2306.6730.

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

(A) Prior to submission of an Application to the Department, an Applicant must provide notice of the intent to file the Application in accordance with §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

(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 §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). 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 current Application Round, such requests must be made no later than December 15 of the previous year. If staff is able to confirm the findings outlined in the request, the Rural designation will be granted without further action and will remain in effect until such time that the population as described in clause (i) of this subparagraph exceeds 25,000. In the event that staff is unable to confirm the information contained in the request, the Applicant will be given an opportunity to supplement their case. If, after receiving any supplemental information, staff still cannot confirm the rural nature of the Application, a recommendation for denial will be presented to the Board.

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

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

(iii) the percentage of the total border of the political subdivision or census designated place that is contiguous with other political subdivisions or census designated places designated as urban. For purposes of this assessment, less than 50% 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 ~~2017~~2014 through 2019, 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. ~~in the ten years preceding submission.~~ Applicants requesting Multifamily Direct Loan funds only may meet the alternative requirement at §13.25(h)(1)of this title (relating to Experience). Acceptable documentation to meet this requirement shall include any of the items in clauses (i) - (ix) of this subparagraph:

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

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

(iii) AIA Document G702--Application and Certificate for Payment;

(iv) Certificate of Occupancy;

(v) IRS Form 8609 (only one per development is required);

(vi) HUD Form 9822;

(vii) Development agreements;

(viii) partnership agreements; or

(ix) other documentation satisfactory to the Department verifying that a Principal of the Development Owner, General Partner, or Developer has the required experience.

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

(C) For competitive HTC Applications, if a Principal is determined by the Department to not have the required experience, a replacement Principal will not be allowed.

(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 or elected in accordance with this Chapter or Chapter 13 of this title (relating to 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) if the Development will receive housing tax credits. The income and corresponding rent restrictions will be reflected in the LURA. Financing amounts must be consistent throughout the Application and acceptable documentation shall include those described in clauses (i) through (iv) 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

(ii) term sheets for interim and permanent loans issued by a lending institution or mortgage company 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 15 years with at least a 30 year amortization or for non-amortizing loan structures a term of not less than 30 years;

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

(V) Include all required Guarantors, if known;

(VI) Include the principal amount of the loan;

(VII) Include an acknowledgement of the amounts and terms of all other anticipated sources of funds and 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.

(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. A term loan request must 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 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% 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 added to, the Deferred Developer Fee for feasibility purposes under §11.302(i)(2) of this chapter (relating to Underwriting Rules and Guidelines) or where scoring is concerned, unless the contribution is a seller note equal to or less than the acquisition price of the subject Development, the Development is a Supportive Housing Development, the Development is not supported with Housing Tax Credits, or the ownership structure includes a nonprofit organization with a documented history of fundraising sufficient to support the development of affordable housing.

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

(i) an estimate of the amount of equity dollars expected to be raised for the Development;

(ii) the amount of Housing Tax Credits requested for allocation to the Development Owner;

(iii) pay-in schedules;

(iv) 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 financing plan for the Development, including as applicable 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 term sheets for all funding sources. For Applicants requesting Direct Loan funds, Match, 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. The information provided must be consistent with all other documentation in the Application.

(8) Operating and Development Cost Documentation.

(A) Fifteen-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 (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 include a description. "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% of the Units restricted in connection with the Direct Loan program must be available to households or families whose incomes do not exceed 60% 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.

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

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

(G) Occupied Developments. The items identified in clauses (i) - (vi) of this subparagraph must be submitted with any Application where any structure on the Development Site is occupied at any time after the Application Acceptance Period begins or if the Application proposes the demolition of any housing occupied at any time after the Application Acceptance Period begins. If the 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 §13.11(b) of this title (relating to Multifamily Direct Loan Rule). 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 12 consecutive months ending not more than three months from the first day of the Application Acceptance Period;

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

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

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

(ii) a rent roll not more than six 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 any vacant units;

(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 Developments a site plan must be submitted that includes the items identified in clauses (i) - (xii) of this subparagraph:

(i) states the size of the site on its face;

(ii) includes a 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) clearly delineates the flood plain boundary lines or states there is no floodplain;

(vii) indicates 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 parking spaces, garages, and carports;

(x) indicates the location and number of accessible parking spaces, garages, and carports, including van accessible spaces;

(xi) includes information regarding local parking requirements; and

(xii) 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.

(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, or two-Bedroom, and for all floor plans that vary in Net Rentable Area by 10% 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 36 month period 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 45 years remaining); or

(ii) a contract or option for lease with a minimum term of 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, regarding Underwriting Rules and Guidelines, then the documentation required 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 by the time of Commitment.

(E) If control of the entire proposed Development Site requires that a plat or right of way be vacated, evidence that the vacation/re-platting process has started must be included in the Application, and evidence of control of the entire Development Site must be provided by the time of Commitment.

(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; or

(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; or

(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 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; or

(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 months prior to the 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.

(A) The title commitment must list the name of the Development Owner as the proposed insured and list 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) The Department assumes that the Applicant will be able to form any one or more business entities, such as a limited partnership, that are to be engaged in the ownership of a Development as represented in the Application, and that all necessary rights, powers, and privileges including, but not limited to, Site Control will be transferable to that entity. The formation of the ownership entity, qualification to do business (if needed), and transfer of any such rights, powers, and privileges must be accomplished as required in this chapter and 10 TAC Chapters 12 and 13, as applicable.

(B) Organizational Charts. A chart must be submitted that clearly illustrates the organizational structure of the 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, whether or not they have Control. Persons having Control should be specifically identified on the Chart. Individual board members and executive directors of nonprofit entities, governmental bodies, and corporations, as applicable, 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.

(C) Previous Participation. Evidence must be submitted that each individual and entity shown on the organizational charts described in subparagraph (A) of this paragraph 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 (relating to Previous Participation and Executive Award Review and Advisory Committee). The information must include a list of all Developments that are, or were, previously under ownership or Control of the Applicant and/or each Principal, including any Person providing the required experience. All participation in any Department funded or monitored activity, including non-housing activities, as well as Housing Tax Credit developments or other programs administered by other states using state or federal programs must be disclosed. The individuals providing previous participation information must authorize the parties overseeing such assistance to release compliance histories to the Department.

(D) Direct Loan. In addition to the information required in (B) and (C) of this subparagraph, if the Applicant is applying for Direct Loan funds then the Applicant must also include the definitions of Person, Affiliate, Principal, and Control found in 2 CFR Part 180, when completing the organizational chart and the Previous Participation information.

(14) Nonprofit Ownership. Applications that involve a §501(c)(3) or (4) nonprofit, housing finance corporation or public facility corporation as the General Partner or Owner shall submit the documentation identified in subparagraph (A) or (B) of this paragraph, as applicable. Additionally, a resolution approved at a regular meeting of the majority of the board of directors of the nonprofit, indicating their awareness 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 for the Nonprofit Set-Aside. 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 clauses (i) to (v) of 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 Nonprofit Set-Aside and a certification that they do not expect to receive a benefit in the allocation of tax credits as a result of being Affiliated with a nonprofit, only need to submit the documentation in subparagraph (B) of this paragraph.

(i) An IRS determination letter which states that the nonprofit organization has been determined by the Internal Revenue Service to be tax-exempt under §501(c)(3) or (4) of the Code;

(ii) The Nonprofit Participation exhibit as provided in the Application, including a list of the names and contact information for all board members, directors, and officers;

(iii) A Third Party legal opinion stating:

(I) That the nonprofit organization is not Affiliated with or Controlled by a for-profit organization and the basis for that opinion;

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit Set-Aside pursuant to Code, §42(h)(5) 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 Community Housing Development Corporation (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; and

(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, housing

finance corporation or public facility corporation as the 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. Housing finance corporations or public facility corporations that do not have such IRS determination letter shall submit documentation evidencing creation under Chapter 394 of the Texas Local Government Code and corresponding citation for an exemption from taxation.

(15) 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 and must meet all of the criteria provided in subparagraphs (A) to (F) of this paragraph.

(A) For all Applications, 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, "any person signing this Report acknowledges 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) An Executive Summary must provide 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. It should specifically describe any atypical or unusual factors that will impact site design or costs.

(C) The Report 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). Where ordinances or similar information is required, provide website links rather than copies of the ordinance. Additionally, it should contain:

(i) a summary of zoning requirements,

(ii) subdivision requirements,

(iii) property identification number(s) and millage rates for all taxing jurisdictions,

(iv) development ordinances,

(v) fire department requirements,

(vi) site ingress and egress requirements, and

(vii) building codes, and local design requirements impacting the Development.

(D) Survey 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 months from the beginning of the Application Acceptance Period.

(E) 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 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.

(F) 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, Scope and Cost Review, Appraisal (if applicable), and the Market Analysis must be submitted no later than the Third Party Report Delivery Date as identified in §11.2(b) of this chapter (relating to Tax-Exempt Bond and Direct Loan Development Dates and Deadlines). For Competitive HTC Applications, the Environmental Site Assessment, Scope and Cost Review, 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 Competitive HTC Deadlines Program Calendar) and the Market Analysis must be submitted no later than the Market Analysis Delivery Date as identified in §11.2(a) of this 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 §11.305 of this chapter (relating to Environmental Site Assessment Rules and Guidelines), must not be dated more than 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 six 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 that those additional assessments and recommendations will be performed prior to closing. If the assessments require further mitigating recommendations, then evidence indicating that 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 §11.303 of this chapter (relating to Market Analysis Rules and Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 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 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 §11.303 of this chapter.

(B) Applications in the USDA Set-Aside proposing Rehabilitation with residential structures at or above 80% occupancy at the time of Application submission, the appraisal, required for Rehabilitation Developments and Identity of Interest transactions prepared in accordance with §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) Scope and Cost Review (SCR). This report, required for Rehabilitation (excluding Reconstruction) and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.306 of this chapter (relating to Scope and Cost Review Guidelines), must not be dated more than six months prior to the date of Application submission or the first day of the Application Acceptance Period for Competitive HTC Applications. If the report is older than six months, but not more than 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 SCR. The statement may not be dated more than six 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 SCR. For Developments which require a capital needs assessment from USDA the capital needs assessment may be substituted for the SCR and may be more than six 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 §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 SCR Supplement in the form of an excel workbook as published on the Department's website.

(4) Appraisal. This report, required for all Rehabilitation and Adaptive Reuse Developments and prepared in accordance with the requirements of §11.304 of this chapter (relating to Appraisal Rules and Guidelines), 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 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 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 staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, 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.

An Applicant may request a waiver in writing at or prior to the submission of the pre-application (if applicable) or the Application or subsequent to an award. Waiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application. Staff may identify and initiate a waiver request as part of another Board action request. Where appropriate, the Applicant 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) A waiver request made at or prior to pre-application or Application must establish that the need for the waiver is not within the control of 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 within the Applicant's control.

(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 to waive any requirement contained in statute. The Board may grant a waiver that is in response to a natural, federally declared disaster that occurs after the adoption of the Qualified Allocation Plan to the extent authorized by a governor declared disaster proclamation suspending regulatory requirements.

Subchapter D —Underwriting and Loan Policy

§11.301. General Provisions. This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Direct Loan, and Scope and Cost Review 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 an awarded Application and the Department's portfolio. In addition, this subchapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (EARAC or 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.

§11.302. Underwriting Rules and Guidelines.

(a) General Provisions. Pursuant to Tex. Gov't 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), 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 Tex. Gov't 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 this chapter, 10 TAC Chapters 11, 12, or 13, or in a Notice of Funds Availability (NOFA), as applicable.

(c) Recommendations in the Report. The conclusion of the Report, if being recommended, 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 amounts determined using the methods in paragraphs (1) to (3) of this subsection:

(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 §11.1(d) of this chapter (relating to Definitions). For Department programs other than Housing Tax Credits, this method is based upon calculation of the funding limit in current program rules or NOFA at

the time of underwriting.

(2) Gap Method. This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated Deferred Developer Fee downward (but not less than zero) before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure (including treatment of a Cash Flow loan 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 §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 Gross Program Rent at 60% AMGI gross rent, or Gross Program Rent at 80% AMGI gross rent and the Applicant will make the Income Average election, and the Applicant submits an investor commissioned market study with the application, the Underwriter has the discretion to use the market rents supported by the investor commissioned market study in consideration of the independently determined rents. The Applicant must also provide a statement by the investor indicating that they have reviewed the market study and agree with its conclusions.

(ii) Gross Program Rent. The Underwriter will use the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the Effective Gross Income (EGI) to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(iii) Contract Rents. The Underwriter will review rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such an increase.

(iv) Utility Allowances. The Utility Allowances used in underwriting must be in compliance with all applicable federal guidance, and §10.614 of this title (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 amenity must be excluded from Eligible Basis.

(C) Vacancy and Collection Loss. The Underwriter generally uses a normalized vacancy rate of 7.5% (5% vacancy plus 2.5% for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. 100% project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5% vacancy rate 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% occupancy rate.

(D) Effective Gross Income (EGI). EGI is the total of Collected Rent for all Units plus Miscellaneous Income less Vacancy and Collection Loss. If the Applicant's pro forma EGI is within 5% 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% of EGI is used, though higher percentages for rural transactions may be used. Percentages as low as 3% may be used if well documented.

(C) Payroll Expense. Compensation, insurance benefits, and payroll taxes for on-site office, leasing and maintenance staff. Payroll does not include Third-Party security or tenant services contracts. Staffing specific to tenant services, security or other staffing not related to customary property operations should be itemized and included in other expenses or tenant services expense.

(D) Repairs and Maintenance Expense. Materials and supplies for the repairs and maintenance of the Development including Third-Party maintenance contracts. This line-item does not include costs that are customarily capitalized that would result from major replacements or renovations.

(E) Utilities Expense. Gas and electric energy expenses paid by the Development. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor.

(F) Water, Sewer, and Trash Expense (WST). Includes all water, sewer and trash expenses paid by the Development.

(G) Insurance Expense. Cost of Insurance coverage for the buildings, contents, and general liability, but not health or workman's compensation insurance.

(H) Property Tax. Includes real property and personal property taxes but not payroll taxes.

(i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10% 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 Payment in Lieu of Taxes (PILOT) agreement the Applicant must provide documentation in accordance with §10.402(d) of this title (relating to Documentation Submission Requirements at Commitment of Funds). 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 Scope and Cost Review (SCR) 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 SCR 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. For Developments financed by USDA, a Return to Owner (RTO) may be included as an operating expense in an amount consistent with the maximum approved by USDA or an amount determined by the Underwriter. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees.

(K) Resident Services. Resident 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 resident supportive services at a specified dollar amount. The financial obligation must be identified by the permanent lender in their term sheet and the dollar amount of the financial obligation must be included in the DCR calculation on the permanent lender's 15-year pro forma at Application. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred; or,

(ii) The Applicant demonstrates a history of providing comparable supportive services and expenses at existing affiliated properties within the local area. Except for Supportive Housing Developments, the estimated expense of supportive services must be identified by the permanent lender in their term sheet and included in the DCR calculation on the 15-year pro forma. At cost certification and as a minimum, the estimated expenses underwritten at Application will be included in the DCR calculation regardless if actually incurred;

(iii) On-site staffing or pro ration of staffing for coordination of services only, and not

the 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 in 10 TAC 11.302(d)(2) subparagraphs (A) – (K) of this paragraph. If the Applicant's total expense estimate is within 5% 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% 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% 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 30 years and not more than 40 years. Up to 50 years may be used for federally sourced or insured loans. For permanent lender debt with amortization periods less than 30 years, 30 years will be used. For permanent lender debt with amortization periods greater than 40 years, 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 30 year period for developments with permanent financing structures with balloon payments in less than 30 years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).

(D) Acceptable Debt Coverage Ratio Range. Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35 (maximum of 1.50 for Housing Tax Credit Developments at cost certification).

(i) If the DCR is less than the minimum, the recommendations of the Report may be based on 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 subclause (I) of this clause is insufficient to balance the sources and uses;

(-a-) a reduction to the interest rate; and/or

(-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) Except for Developments financed with a Direct Loan as the senior debt and 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 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 and may limit total debt service if the Direct Loan is the senior primary debt.

(5) Long Term Pro forma. The Underwriter will create a 30-year operating pro forma using the criteria provided in subparagraphs (A) to (C) of this paragraph:

(A) The Underwriter's or Applicant's first year stabilized pro forma as determined by paragraph (3) of this subsection.

(B) A 2% annual growth factor is utilized for income and a 3% annual growth factor is utilized for operating expenses except for management fees that are calculated based on a percentage of each year's EGI.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as independently determined by the Underwriter.

(e) Total Housing Development Costs. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's Development cost schedule to the extent that costs can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5% of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for Rehabilitation Developments or Adaptive Reuse Developments will be based on the estimated cost provided in the SCR for the scope of work as defined by the Applicant and §11.306(a)(5) of this chapter (relating to SCR Guidelines); the Underwriter may make adjustments to the SCR~~PCA~~ estimated costs. 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 acquisition cost used will be the amount verified by the settlement statement. For Identify of Interest acquisitions at cost certification, the cost will be limited to the underwritten acquisition cost at initial Underwriting, or for Developments financed by USDA, the transfer value approved by USDA.

(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 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 ~~(60 months for Developments meeting the requirements of subclause (iii)(V) of this subparagraph),~~ 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:

(-a-) an appraisal that meets the requirements of §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% 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% 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. The annual return may not be applied for any period of time during which the existing residential or non-residential buildings are occupied or otherwise producing revenue.

(iii) For Identity of Interest transactions, the acquisition cost used for underwriting will be:

(I) the original acquisition cost evidenced by clause (B)(ii)(I) of this subparagraph plus costs identified in item (B)(ii)(II)(-b-) of this subparagraph; or,

(II) the "as-is" value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph if less than the value identified in subclause (I); or,

(III) if applicable, the transfer value approved by USDA; or,

(IV) if applicable, the appraised land value for transactions where all existing buildings will be demolished.; or,

(V) if applicable, for Developments that will be financed using tax-exempt mortgage revenue bonds that currently have project-based rental assistance or currently have rent restrictions that will remain in place on the property after the acquisition and the current owner has owned the property for at least 60 months prior to the first day of the Application Acceptance Period ~~meets clause (e)(1)(B)(i) of this paragraph~~, the Underwriter shall only restrict the acquisition costs if it exceeds the “as-is” value conclusion evidenced by item (B)(ii)(II)(-a-) of this subparagraph. The appraisal used for this purpose must be reviewed by a licensed or certified appraiser by the Texas Appraisal Licensing and Certification Board that is not related to the original appraiser or anyone on the Development Team and in accordance with USPAP Standard 3. If the reviewing appraiser disagrees with the appraised value determined by the appraiser, the Underwriter will determine the acquisition cost to be used in the analysis.

(C) Eligible Basis on Acquisition of Buildings. Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §11.304 of this chapter (relating to Appraisal Rules and Guidelines). The underwritten eligible building cost will be evaluated as described in clause (iv) of this subparagraph and with the lowest of the values determined based on clauses (i) - (iv) 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; or

(iii) 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), less the appraised "as-vacant" land value; or

(iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development that will continue to affect the Development after transfer to the new owner in determining the building value. These circumstances include but are not limited to operating subsidies, rental assistance, 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, including site amenities, 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. Costs for multi-level parking structures must be supported by a cost estimate from a Third Party contractor with demonstrated experience in structured parking construction. 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 Off-Site Construction, Site 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 must generally be arranged consistent with the line-items on the SCR Supplement and must also be consistent with the Development Cost Schedule of the

Application.

(ii) The Underwriter will use cost data provided on the SCR Supplement as the basis for estimating Total Housing Development Costs.

(5) Contingency. Total contingency, including any soft cost contingency, will be limited to a maximum of 7% of Building Cost plus Site Work and Off-Site Construction for New Construction and Reconstruction Developments, and 10% of Building Cost plus Site Work and Off-Site 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 Off-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% on Developments with Hard Costs of $3 million or greater, the lesser of $420,000 or 16% on Developments with Hard Costs less than $3 million and greater than $2 million, and the lesser of $320,000 or 18% on Developments with Hard Costs at $2 million or less. 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. 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% of the project's eligible costs, less Developer Fee, for Developments proposing 50 Units or more and 20% of the project's eligible costs, less Developer Fee, for Developments proposing 49 Units or less.

(B) For Housing Tax Credit Developments, any additional Developer Fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15% for Developments with 50 or more Units, or 20% for Developments with 49 or fewer Units). Any Developer Fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer Fee.

(C) In the case of a transaction requesting acquisition Housing Tax Credits:

(i) the allocation of eligible Developer Fee in calculating Rehabilitation~~/New~~

~~Construction~~ Housing Tax Credits will not exceed 15% of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee for Developments proposing 50 Units or more and 20% of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee for Developments proposing 49 Units or less; and

(ii) no Developer Fee attributable to an identity of interest acquisition of the Development will be included; ~~and~~or

(iii) ~~if applicable~~ for Developments meeting the requirements of 10 TAC §11.302(e)(1)(B)(iii)(V), the allocation of eligible Developer Fee in calculating Rehabilitation~~/New Construction~~ Housing Tax Credits will not exceed 5 percent of the Rehabilitation~~/New Construction~~ eligible costs less Developer Fee.

(D) For Housing Tax Credit Developments, Eligible Developer Fee is multiplied by the appropriate Applicable Percentage depending on whether it is attributable to acquisition or rehabilitation basis.

(E) For non-Housing Tax Credit Developments, the percentage can be up to 7.5%, 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 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 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 or Affiliate construction loans is only included in Eligible Basis with documentation satisfactory to the Underwriter that the loan will be at a market interest rate, fees and loan terms and the Related Party lender can demonstrate that it is routinely engaged in construction financing to unrelated parties.

(9) Reserves. Except for the underwriting of a Housing Tax Credit Development at cost certification, the Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two to six 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 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 (relating to Operative Reserve Accounts), 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 and Third Party CPA certification as to the capitalization of the costs 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 Target Population being served) proposed by the Owner in an amount not to exceed 1.5% of the originally underwritten Hard Costs. The additional amenities must 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 as found in Chapter 2 of this title (relating to Enforcement);

(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; and

(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 determined to be infeasible by the Underwriter. Any recommendation made under this subsection to deny

an Application for a Grant, Direct Loan and/or Housing Credit Allocation is subject to Appeal as further provided for in §11.902 of this chapter (relating to Appeals).

(g) Other Underwriting Considerations. The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (4) of this subsection.

(1) Interim Operating Income. Interim operating income listed as a source of funds must be supported by a detailed lease-up schedule and analysis.

(2) 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.

(3) Proximity to Other Developments. The Underwriter will identify in the Report any Developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(4) 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 below the 50% AMGI level or other maximum rent limits established by the Department. The Underwriter will utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the Units 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 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. As also described in §11.302(h), 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 §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%; 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% (or 15% for Tax-Exempt Bond Developments

located in an MSA (as defined in the HTC Site Demographics Characteristics Report) with a population greater than one 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%; or

(D) Is Supportive Housing and the Gross Capture Rate or any AMGI band capture rate exceeds 30%; or,

(E) Has an Individual Unit Capture Rate for any Unit Type greater than 65%.

(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 §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% AMGI rents, which is at least 50% occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.

(2) Deferred Developer Fee. Applicants requesting an allocation of tax credits where the estimated Deferred Developer Fee, based on the underwritten capitalization structure, is not repayable from Cash Flow within the first 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% 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% 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% 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% for Rural Developments 36 Units or less, and 65% 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 EARAC 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% 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% 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% of the Units.

(iv) the Development will be characterized as Supportive Housing 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) for all Units and evidence of adequate financial support for the long term viability of the Development is provided. 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; or

(v) the Development has other long term project based restrictions on rents for at least 50% of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10% 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 Development rental rates or sales price, and state conclusions as to the impact of the Development 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, “any person signing this Report acknowledges 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) - (2) 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 30 calendar days prior to the first day of the competitive tax credit Application Acceptance Period or 30 calendar days prior to submission of any other application for funding for which the Market Analyst must be approved. 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.

(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; and

(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.

(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 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 Development 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 Development’s address or location, description of Development, 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 Real Estate. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.

(7) Statement of Ownership. Disclose the current owners of record and provide a three year

history of ownership for the subject Development.

(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,

(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 §11.302(d)(1)(C) of this chapter (relating to Vacancy and Collection Loss). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

(i) number of Bedrooms;

(ii) quality of construction (class);

(iii) Target Population; and

(iv) Comparable Units.

(C) Absorption. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) Demographic Reports.

(i) All demographic reports must include population and household data for a five 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 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% for the general population and 50% for elderly households; and

(-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 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% rent to income ratio;

(-b-) appropriate household size is defined as two 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 or more Bedrooms:

(-a-) minimum eligible income is based on a 40% rent to income ratio;

(-b-) appropriate household size is defined as two 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% 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 (Project Based Vouchers, Project-Based Rental Assistance, Public Housing Units):

(-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:

(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) - (J) 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 §11.302(i) of this chapter (relating to Feasibility Conclusion). 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% must be supported with additional narrative.

(vi) Total adjustments in excess of 25% 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% of AMGI; two-Bedroom Units restricted at 60% of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(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 §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 §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)

(11) Photographs. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(12) 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.

(13) 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 §11.303(c)(1)(B) and (C) of this chapter (relating to Market Analyst Qualifications).

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

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or Unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market Analysis considering the combined PMA's and all proposed and Unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used by the Underwriter 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, or reviewing 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 appraiser and reviewing 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, “any person signing this Report acknowledges 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 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.), use (whether vacant, occupied by owner, or being rented), number of residents, number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.

(E) Environmental Hazards. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue,

asbestos-containing materials, lead-based paint etc.) noted during the inspection.

(8) Highest and Best Use. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.

(A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.

(B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.

(9) Appraisal Process. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

(A) Cost Approach. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.

(i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

(ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.

(iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three 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.); and

(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 Underwriter 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 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 for the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) Income Approach. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

(i) Market Rent Estimate/Comparable Rental Analysis. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.

(ii) Comparison of Market Rent to Contract Rent. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents

should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.

(iii) Vacancy/Collection Loss. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.

(iv) Expense Analysis. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.

(v) Capitalization. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.

(I) Direct Capitalization. The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.

(II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) Value Estimates. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The “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.

(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 at current contract rents." 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, "any person signing this Report acknowledges 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 all Rehabilitation Developments, the ESA provider must state whether the on-site plumbing is a potential source of lead in drinking water;

(6) Assess the potential for the presence of Radon on the Development Site, 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 the ASTM "Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions" (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.

(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. Scope and Cost Review Guidelines**.**

(a) General Provisions. The objective of the Scope and Cost Review Report (SCR) required for Rehabilitation Developments (excluding Reconstruction) and Adaptive Reuse Developments is to provide a self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development and identifies a scope of work for the proposed repairs, replacements and improvements to an existing multifamily property or identifies a scope of work for the conversion of a non-multifamily property to multifamily use.

The SCR author must evaluate the sufficiency of the Applicant's scope of work and provide an independent review of the Applicant's proposed costs. The report must be in sufficient detail for the Underwriter to fully understand all 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 author. The SCR must include a copy of the Development Cost Schedule submitted in the Application. The report must also include the following statement, "any person signing this Report acknowledges 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) For Rehabilitation Developments, the SCR must include analysis in conformity with the ASTM "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.

(c) The SCR must include good quality color photographs of the subject Real Estate (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 must be included.

(d) The SCR must also include discussion and analysis of:

(1) Description of Current Conditions. For both Rehabilitation and Adaptive Reuse, the SCR must contain a detailed description with good quality photographs of the current conditions of all major systems and components of the Development regardless of whether the system or component will be removed, repaired or replaced. For historic structures, the SCR 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 SCR 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 New Construction must be described. 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 SCR must estimate its remaining useful life, citing the basis or the source from which such estimate is derived;

(4) Code Compliance. The SCR must 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 SCR adequately considers any and all applicable federal, state, and local laws and regulations which are applicable and govern any work. For Applications requesting Direct Loan funding from the Department, the SCR author must include a comparison between the local building code and the International Existing Building Code of the International Code Council.;

(5) Program Rules. The SCR 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; for Direct Loan Developments this includes, but is not limited to the requirements in the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821-4846), the Residential Lead-Based Paint Hazard Reducation Act of 1992 (42 USC §§4851-4856), and implementing regulations, Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35 (including subparts A, B, J, K, and R), and the Lead: Renovation, Repair, and Painting Program Final Rule and Response to Children with Environmental Intervention Blood Lead Levels (40 CFR Part 745);

(6) Accessibility Requirements. The SCR report must include an analysis of compliance with the Department's' accessibility requirements pursuant to Chapter 1, Subchapter B and §11.101(b)(8) of this title and 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 SCR report must include the Department's Scope and Cost Review Supplement (SCR Supplement) with the signature of the SCR author. The SCR Supplement must reconcile the scope of work and costs of the immediate physical needs identified by the SCR author with the Applicant's scope of work and costs. The costs presented on the SCR Supplement must be consistent with both the scope of work and immediate costs identified in the body of the SCR report and the Applicant's scope of work

and costs as presented in the Application. Variations between the costs listed on the SCR Supplement and the costs listed in the body of the SCR report or on the Applicant's Development Cost Schedule must be reconciled in a narrative analysis from the SCR provider. The consolidated scope of work and costs shown on the SCR Supplement will be used by the Underwriter in the analysis to the extent adequately supported in the report; and

(8) Cost Estimates. The Development Cost Schedule and SCR 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 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 SCR 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 SCR 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.

(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 SCR Supplement.

(D) Expected Repair and Replacement Over Time. The term during which the SCR should estimate the cost of expected repair and replacement over time must equal the lesser of 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 SCR 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 SCR 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 for a period and no less than 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% per annum.

(e) Any costs not identified and discussed in sufficient detail in the SCR as part of subsection (d)(6), (d)(8)(A) and (d)(8)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(f) 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.

(g) 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.

(h) The SCR 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.

(i) The SCR report must include a statement that the individual and/or company preparing the SCR report will not materially benefit from the Development in any other way than receiving a fee for performing the SCR. 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 SCR report must contain a statement indicating the report preparer has read and understood the requirements of this section.

Subchapter E – Fee Schedule, Appeals, and other Provisions

§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 Executive Director may extend the deadline for specific extenuating and extraordinary circumstances, provided the Applicant submits a written request for an extension to a fee deadline no later than five business days prior to the deadline associated with the particular fee.

(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% 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% of the review, threshold review prior to a deficiency being issued will constitute 30% of the review, and review after deficiencies are submitted and reviewed will constitute 20% 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 Competitive Housing Tax Credit pre-application which met the pre-application threshold requirements, and for which a pre-application fee was paid, the Application fee will be $20 per Unit based on the total number of Units in the full Application. Otherwise, the Application fee will be $30 per Unit based on the total number of Units in the full Application. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the Managing General Partner of the Development Owner, or Control the Managing General Partner of the Development Owner, may be eligible to receive a discount of 10% off the calculated Application fee, provided such documentation is submitted with the fee. (§2306.6716(d))

(B) Direct Loan Applications. The fee will be $1,000 per Application except for those

Applications that are layered with Housing Tax Credits and submitted simultaneously with the Housing Tax Credit Application. Pursuant to Tex. Gov't Code §2306.147(b), the Department is required to waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services and if HOME funds are awarded. In lieu of the Application fee, these organizations must include proof of their exempt status and a description of their supportive services as part of the Application. The Application fee is not a reimbursable cost under the HOME Program.

(4) Refunds of Application Fees. Upon written request from the Applicant, the Department shall refund the balance of the Application fee for an Application that is withdrawn by the Applicant and that is not fully processed by the Department. The withdrawal must occur prior to any Board action regarding eligibility or appeal. The amount of refund will be commensurate with the level of review completed. Initial processing will constitute 10% of the review, the site visit will constitute 10% of the review, program evaluation review will constitute 40% of the review, and the underwriting review will constitute 40% of the review. 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) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4% of the annual Housing Credit Allocation amount must be submitted; however, this amount is reduced to 2% in 2020 only. 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% of the Commitment Fee may be issued upon request.

(7) Tax Exempt Bond Development Determination Notice Fee. No later than the expiration date in the Determination Notice, a fee equal to 4% of the annual Housing Credit Allocation amount, unless otherwise modified by a specific program NOFA, must be submitted; however, this amount is reduced to 2% in 2020 only. If the Development Owner has paid the fee and is not able close on the bonds, then a refund of 50% of the Determination Notice Fee may be issued upon request. The refund must be requested no later than 60 days after the bond closing date described in the Board action approving the Determination Notice.

(8) 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% of the amount of the credit increase for one year.

(90) Extension Fees. All extension requests for deadlines relating to the Carryover, 10% Test (submission and expenditure), Construction Status Reports, or Cost Certification

requirements submitted at least 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 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.

(10) 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 in order for the request to be processed. 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.

(11) 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.

(12) 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.

(13) 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.

(14) Ownership Transfer Fee. Requests to approve an ownership transfer must be accompanied by a non-refundable processing fee of $1,000.

(15) 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% 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 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 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 Applicant or any Affiliate for any Application in an Application Round occurring concurrent to the return of credits as further provided for in §11.9(f) of this chapter (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds), 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 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

(16) 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. For HTC only the amount due will equal $40 per low-income unit. For Direct Loan Only Developments the fee will be $34 per Direct Loan Designated Units. Developments with both HTCs and Direct Loan will only pay one fee equal to $40 per low income unit. Existing HTC developments with a Land Use Restriction Agreement that require payment of a compliance monitoring fee that receive a second allocation of credit will pay only one fee; the fee required by the original Land Use Restriction Agreement will be disregarded. 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. For Direct Loan only developments, the fee must be paid prior to the release of final retainage. 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.

(17) 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.

(18) 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

(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 using the process identified in this section. For Tax-Exempt Bond Developments and Direct Loan Developments (not contemporaneously submitted with a Competitive HTC Application), 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, and underwriting criteria;

(2) The scoring of the Application under the applicable selection criteria;

(3) A recommendation as to the amount of Department funding to be allocated to the Application;

(4) Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal;

(5) Denial of a requested change to a Commitment or Determination Notice;

(6) Denial of a requested change to a loan agreement;

(7) Denial of a requested change to a LURA;

(8) Any Department decision that results in the termination or change in set-aside 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 the seventh calendar day 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 made by a 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 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 information can be provided in

accordance with any rules related to public comment before the Board, full and complete explanation of the grounds for appeal and circumstances warranting the granting of an appeal must be disclosed in the appeal documentation filed with the Executive Director.

(e) An appeal filed with the Board must be received in accordance with Tex. Gov't Code §2306.6715(d).

(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 Chapter 2, Subchapter C of this title (relating to Administrative Penalties) 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 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 provided for in §1.17 of this title (relating to Alternative Dispute Resolution).

This page is intentionally left blank

(1) State Representative Four Price

Member
Chair, Calendars Committee
Co-Chair, Health & Human Services Transition Legislative Oversight Committee
Natural Resources Committee
Public Health Committee
Redistricting Committee

Four Price
State Representative

Capitol Office
P.O. Box 2910
Austin, Texas 78768-2910
www.house.state.tx.us
four.price@house.texas.gov
(512) 463-0470 Capitol
(806) 374-8787 District

October 9, 2019

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2020 Qualified Allocation Plan (QAP) Proposed Rule 10 TAC §11.9 (C)(7)(A) Proximity to Urban Core

Dear Mr. Wilkinson,

I am submitting this letter as my comments regarding the above-referenced proposed rule. Specifically, I respectfully request your consideration that the proposed rule be amended by reducing the population threshold to 190,000, as there are only two cities in Region 1/Urban – Amarillo and Lubbock. If this rule is not amended, Amarillo will continue to receive unequal treatment until the 2020 census numbers take effect. It is believed that Amarillo's current estimated population exceeds 200,000; however, this estimate will not become official until sometime in 2021.

In February of this year, I submitted a letter in support of Application Number 19232, The Commons at St. Anthony's, Amarillo, Potter County, Texas, for consideration of the 2019 Competitive (9 percent) Housing Tax Credit ("HTC") Program - Region 1/Urban. In addition to my enthusiastic support, the project application received wide-spread community support including from many local leaders, the neighborhood advisory association and the Amarillo City Commission, which passed a resolution in support. The proposed development sought to address the existing need for more affordable and quality senior housing in the city of Amarillo. The redevelopment of this tract of land and buildings, once utilized by a major hospital system, would significantly revitalize this portion of Amarillo. As this property has long been unoccupied, many in the greater Amarillo community, including myself, were very disappointed that the project was not awarded the tax credit funding, as the senior housing development is the cornerstone for redeveloping this site.

I am informed that the reason for the St. Anthony's project losing out on the award is due to Amarillo's official population number of 190,000 being below the Urban Core population threshold of 200,000. Thus, I am further informed that a project in Lubbock, which has a population of 200,000 and above, received the award. This disparate treatment based on a mere 10,000 persons is neither reasonable nor equitable. The proposed rule seeks to keep, as part of the evaluation process, the arbitrary threshold in place. Again, I urge that the proposed rule be amended as aforementioned in this letter. If I can provide any other information, or if you wish to speak with me, I would be pleased to do so.

Sincerely,

Four Price
State Representative

(2) State Senator Kel Seliger

SENATOR KEL SELIGER

CAPITOL OFFICE:
P.O. BOX 12068
AUSTIN, TEXAS 78711
(512) 463-0131
FAX: (512) 475-3733
DIAL 711 FOR RELAY CALLS

The Senate of
The State of Texas

DISTRICT 31

DISTRICT OFFICES:
410 S. TAYLOR
SUITE 1600
AMARILLO, TEXAS 79101
(806) 374-8994
FAX: (806) 374-4607

401 AUSTIN
SUITE 101
BIG SPRING, TEXAS 79720
(432) 268-9909
FAX: (432) 268-9899

6 DESTA DRIVE
SUITE 3360
MIDLAND, TEXAS 79705
(432) 620-0436
FAX: (432) 686-7748

6005 EAST RIDGE ROAD
SUITE 210
ODESSA, TEXAS 79762
(432) 550-7476
FAX: (432) 367-0034

October 9, 2019

Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Wilkinson:

I applaud the effort of the Texas Department of Housing and Community Affairs (TDHCA) to provide affordable statewide housing using a variety of tools such as grants, local partnerships, and tax credits. I am writing in regards to the Housing Tax Credits (HTC) that the agency provides on an annual basis.

I am fortunate to represent the St. Anthony's Hospital, located in Amarillo, which was once a storied institution. The Hospital has recently formed into a nonprofit known as the St. Anthony's Legacy & Redevelopment Corporation, which seeks to revitalize the property to accommodate over one hundred senior housing units. While TDHCA considers many items in the selection criteria, it is my understanding that St. Anthony's efforts to secure the 9% competitive housing credits for Fiscal Year 2019 were unsuccessful due only to Amarillo's population threshold being just under the minimum 200,000 requirement based on 2010 census data.

As a result of being contacted by numerous constituents, I urge you to examine the population criteria and consider a change to the threshold which would allow competitive projects in the City of Amarillo an opportunity to earn the much needed tax credits in the future. I support this initiative and hope you will give it consideration. Thank you for your assistance.

Sincerely,

Kel Seliger

Kel Seliger

(3) Mayor Ginger Nelson, City of Amarillo

CITY OF AMARILLO

OFFICE OF THE
MAYOR

October 10, 2019

Texas Department of Housing and Community Affairs
Attn: Bobby Wilkinson, Executive Director
Patrick Russell, Multifamily Policy Research Specialist
P.O. Box 13941
Austin, Texas 78711-3941

Dear Mr. Wilkinson and Mr. Russell,

I am writing on behalf of the City of Amarillo to comment on the population threshold of the 2020 draft tax credit rules. As currently drafted, the rules place the threshold at a population of 200,000. I respectfully request that the threshold be lowered to 190,000.

Our request is based on an inequity that results from the current threshold of 200,000. This inequitable result happens only in Region 1, our region. The two largest urban populations in Region 1 are Lubbock and Amarillo. These cities are very similar and often use each other as primary resources for best practices. While they are so similar, Amarillo's population hovers just under 200,000 while Lubbock's exceeds 200,000. This one difference puts Amarillo at an unfair disadvantage to Lubbock when applying for tax credit awards with your department. We are the only region in the state that has a slight population gap between its largest urban cities, but yet that gap results in a distinct punitive effect to the Amarillo community in the scoring of its projects.

Reducing the urban core threshold population to 190,000 will change the scoring dynamic only in Region 1. With this minor rule change, fairness in the rule between Amarillo and Lubbock will be restored.

I welcome a conversation about this issue and thank you in advance for your consideration.

Sincerely,

Ginger Nelson

Ginger Nelson
Mayor

Copes to: Sen. Kel Seliger
Rep. John Smithee
Rep. Four Price

601 S. BUCHANAN ST. • P.O. BOX 1971 • AMARILLO, TEXAS 79105-1971 • 806/378-3000 • FAX 806/378-9394 • TDD 806/378-4229

(4) City of Houston Housing and Community Development Department

CITY OF HOUSTON
Housing & Community Development Department

Sylvester Turner
Mayor

Tom McCasland
Director
601 Sawyer, Suite 400
Houston, Texas 77007

T. (832) 394-6200
F. (832) 395-9662
www.houstontx.gov/housing

October 10, 2019

Marni Holloway, Director Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
Marni.holloway@tdhca.state.tx.us

Re: Preliminary Comments Regarding 2020 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Ms. Holloway,

The City of Houston appreciates the opportunity to provide feedback on the Draft of the 2020 Qualified Allocation Plan (QAP). We appreciate the agency's consideration in regards to several changes in the QAP in relation to promoting hi-frequency mass transportation, access to trails and site features. In addition, we applaud the agency's efforts to further define the nature of permanent supportive housing and promoting extended affordability periods.

The Texas Housing Group is a network of affordable housing leaders from Texas cities with populations over 500,000 working to create affordable housing opportunities for all Texans who need access to them. Participants engaged with the group are offering aligned comments for the draft 2020 Qualified Allocation Plan with the intent to demonstrated alignment and support across the largest cities in Texas for the following changes to the draft 2020 QAP.

Recommended Changes for 2020 QAP

1. §11.9(c)(8) (Readiness to Proceed in Disaster Impacted Counties)

HCDD recognizes the urgency to replace lost affordable housing immediately after disaster events. However, the 2019 allocations required a three-month period. This shortened period required an accelerated timeline which burdened not only HCDD but also the office of Planning and Public Works prioritize the affordable transactions for permitting approvals. These departments are already dealing with dealing with strain of rebuilding efforts. If Houston were to face a similar disaster and eligible for this criteria in future years, HCDD recommends sufficient time for staff to adequate underwrite funded transactions and developers to secure permitting approval.

Proposed Amended Language:

HCDD recommends a minimum **six-month period** for the time of securing the credits (January 31 of the following year of allocation).

2. §11.9(d)(7)(A)(i)(III) (Concerted Revitalization Plan and committed funding)

The requirements outlined or CRP's are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. HCDD recommends that the agency provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

Proposed Amended Language:

The adopted plan must have sufficient and documented ~~and committed~~ funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

3. §11.9(d)(2) (Commitment of Development Funding by Local Political Subdivision.)

(d)(2) Commitment of Development Funding by Local Political Subdivision

When a county, municipality or other agency with jurisdiction provides a commitment of its HOME, CDBG or local funding to developments, it should be weighted more heavily compared to a transaction that secures $500 of in-kind contributions that are not material to the overall financing of a transaction. The scoring component under §11.9(e)(4) (Leveraging of Private, State, and Federal Resources) to prioritize transactions levering other sources may work against transactions with higher development costs. Large urban cities will likely continue to prioritize transactions within the urban core which reflect higher costs and may not benefit from this scoring item. We request this scoring item reflect an amount that is material to the overall financing of a transaction.

Proposed Amended Language:

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 if levered with HOME, CDBG, CDBG-DR or other locally funded subsidy. 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. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction.

4. Section11.101(a) (3) (B) (iv). Neighborhood Risk Factors- Schools

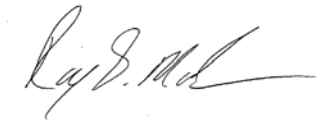
Per the Staff Draft, if the "Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating by the Texas Education Agency. Any school in the attendance zone that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation. 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."

Proposed Amended Language:

We request that the Applicant have the ability to mitigate this neighborhood risk factor if the school district has district-wide or open enrollment, even if the closest school has received an F rating from the Texas Education Agency if the Applicant provides an adequate plan for transporting students to and from a school within the district with a passing rating. Additionally, provide the Applicant with the ability to mitigate this neighborhood risk factor regardless of if it does or does not have district-wide or open enrollment if there is a passing open enrollment charter school the Applicant is able to provide an adequate plan for transporting students to and from.

We thank you for your consideration.

Sincerely,



Ray S. Miller
Assistant Director

(5) City of San Antonio Neighborhood and Housing Service Department

CITY OF SAN ANTONIO
NEIGHBORHOOD & HOUSING SERVICES DEPARTMENT

October 10, 2019

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Preliminary Comments Regarding 2020 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Mr. Russell,

The City of San Antonio's Neighborhood and Housing Services Department (NHSD) appreciates the opportunity to provide feedback on the Staff Draft of the 2020 Qualified Allocation Plan (QAP). NHSD is dedicated to enhancing the quality of life for the residents of San Antonio. We believe that the Housing Tax Credit programs administered by TDHCA are integral to our efforts to provide quality, safe, and affordable housing throughout San Antonio.

NHSD is participating in the Texas Housing Group, a network of affordable housing leaders from Texas cities with populations over 500,000. The Texas Housing Group is working to create affordable housing opportunities for all Texans who need access to them. Group members worked together to craft recommendations for the draft 2020 QAP:

Section 11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule.
Cities must be able to accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule hinders this ability. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city.

Proposed Amended Language:
Recommend additional language that any political subdivision subject to the Two-Mile Same Year Rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

Section 11.9. Competitive HTC Selection Criteria (c)(7) Proximity to Jobs.
Thank you for including a way for developments outside of the Urban Core to be competitive. The City of San Antonio has several job centers throughout the city which have been identified as lacking affordable housing. We believe awarding points to job centers outside the Urban Core will allow affordable units in areas of the city that are in need of affordable housing but were almost automatically excluded from 9% HTC awards under the 2019 criteria. Proximity to Jobs is a more flexible alternative to Urban Core, and does not eliminate developments proposed within the Urban Core from being competitive because there tends to be a concentration of jobs in the Urban Core of cities.

Section 11.9. Competitive HTC Selection Criteria (d)(7) Concerted Revitalization Plan
The requirements outlined for Concerted Revitalization Plans are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. There is a need to better define a CRP and how it functions in the QAP. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. It is recommended that TDHCA provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

Proposed Amended Language
The adopted plan must have sufficient and documented ~~and committed~~ funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

Section 11.9. Competitive HTC Selection Criteria (e)(5)Extended Affordability.
We are excited to see more points being made available to Applicants willing to extend the affordability of their developments beyond 30 years. We would like additional language ensuring the quality of these developments will be maintained over these extended periods. The current opportunity to re-syndicate after 15 years is less than half of the new affordability period for developments opting to maintain affordability to 35, 40, and 45 years. We request TDHCA explore opportunities for another influx of funding for rehabilitation at 30 or 35 years, such as through proactive outreach or priority access to at-risk funds.

The San Antonio development community finds it difficult to identify developments that will qualify for At-Risk funding. We request TDHCA's help in identifying eligible properties.

Section 11.101 Site and Development Requirements and Restrictions (a)(3)(B)(iv)Neighborhood Risk Factors- Schools
Per the Staff Draft, if the "Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating by the Texas Education Agency. Any school in the attendance zone that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation. 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."

Proposed Amended Language:

CITY OF SAN ANTONIO
NEIGHBORHOOD & HOUSING SERVICES DEPARTMENT

The Applicant has the ability to mitigate this neighborhood risk factor if the school district has district-wide or open enrollment, even if the closest school has received an F rating from the Texas Education Agency if the Applicant provides an adequate plan for transporting students to and from a school within the district with a passing rating. Additionally, provide the Applicant with the ability to mitigate this neighborhood risk factor regardless of if it does or does not have district-wide or open enrollment if there is a passing open enrollment charter school the Applicant is able to provide an adequate plan for transporting students to and from.

We understand there are limits in statute pertaining to what staff can change regarding the QAP. NHSD plans to develop a legislative strategy leading up to the 2021 legislative session which will included items related specifically to the QAP. In the meantime, we welcome the opportunity to work with TDHCA to develop methods to advance our shared visions without legislative interventions.

Thank you for your consideration. Please contact me if you have any questions.

Regards,

Verónica R. Soto, AICP
Director, Neighborhood and Housing Services Department
Veronica.Soto@sanantonio.gov
210-207-6620

(6) Nicole Ferrini, City of El Paso

Community + Human Development

October 11, 2019

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941
Austin, Texas 78711-3941
Fax: (512) 475-1895
Email: htc.public-comment@tdhca.state.tx.us

Re: Preliminary Comments Regarding 2020 Qualified Allocation Plan and Uniform Multifamily Rules

Dear Mr. Russell,

The City of El Paso appreciates the opportunity to provide feedback on the Draft of the 2020 Qualified Allocation Plan (QAP). We appreciate the agency's consideration in regards to several changes in the QAP in relation to promoting hi-frequency mass transportation, access to trails and site features. In addition, we applaud the agency's efforts to further define the nature of permanent supportive housing and promoting extended affordability periods.

The Texas Housing Group is a network of affordable housing leaders from Texas cities with populations over 500,000 working to create affordable housing opportunities for all Texans who need access to them. Participants engaged with the group are offering aligned comments for the draft 2020 Qualified Allocation Plan with the intent to demonstrated alignment and support across the largest cities in Texas for the following changes to the draft 2020 QAP.

Recommended Changes for 2020 QAP

1. Section 11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule.

It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city.

Nicole Ferrini – Director & Chief Resilience Officer
City 3 | 801 Texas Ave | El Paso, Texas 79901 | (915) 212-1659

Proposed Amended Language:

Recommend additional language that any political subdivision subject to the Two-Mile rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

2. §11.9(d)(7)(A)(i)(III) (Concerted Revitalization Plan and committed funding)

The requirements outlined or CRP's are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. HCDD recommends that the agency provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

Proposed Amended Language:

The adopted plan must have sufficient and documented and committed funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

3. §11.9(d)(2) (Commitment of Development Funding by Local Political Subdivision.) (d)(2) Commitment of Development Funding by Local Political Subdivision

When a county, municipality or other agency with jurisdiction provides a commitment of its HOME, CDBG or local funding to developments, it should be weighted more heavily compared to a transaction that secures $500 of in-kind contributions that are not material to the overall financing of a transaction. The scoring component under §11.9(e)(4) (Leveraging of Private, State, and Federal Resources) to prioritize transactions levering other sources may work against transactions with higher development costs. Large urban cities will likely continue to prioritize transactions within the urban core which reflect higher costs and may not benefit from this scoring item. We request this scoring item reflect an amount that is material to the overall financing of a transaction.

Proposed Amended Language:

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 if levered with HOME, CDBG, CDBG-DR or other locally funded subsidy. 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. Documentation must include a letter from an official of the municipality, county, or other instrumentality with jurisdiction.

4. Section11.101(a) (3) (B) (iv). Neighborhood Risk Factors- Schools

Per the Staff Draft, "if the Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating by the Texas Education Agency. Any school in the attendance zone

Nicole Ferrini – Director & Chief Resilience Officer
City 3 | 801 Texas Ave | El Paso, Texas 79901 | (915) 212-1659

that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation. 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."

Proposed Amended Language:

We request that the Applicant have the ability to mitigate this neighborhood risk factor if the school district has district-wide or open enrollment, even if the closest school has received an F rating from the Texas Education Agency if the Applicant provides an adequate plan for transporting students to and from a school within the district with a passing rating. Additionally, provide the Applicant with the ability to mitigate this neighborhood risk factor regardless of if it does or does not have district-wide or open enrollment if there is a passing open enrollment charter school the Applicant is able to provide an adequate plan for transporting students to and from.

The City of El Paso is appreciative of the the opportunity to submit our comments alongside other Texas cities committed to the goal of providing quality, safe and affordable housing in our communities. We thank you for your consideration.

Please feel free to contact me if you have any questions.

Sincerely,

Nicole Ferrini
Chief Resilience Officer
Director of Community + Human Development
City of El Paso

(7) Housing Authority of the City of Austin

Housing Authority of the City of Austin

Established in 1937

Board of Commissioners
Carl S. Richie, Jr., Chairman
Charles Bailey
Tyra Duncan-Hall
Edwina Carrington
Mary Apostolou

President & CEO
Michael G. Gerber

October 11, 2019

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Attn: Patrick Russell
Marni Holloway

Re: §11.101(a)(3) Neighborhood Risk Factors, School Quality

Dear Mr. Russell and Ms. Holloway:

I am concerned about the effect of the new language in the 2020 Draft QAP stating that developments in attendance zones of schools with an F rating in 2019 and an Improvement Required rating in 2018 are ineligible with no ability to mitigate this Neighborhood Risk Factor. I believe this provision will disproportionately affect existing affordable housing developments owned by Public Housing Authorities ("PHAs"), and 4% housing tax credit ("HTC") / bond developments. PHAs such as the Housing Authority of the City of Austin ("HACA") fulfill an important need for affordable housing in Texas cities that are becoming increasingly unaffordable, and it is essential that PHAs have access to all available financing tools to preserve and modernize their existing affordable housing developments.

Very often, existing PHA developments and 4% HTC / bond developments are located in Qualified Census Tracts ("QCTs"). Research reveals that in the five major metropolitan areas of Texas, where most 4% HTC / bond developments are located, approximately 66% of F rated schools are located in QCTs (see attached Exhibit A). Eliminating the ability to mitigate the school quality Neighborhood Risk Factor will severely limit the ability to preserve PHA-owned affordable housing through the 4% HTC / bond programs. As stated by TDHCA staff during the October 10, 2019 TDHCA Board meeting, the 4% HTC / bond programs are responsible for the production of more affordable housing in Texas than the 9% HTC program; therefore, the impact of this new language cannot be ignored.

Each location proposed for affordable housing should be evaluated relative to the unique circumstances that exist in the surrounding area. No one factor (crime, poverty, schools, blight) should carry so much weight that the other factors are not able to be considered. As such I request the elimination of the proposed 2020 Draft QAP language stating that mitigation is impossible for developments in the attendance zones of schools with an F rating in 2019 and an Improvement Required rating in 2018. Additionally, I request expanding the exceptions to the school quality Neighborhood Risk Factor to include existing developments going through HUD's RAD conversion process. Public Housing Authorities need access to all available financing tools to preserve and modernize much needed existing affordable housing stock throughout Texas. Prohibiting certain locations will result in a lost opportunity to preserve existing housing, counter to TDHCA's preservation goals.

To date, if the 2020 Draft QAP school ratings had been in effect, Austin Affordable Housing Corporation, subsidiary of the Housing Authority of the City of Austin, would have been denied credits to develop Studios at ThinkEAST and Bridge at Cameron. These properties have a combined 445 units with 100% of these units serving families at 60% AMI and below. Studios at ThinkEAST is 100% leased and carries a waitlist of 100 families continuously. Bridge at Cameron will start leasing in December and we have no doubt there will be a high demand for these units as well.

Sincerely,

Michael Gerber
President & CEO

"F" schools are disproportionately located in QCTs

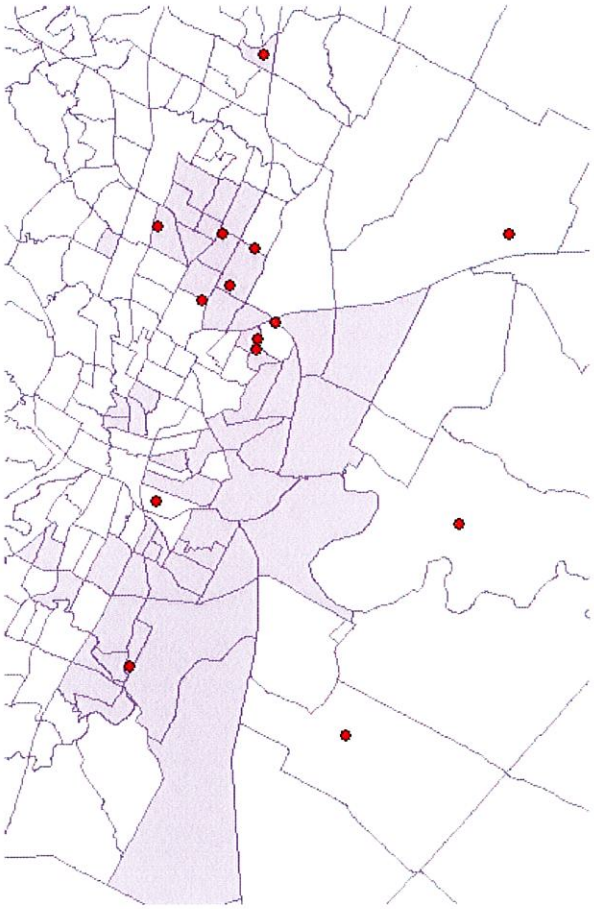
Statewide Results

- 402/9555 (4%) of schools received an "F" rating
- Of those, 148/404 (37%) of "F" rated school are located in QCTs.

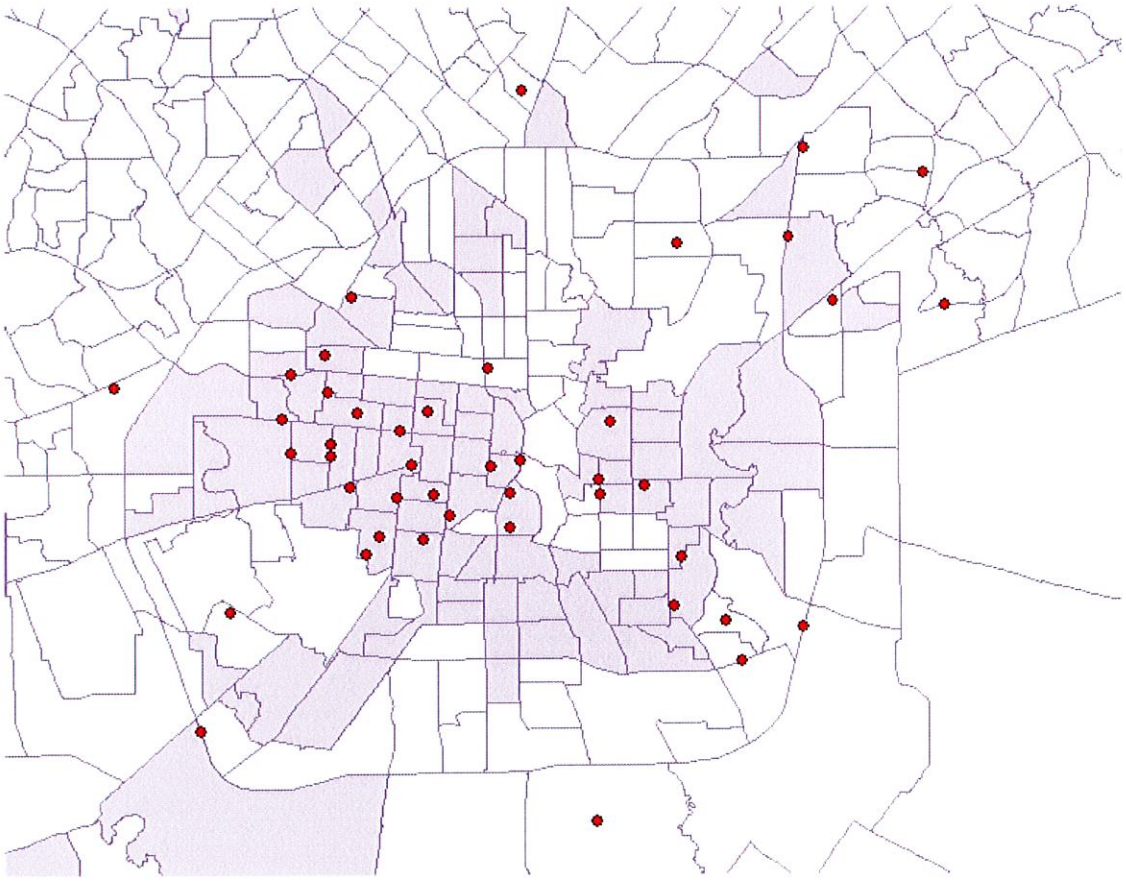
Major Urban Areas

- The five largest cities – 99/151 (66%) of "F" rated schools are located in QCTs

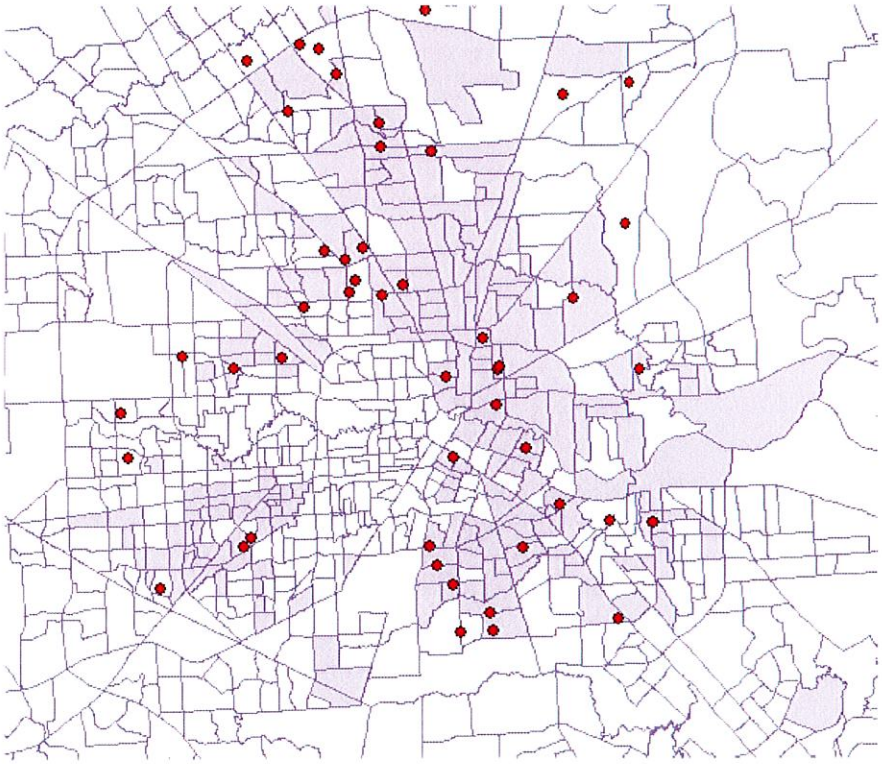
Austin:
10/14 (71%) F schools are in QCTs.



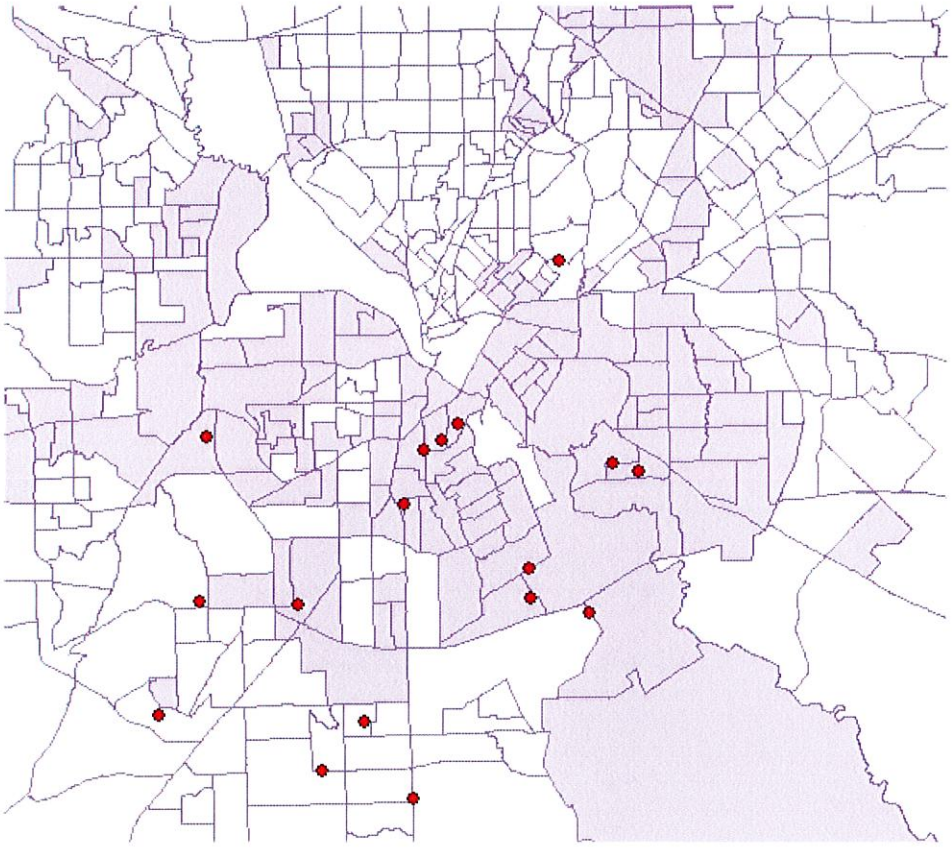
San Antonio: 31/44 (70%) F schools are in QCTs.



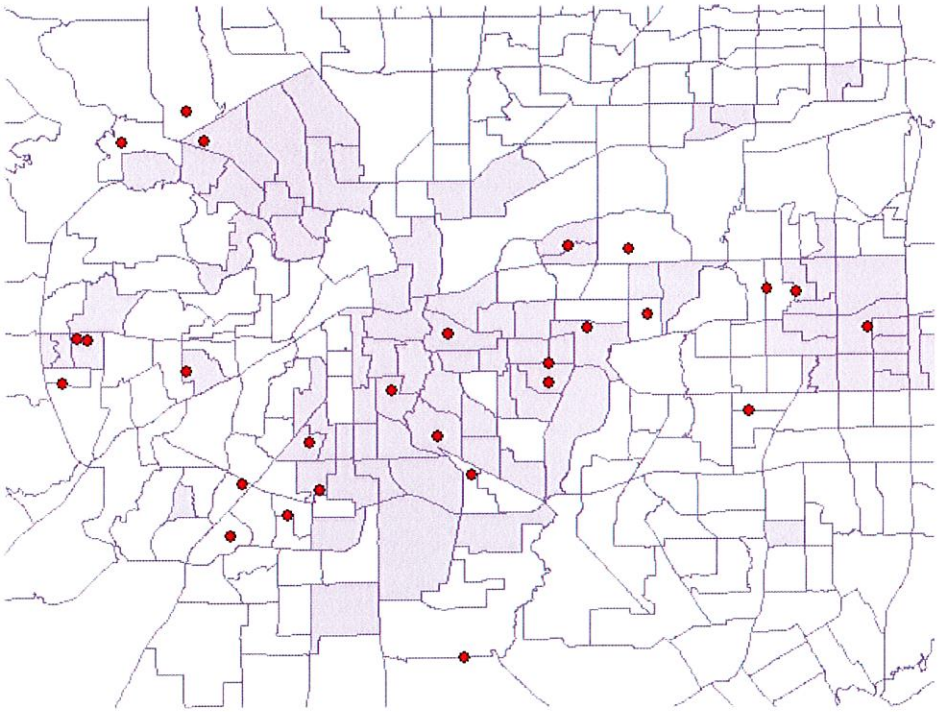
Houston: 32/49 (65%) F schools are in QCTs.



Dallas County: 11/17 (65%) F schools are in QCTs.



Tarrant County: 15/27 (56%) F schools are in QCTs.



(8) Houston Housing Authority

HOUSTON
HOUSING AUTHORITY
Transforming Lives & Communities

2640 Fountain View Drive ■ Houston, Texas 77057 ■ 713.260.0500 P ■ 713.260.0547 TTY ■ www.housingforhouston.com

October 11, 2019

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: TDHCA Draft 2020 Qualified Allocation Plan

Dear Mr. Russell:

In connection with the draft 2020 Qualified Allocation Plan, we would like to submit the following comment:

Section 11.101(a)(3)(B)(iv) and 11.101(b)(1)(C). The proposed language regarding ineligibility with no opportunity to mitigate for those Developments that fall within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating will preclude development in revitalization areas in the inner cities. For example, our client, the Houston Housing Authority ("HHA"), is losing the 296-unit Clayton Homes site as it is being taken by the Texas Department of Transportation in order to widen Highway 59. HHA has an obligation to replace the 296 units within 2 miles of the Clayton Homes site. HHA has identified a site within 2 miles of the Clayton Homes site and has the site under contract to replace a majority of the units. Under the proposed language, this replacement site would be deemed ineligible because of the high school's 2019 TEA Accountability Rating and 2018 Improvement Required Rating. The kids who live at Clayton Homes are already attending the high school and we want the ability to rebuild the housing that is being demolished. Some mitigating factor in this case, is that Houston has School Choice and charter schools that meet the standard. This is just one example of how the concept of a hard and fast rule with no ability to explain mitigating factors will lead to unjust results. Accordingly, we suggest removing the language in clause (iv) and recommend the language return to that used in 2019.

Assuming this language is meant to remove the right to appeal a staff determination of ineligibility based on one school's F rating, we do not think it is appropriate to single out one factor that would cause an application to be ineligible with no such option for appeal. It has otherwise been presumed that both the Neighborhood Risk Factors and the Undesirable Site Features are aspects of the rule that allow for a wholistic approach to the consideration of site eligibility, and this language removes the potential for that wholistic approach in one particular situation. In addition, Section 2306.6715 of the Texas Government Code explicitly states that an applicant may appeal a "determination regarding the application's satisfaction of threshold…criteria." We believe that this would apply in this situation, that applicants are entitled to be able to appeal a staff determination regarding eligibility of an application, even if that is specifically related to the eligibility of a site.

The automatic ineligibility of a site that has any school with low accountability ratings in 2019 and 2018 effectively redlines entire communities; for example, the entire Fifth Ward in Houston. Respectfully, we understand this policy to be in direct conflict with the concerted community revitalization requirements of Chapter 42 of the Internal Revenue Code.

As you know, this section requires QAPs to give preference to projects in QCTs in neighborhoods with concerted community revitalization plans. The section further states that QAP selection criteria must include community revitalization plans. By automatically eliminating (redline) these areas, the QAP removes the foundation that a decent, safe and affordable home will improve the student's socioeconomic stability and consequently their educational performance.

Thank you for the opportunity to provide these comments. If you need any additional information or have questions, please feel free to call me at 713-260-0522 or e-mail me at tgunsolley@housingforhouston.com

Sincerely,

Tory Gunsolley
President & CEO

Encl.

(9) San Antonio Housing Authority

Patrick Russell

From: Patrick Russell
Sent: Friday, October 11, 2019 5:02 PM
To: HTC Public Comment
Subject: FW: Public Comment to the 2020 QAP
Attachments: F schools overlaid with QCTs.pdf; Texas Housing Group QAP Comments 100919.docx

From: Timothy Alcott <timothy_alcott@saha.org>
Sent: Wednesday, October 09, 2019 3:43 PM
To: htc.pulbic-comment@tdhca.state.tx.us; Marni Holloway <marni.holloway@tdhca.state.tx.us>; Patrick Russell <patrick.russell@tdhca.state.tx.us>
Cc: Lorraine Robles <lorraine_robles@saha.org>; Michael Reyes <michael_reyes@saha.org>
Subject: Public Comment to the 2020 QAP

Patrick Russell - Please consider these comments to the daft 2020 QAP, 10 Texas Administrative Code (TAC). Regarding, Section 11.101 *Site and Development Requirements*. Under Undesirable Site Features, Neighborhood Risk Factors subsection (iv) page 77 of 184, I am concerned that the rule cannot be mitigated if the school receives an F rating. In San Antonio, **70% of QCT** had one school with an F rating. When you look at the five major urban areas, 66% of "F" schools are located in a QCT. If the school got an Improvement Rating the year prior, any deal zoned to this school would be ineligible. This will negatively impact 4% bond applicators and would negatively much of San Antonio. See attachment.

Additionally, I am a part of the Texas Housing Group, which is a group of cities and housing authorities that have discussed the QAP. I am also attaching the Texas Housing Group's comments QAP.

TIMOTHY ALCOTT
Real Estate and Legal Services Officer

San Antonio Housing Authority
818 S. Flores St.
San Antonio, TX 78204
Direct (210) 477-6633 | **Fax** (210) 477-6633

A Moving to Work Agency

“F” schools are disproportionately located in QCTs

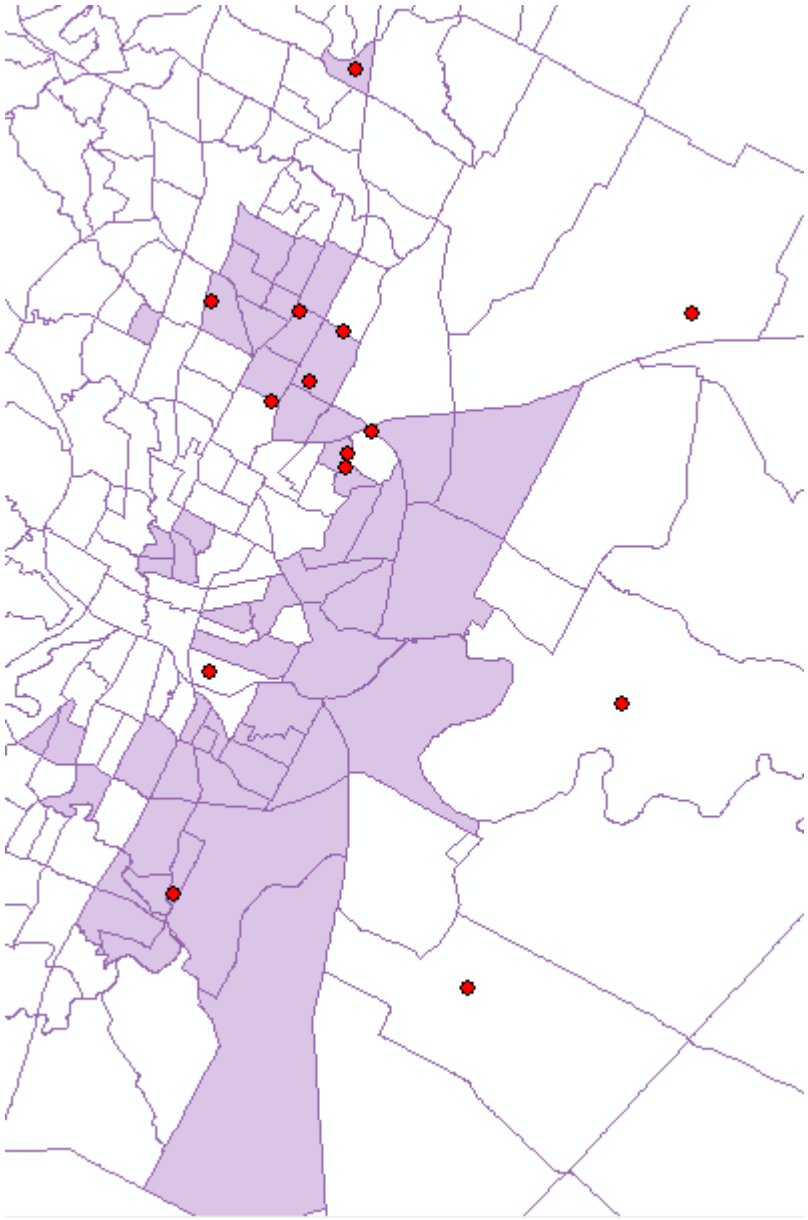
Statewide Results

- 402/9555 (4%) of schools received an “F” rating
- Of those, 148/404 (37%) of “F” rated school are located in QCTs.

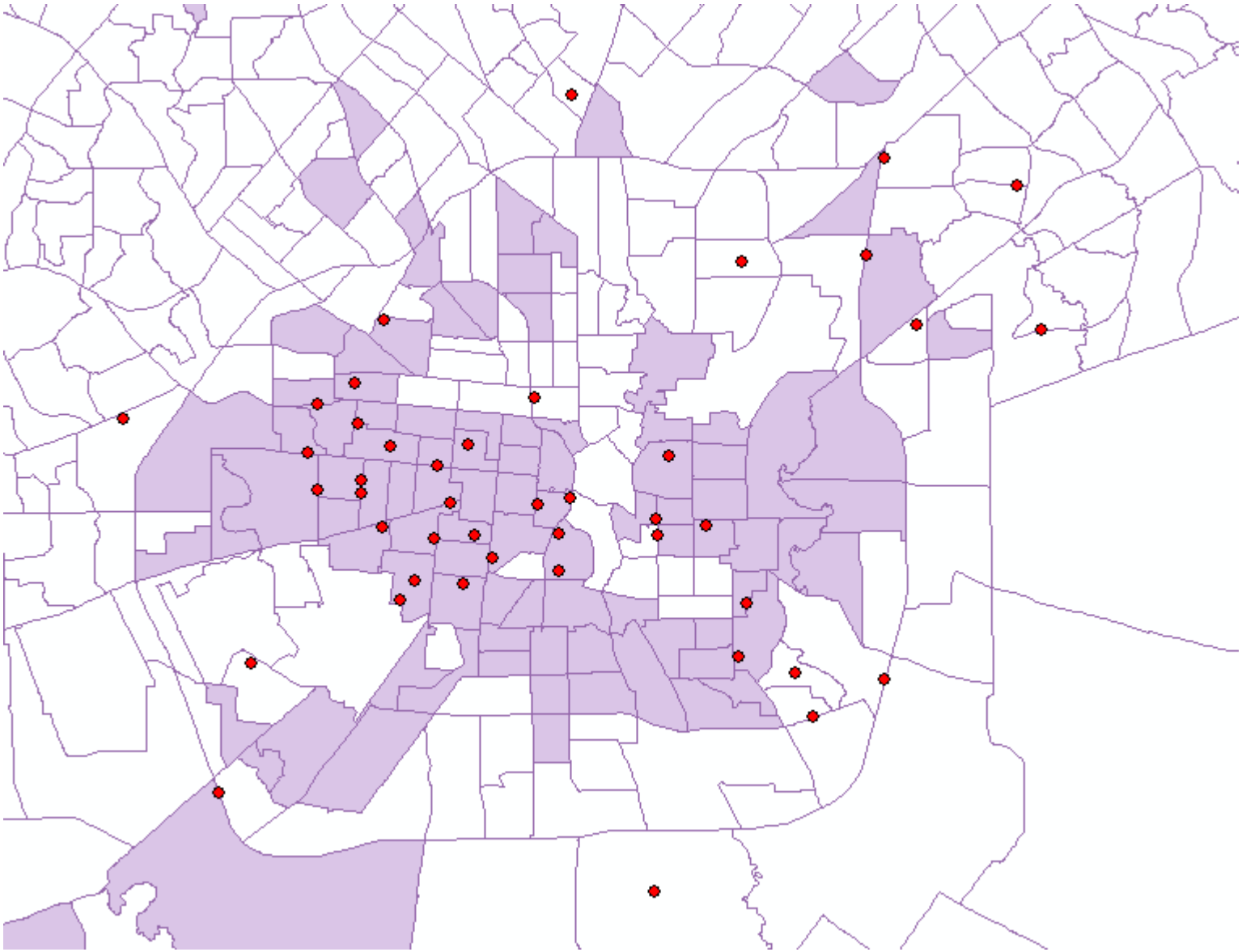
Major Urban Areas

- The five largest cities – 99/151 (66%) of “F” rated schools are located in QCTs

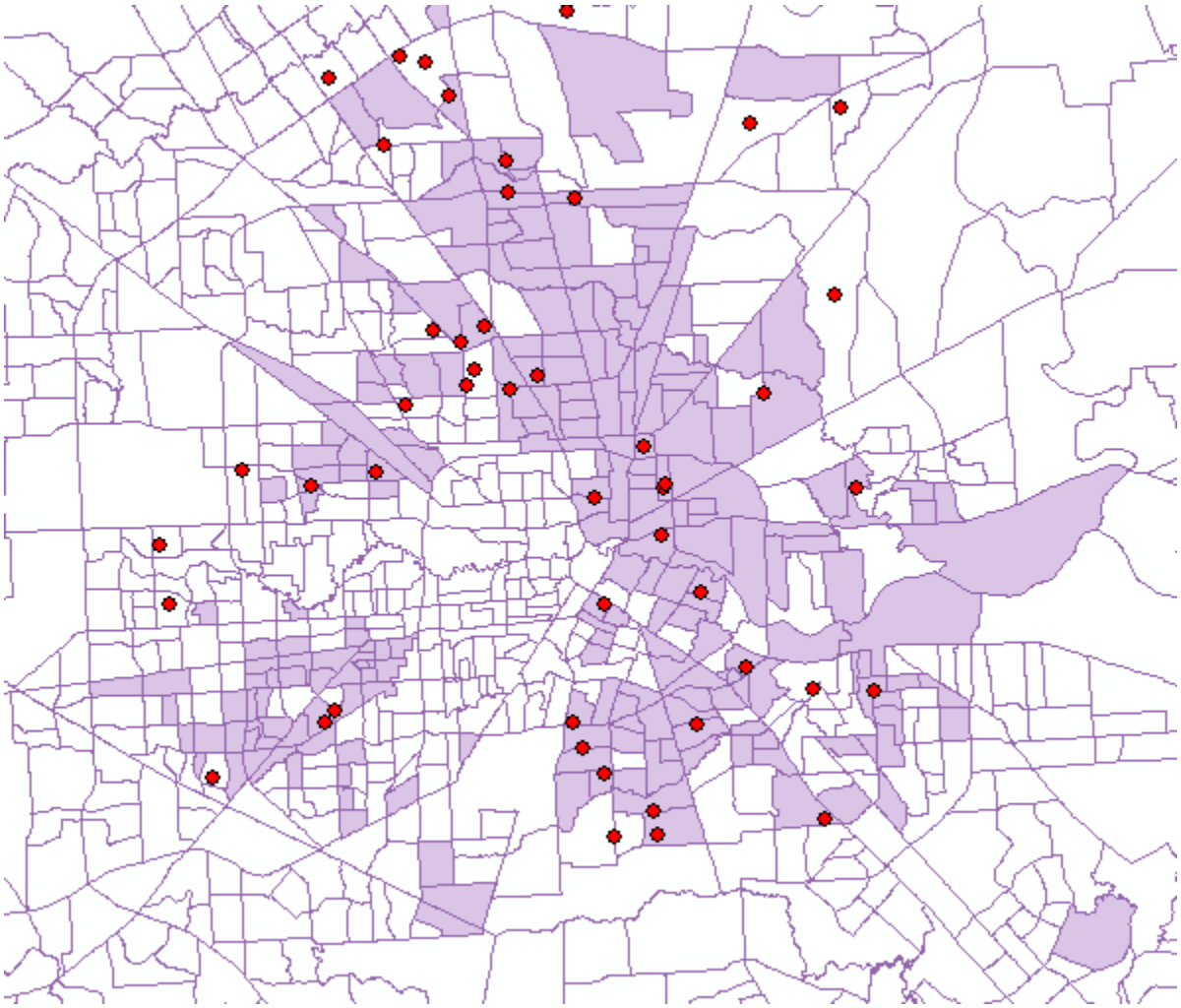
Austin:
10/14 (71%) F schools are in QCTs.



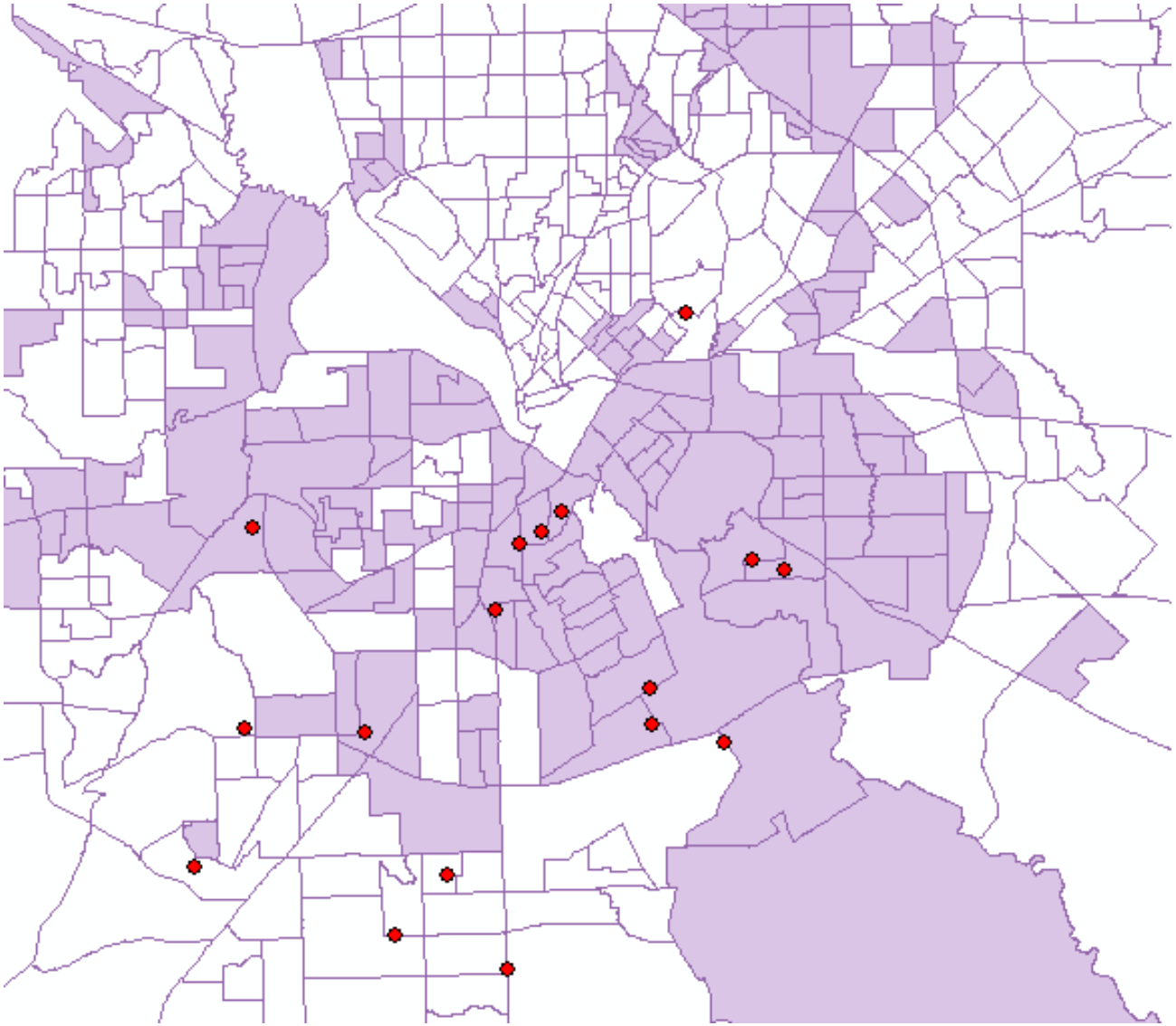
San Antonio: 31/44 (70%) F schools are in QCTs.



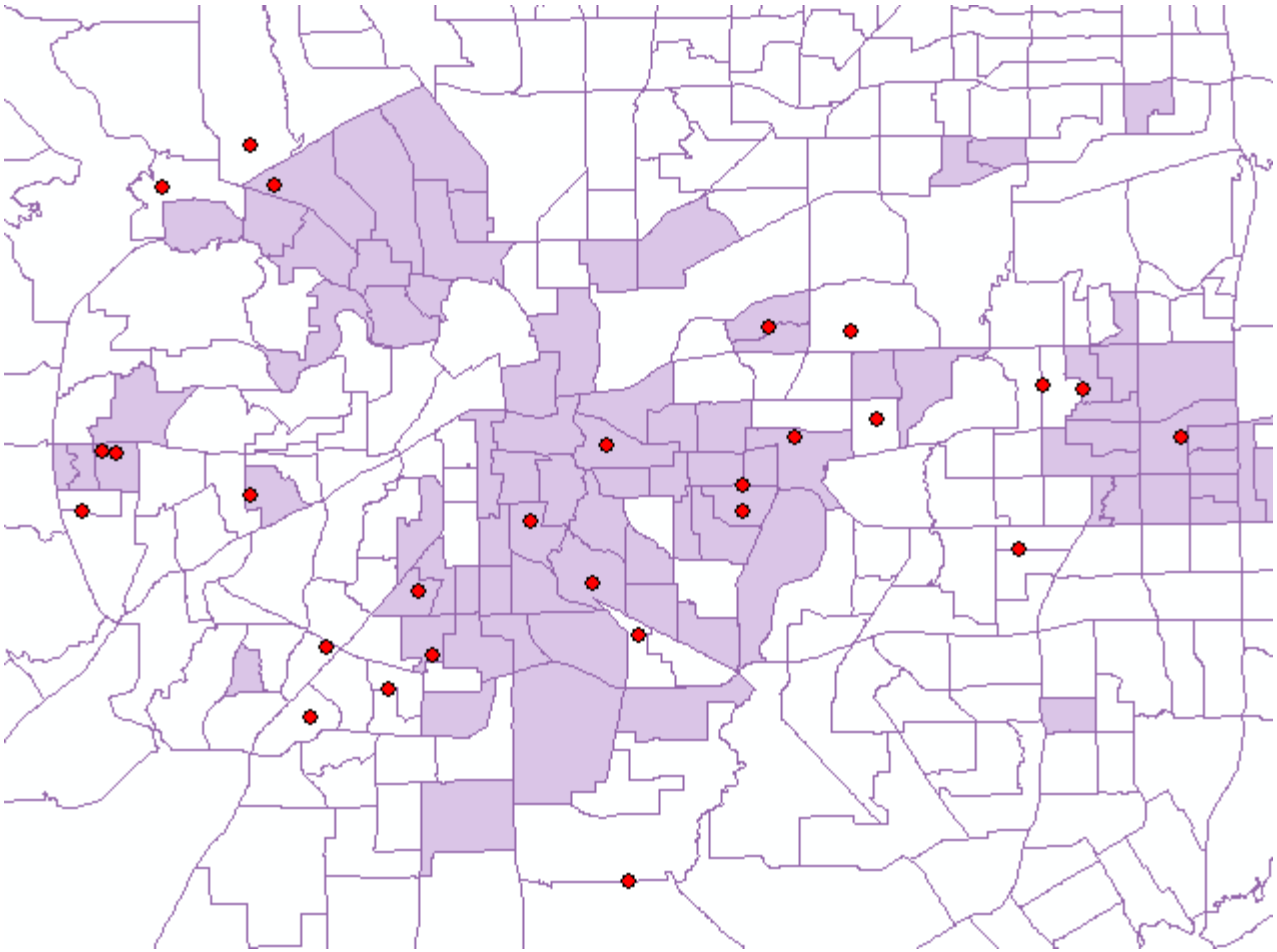
Houston: 32/49 (65%) F schools are in QCTs.



Dallas County: 11/17 (65%) F schools are in QCTs.



Tarrant County: 15/27 (56%) F schools are in QCTs.



(10) Texas Affiliation of Affordable Housing Providers

TAAHP
TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS

TEXAS AFFILIATION OF AFFORDABLE HOUSING PROVIDERS | 221 E. 9th Street, Ste. 408 | Austin, TX 78701
tel 512.476.9901 taahp.org

October 11, 2019

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701
Patrick.Russell@tdhca.state.tx.us

Re: Texas Affiliation of Affordable Housing Providers – Comments Regarding TDHCA Governing Board Approved 2020 Qualified Allocation Plan

Dear Mr. Russell,

The Texas Affiliation of Affordable Housing Providers ("TAAHP") is appreciative for the opportunities to discuss changes to the 2020 Qualified Allocation Plan ("QAP") with Texas Department of Housing and Community Affairs ("TDHCA") staff, and particularly for revisions made as a result of those discussions and previously submitted comments from TAAHP. TAAHP has convened a meeting of its membership to discuss those comments which were not incorporated into the TDHCA Governing Board Approved Draft of the 2020 QAP that is currently published in the *Texas Register*. It is TAAHP's policy to submit only recommendations that represent consensus opinions of membership. On behalf of TAAHP, please accept the following consensus comments for consideration in the drafting of the 2020 QAP.

Qualified Allocation Plan

- §11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties – TAAHP reiterates previous comment and recommends the elimination of this scoring item in 2020 as it was a disaster recovery tool and temporary measure to deliver affordable housing in Hurricane Harvey-impacted areas. This scoring item has served its purpose and should now be phased out of the QAP.

- §11.9(e)5 Extended Affordability – TAAHP reiterates its previous suggestion to revert to 2019 language offering maximum points for a 35-year affordability period. Compliance periods beyond 35-years (i) run counter to the national average; (ii) are burdensome for owners considering the barriers to recapitalization/rehabilitation; (iii) will increase construction costs for longer-term, more sustainable product and (iv) will require updating underwriting standards to ensure longer-term, financial longevity of the developments. We understand that this revision was made in response to a larger discussion surrounding preservation of affordable units. However, extending affordability periods for units constructed now will not address the primary issue, the loss of existing units. As stated in previous comment, TAAHP believes that preservation is an important issue facing the housing tax credit industry and supports TDHCA in evaluating its comprehensive preservation policy. TAAHP membership is supportive of a preservation policy that provides increased ability to recapitalize existing affordable housing developments, including financial incentives for recapitalization, and the removal of barriers to do so. Regarding barrier removal, TAAHP membership suggests allowing greater ability for findings of eligibility for

rehabilitation developments that have Neighborhood Risk Factors. In addition, TAAHP believes that the two separate issues of 1) preservation of existing affordable units and 2) extended affordability periods for new construction are most effectively addressed through local requirements. This would allow preservation approaches to be guided by the specific needs of different markets, particularly in rural vs. urban markets.

- §11.9(e)(2) Cost of Development per Square Foot – TAAHP reiterates previously made comment and requests that TDHCA consider actual cost data in establishing policy objectives related to development costs. Because that actual cost data is now available, TAAHP believes that the cost levels in the scoring item should have some relationship to it. A 20% deduction from actual cost data presented at the June 2019 QAP roundtable to the proposed new construction Eligible Building Cost per square foot is reasonable for non-high cost developments. Therefore, TAAHP suggests $83.10 ($103.88*80%) as new construction Eligible Building Cost for non-high cost developments in order to achieve maximum points. In 2019, there was an approximate 7% increase from the non-high cost development cost number to the high-cost development number; therefore, we recommend $89.04 as the Eligible Building Cost per square foot for high-cost new construction developments to achieve maximum points. TAAHP suggests that other cost levels within the scoring item can be adjusted from these base numbers.

- §11.101(a)(2) Undesirable Site Features and §11.101(a)(3) Neighborhood Risk Factors – TAAHP believes that both rules are intended to allow for a holistic approach to the consideration of site eligibility and notes two instances where the draft language does not serve that purpose and so requests the deletion of the following language:
    - "If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting;" and
    - "Except for…a Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation."

  TAAHP believes that staff determinations of eligibility are always appealable to the Board per Statute (Texas Government Code §2306.6715) and that no one factor (crime, poverty, schools, etc.) should carry so much weight that the other factors are not able to be considered. In the same vein, TAAHP believes there are instances where it is appropriate to present new information, particularly after application reviews and discussion reveal the specific concerns of staff and/or the Board.

- §11.201(2)(B) Bond Developments, Non-Lottery Applications – TAAHP requests either a reversion to 2019 language allowing an application for Priority 3 transactions to be submitted up to 30 days prior to the issuance of the Certificate of Reservation, OR removal of language in §11.201(6) regarding "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" which "may not be reviewed or underwritten…" Other revisions to this section will allow a longer time period for staff review, which TAAHP does appreciate may be necessary. However, with the new legislation regarding the cap on the bond reservations, it is much more likely that applications will be submitted throughout the year. If some of those applications are not reviewed by staff due to when they were submitted, there is significant risk of the Certificate of Reservation expiring before reviews and underwriting are complete.

- §11.302(e)(1)(B)(iii) related to Identity of Interest transactions – TAAHP requests either the removal of the requirement for a second review of an appraisal or alternatively, would support TDHCA publishing a list of approved appraisers to eliminate any previous providers that may

have caused concern. Appraisals are prepared by licensed and experienced professionals and must abide by the standards of USPAP (Uniform Standards of Professional Appraisal Practice). It is our understanding that an appraiser would not be able to give an opinion on another appraisal without doing the full scope of appraisal work themselves, per USPAP rules. This would make any kind of secondary review impossible, potentially forcing applicants to engage two appraisers simultaneously, adding an unnecessary burden to an already very expensive application. In addition, even if a secondary review were possible, it is unclear when or how quickly this is expected to happen during the already tight timeline of the 9% application round.

Thank you for your consideration of these comments. Please note that representatives from the TAAHP QAP Committee welcome the opportunity to meet with TDHCA staff in order to discuss these recommendations more fully.

Please contact Jean Latsha at (512) 470-7312 or jlatsha@pedcor.net, Nathan Kelley at (281) 782-7078 or nkelley@blazerbuilding.com, or TAAHP Executive Director Roger Arriaga at (512) 476-9901 or roger@taahp.org with questions.

Sincerely,

Nathan Kelley

Nathan Kelley
TAAHP QAP Committee Co-Chair

Jean Latsha

Jean Latsha
TAAHP QAP Committee Co-Chair

Cc: Bobby Wilkinson, TDHCA
Brooke Boston, TDHCA
Marni Holloway, TDHCA
Sharon Gamble, TDHCA
TDHCA Board
TAAHP Membership

(11) Rural Rental Housing Assocation of Texas, Inc.

RRHA OF TEXAS

RURAL RENTAL HOUSING ASSOCIATION OF TEXAS, INC.

October 11, 2019

ATTN: Patrick Russell
TDHCA, Multi-Family Finance
221 E. 11th Street
Austin, Texas 78701-2410
Email: htc.public-comment@tdhca.state.tx.us

RE: 2020 STAFF DRAFT QAP COMMENT: RURAL RENTAL HOUSING ASSOCIATION

Dear Mr. Russell:

Please find the Rural Rental Housing Association's comment to the release of Staff's 2020 Qualified Application Plan "Draft," attached to this letter. We appreciate Staff's consideration of our prior comments and the revision to the Underserved Area section based thereon. In light of TDHCA's data showing that the total number of unit production decreased last year, we believe we are not accomplishing efficient construction under the QAP. Some of our criticism contained herein with a focus on increased costs is due to our collective desire to provide much-needed affordable housing across the state as efficiently as possible. We encourage standards and requirements that do not unnecessarily increase costs of producing affordable housing units.

The Rural Rental Housing Association of Texas, Inc. ("RRHA") represents more than 600 rural properties consisting of over 22,000 units that house more than 34,500 residents and has considered the staff proposed "options" during the 2020 Qualified Allocation Plan ("QAP") meetings. A significant focus of Chapter 2306, Texas Government Code, is the preservation of existing affordable multifamily housing and our portfolio represents existing properties, many of which are in need of rehabilitation. In consideration of the residents we serve, we are very grateful for your consideration of our comments.

If you need any additional information or clarification, please feel free to contact Devin Baker, Development Chair, at 281-689-2030, ext. 128, or via email at dpbaker@lcjcompanies.com. Thank you for consideration of our concerns.

Very respectfully,

Brent Guldahl

Brent Guldahl
President
Rural Rental Housing Association of Texas, Inc.
2 North 9th Street, Suite B
Temple, Texas 76501
P: 254.778.6111

Suggested revisions to language, including the draft language, and practical policy concerns behind the suggestions:

1. Proximity to Jobs Areas, (7)

On p. 53-54, there are new options for scoring under Proximity to Jobs. We are opposed to this scoring item applying in Rural areas. Rural communities are generally spread out and vary in concentration of businesses. We believe it is an impractical factor to gage the need for units in a community based on this concept as the makeup of Rural communities varies widely across the state. This item has not applied to these areas in the past and, as currently stated, does not apply to the "At-Risk Set Aside." We request this scoring item not apply to either the USDA or At-Risk set aside.

Suggested change:

(B) Proximity to Jobs. . . . . This scoring item will not apply to Applications under the At-Risk and USDA Set-Asides.

2. Construction Costs for Rehabs

Our Association will always support incremental annual increases to allowed construction costs. Without these increases, typically, developers are encouraged to cut much needed costs in order to ensure scoring. The 12 point ceiling, in some instances, requires the applicant to voluntarily limit the acquisition basis with a reduction in the acquisition credit in order to ensure they are able to perform a complete rehab. Our members will always support a full rehab (not partial) as it is a more efficient use of all the other fixed costs; architect, counsel (our attorney fees are not fixed), CNA/appraisal, etc. Rehabs are already able to spread credits across multiple properties, relative to new construction. Our membership asks that Staff would see the need to increase the construction cost limits to keep pace with inflation and to attempt to offset labor and material shortages.

Suggested Change:

(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~~ $115.00 per square foot;

3. Scope of Work and Cost Review "SWCR"

We believe the new preliminary language requiring a "comprehensive description" will lead to excessive information, raising the overall cost of these reports; (p. 162) §11.306. Scope of Work and Cost Review Guidelines, (a) .... self-contained report that provides a comprehensive description and evaluation of the current conditions of the Development..."

CNA providers and Developers will spend extra time detailing analysis of issues, rather than documenting the condition and continuing on with the decision-making process. For example, a current report may outline that "the project has sheet vinyl floor covering that has reached the end of its useful life and should be replaced." However, under these new proposed requirements, this may not be considered a comprehensive statement. For a SWCR provider to be safe in complying with the "comprehensive" requirements, the statement would likely be unnecessarily stretched, and lengthened, with nothing of substance added. Due to this consideration, we believe the "comprehensive" requirement will not be efficient and only raise costs of the rehabilitation. At the very least, "comprehensive" needs to be defined to prevent the costly logging of unnecessary information.

(12) Texas Coalition of Affordable Developers

TX-CAD 2020 QAP Comments

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2019 QAP. TX-CAD is a coalition of developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent 200 years of affordable housing development/policy experience and approximately 35,000 units of affordable housing in Texas.

We appreciate the multiple forums used to gather public comment and staff/Board's willingness to incorporate suggestions from our various members. While we believe that there is consensus about most items in the 2020 QAP, there are some issues that we would like to be reevaluated by staff and ultimately amended in the final version to be adopted by the Board. Please see our comments below:

Section 11.9(e)(5) Extended Affordability
Several times through the initial discussions of the 2020 QAP it was stated that the "vast majority" of states now require 50 years of affordability for their tax credit developments, and that this is the "industry standard". At the time we wondered whether this really was the case. With that in mind, we engaged Novogradac to do a study of what each state requires/incentivizes with regard to extended affordability (see Attached study results). Per the study:

Of the 49 states other than Texas:

- **Twenty-six (26) have some form of extended use requirement;**
- **Twenty-three (23) states have no extended use requirements at all;**
- **An "all states average" is 10 additional years; and**
- **The most frequent periods are 15 and 20 years.**

We believe that these figures show that a 45 year extended use period is **not** industry standard and certainly not done by the vast majority of the states. In fact, it shows that the language from the 2019 QAP that has a maximum of 35 years is actually much closer to "industry standards".

Continued Sustainability of Developments
Our biggest concern with regard to affordability periods being extended via points to 45 years is that there is no correlating consideration being given to 1) increasing construction costs for more sustainable product 2) updating underwriting standards to ensure longer term financial longevity of the developments and 3) providing solutions for rehabilitation and refinancing needs on the back end of the development (especially after year 30) to ensure continued sustainability of the developments.

Ten states out of 26 incentivize an additional 15 or 20 year affordability periods (5 each). In looking at several of the largest of these states, it was evident that while they have incentives or requirements for longer affordability periods, they also provide the ability to refinance and/or re-syndicate or provide other incentives to allow for substantial renovation of properties during the extended affordability periods. Whether through robust design standards or sustainable development overlays to incorporate longer life cycle construction products, it is understood that paying for quality upfront will have long-term benefits for the developments. Likewise many of

these states provide Preservation set-asides funds for existing Tax Credit deals, availability/ease of refinancing using bond funds, modifications or relief to the rent and income restrictions after year 30, the ability to apply for a new allocation of 9% tax credits and/or property tax exemptions for older Tax Credit properties. These are examples of various tools that help keep properties sustainable long-term.

Preservation

While extending the affordability period seems like a simple way to help address preservation if we are preserving buildings that are functionally obsolete and/or in need of repair, maintenance, rehabilitation, then we must also provide solutions. The physical plant of frame constructed buildings and the useful life of finishes, appliances, plumbing, electrical simply is not viable for these longer affordability periods without significant maintenance and /or replacement.

The primary concern with extended affordability periods is the ability to generate funds after year 15 in order to pay for needed improvements/capital-type maintenance. Given that 15 year old properties continue to be rent and income restricted, their ability to refinance and generate proceeds for improvement is limited by the property's net operating income, which in turn is limited due to rent restrictions. This becomes even more of an issue after year 30.

Providing 15+ year old properties with an opportunity "re-syndicate" with bonds and 4% non-competitive credits is not always a viable solution. The limiting factor is that (due to existing rent restrictions in the original LURA, and the relatively small amount of equity proceeds generated in 4% noncompetitive transactions), it is very difficult to generate a meaningful amount of excess refinancing proceeds to be used for improvement of the property.

Nine percent (9%) tax credits and other soft funds need to also be available to address the future needs of those developments that currently have extended use requirements and may be coming close to the end of their affordability period.

One example of a limiting factor within the current QAP is that the At Risk set aside requires TDHCA's existing portfolio to go through a full Right of First Refusal (ROFR) process before being eligible to apply for new credits, thereby discouraging recapitalization, rehabilitation and preservation. Other limiting factors include ineligible site features when considering an existing tax credit development as compared to new construction sites.

Conclusion

The issues of Extended Affordability and Preservation are prioritized by statute, but have not necessarily evolved to address the most pressing needs of the newly constructed or existing portfolio. We believe that forethought and planning on both the front and back end of the lifecycle of developments need to be addressed before longer term affordability is incorporated into the 2020 QAP.

Specific 2019 QAP Comments

1. Revert the 2020 QAP back to the 2019 affordability periods, ie 35 years, and undertake a full evaluation of all the issues surrounding extended affordability and potential solutions for the 2021 QAP.
2. For 2021 QAP preservation of the existing TDHCA portfolio needs to be moved up in priority to help with expiring affordability state wide.
3. Extended affordability should not be considered in a vacuum but realistically considered in light of the life cycle of the physical product, needs for rehabilitation and likelihood of re-financing.

NOVOGRADAC & COMPANY LLP®

Texas Coalition of Affordable Developers

Determination of Extended Use Periods from State Housing Credit Agencies with Independent Accountants' Report on Applying Agreed-Upon Procedures

October 11, 2019

INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED-UPON PROCEDURES

Texas Coalition of Affordable Developers
811 Main Street; Suite 290
Houston, Texas 77002

Re: Texas Coalition of Affordable Developers

We have applied the procedures enumerated below, which were agreed by the Board of Directors of the Texas Coalition of Affordable Developers ("TCAD", or "Organization"), on information with respect to extended use periods used by various State Credit Housing Agencies (the "State Agencies"). These agreed-upon procedures were performed solely to assist you with the identification of extended use periods used by the State Agencies. The Organization's management is responsible for the information collected herein. The sufficiency of these procedures is solely the responsibility of the specified parties. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and associated findings are as follows:

1) We identified the State Agencies in the United States that are responsible for the allocation of Low Income Housing Tax Credit (LIHTC) under IRC §42;

   Findings:

   We identified the Agencies from the membership list of the National Council of State Housing Agencies ("NCSHA. For purposes of these procedures, we selected the 50 state housing agencies, and did not include housing agencies from the District of Columbia, the City of New York, the City of Chicago, and other agencies associated with United States Territories. These State Agencies are included in Appendix A, attached hereto.

2) We read information provided by the State Agencies for current guidance and requirements regarding the Extended Use Period, as defined under IRC §42(h)(6)(D), (e.g. Qualified Allocation Plan) for the purpose of identifying the following:

   a) Guidance that requires and/or offers points for extending the extended use period beyond the federal 30-year period; and;

   b) The number of years by which the period is extended.

   Findings:

   Of the 49 states other than Texas, 26 have some form of qualified allocation plan (QAP) requirement or incentive for low-income housing tax credit (LIHTC) projects to remain affordable longer than the Internal Revenue Code minimum of 30 years.

   Among these 26, the extension ranges from five to 99 years, with an average of just over 20 (for a total of 50 years). Including all states brings the average down to 10 additional years. The most frequent periods are 15 and 20, with five states adopting each.

   Information for specific State Agencies is included in Appendix A, attached hereto.

3) The Organization selected certain State Agencies for further analysis. With respect to these State Agencies, we read information for current guidance and requirements regarding the Extended Use Period, as defined under IRC §42(h)(6)(D), (e.g. Qualified Allocation Plan) for the purpose of identifying the following:

a) Agency's policies that consciously/deliberately incorporate longer life cycle construction products to compensate for the extending beyond the 30-year use restriction; and,

b) Assistance provided with refinancing and/or rehabilitation for projects maintaining long-term use agreements (e.g. relaxing rent restrictions after year 15 or a real estate tax exemption).

Findings:

The Organization identified the following State Agencies for purposes of Procedure #3:

- New Jersey,
- Michigan,
- Virginia,
- Nevada,
- Massachusetts, and
- Oregon.

Massachusetts

- 30% set-aside for preservation.
- No clear thresholds (other than >12 units).
- Housing at risk of loss due to market conversion, fiscal condition, or physical distress.
- Applications representing a time-limited opportunity to purchase existing affordable housing.

Massachusetts is in the process of incorporating more green and sustainable requirements into LIHTC project design. The new QAP draft contains info in several sections related to design covering longer life-cycles.

Massachusetts offers no specific assistance at front end of process. Sponsors of existing LIHTC projects are allowed to come back to seek more funding when ready.

Michigan

- 25% set-aside for preservation.
- Year 15 projects are one of four types eligible.

For actual construction products, on the 9% LIHTC side, Michigan has a minimum green standard that every development. The 4% LIHTC/Direct Lending unit has fairly robust design standards, as they are the actual direct lender. The design standards go into detail about specific construction materials and finishes that are required.

Michigan (continued)

For refinancing/rehab of existing LIHTC deals, Michigan has allowed modifications to the rent/income targeting in conjunction with a new LIHTC award, but caution that this does not cause negative impacts to the current tenants. All projects (new or rehab) are eligible to apply for a Payment in Lieu of Taxes (PILOT) with their local municipality and earn points in the QAP. However, it is ultimately up to municipality as to whether they choose to grant an exemption to the project. The majority of the projects (new and rehab) have some type of real estate tax exemption associated with the rehab/refinancing. Also, at the owner's request, Michigan has reviewed the rent targeting (on a case-by-case basis) on some projects that may not have a high likelihood of refinancing under our multifamily development programs but are struggling with their current rent/income targeting. In those cases, Michigan does analysis to help determine adjustments to rent/income targeting while ensuring that there are no negative impacts to the current residents.

New Jersey

- Set-asides are for a project in each of two cycles (Family and Senior).
- "Preservation project" means an existing housing project that is at least 50 percent occupied and is at risk of losing its affordability controls or at risk of losing its level of affordability. In order to qualify for the preservation set-aside, the proposal must be for the rehabilitation of at least 75 percent of the affordable units and no new construction of units is permitted

New Jersey encourages sustainable design and high quality construction materials but the requirement is only to meet building code.

New Jersey does not preclude projects from refinancing or resyndicating after the initial 15 years. New Jersey has not relaxed any rent restrictions in the extended use period. All projects have a tax abatement from the outset.

Oregon

- 25% preservation set-aside.
- Projects with at least 25% of the units have federal project-based rent subsidies expiring within 7 years; or, projects with public housing units undergoing a comprehensive recapitalization.

Oregon has a sustainable development overlay to incorporate longer life cycle construction products for all project receiving OHCS funding. The sponsors can request a waiver.

Oregon typically does not relax rent restrictions. Oregon was the first state in the nation to impose rent control statewide.

Nevada and Virginia

Information was either not available or the procedures did not apply to Nevada or Virginia.

Based on the agreed-upon procedures, we determined that there was no “industry standard” for the length of the extended use period. For the State Agencies identified in Procedure #3, each State Agency used different policies and methods for determining the periods longer than the mandated Extended Use Period under IRC §42.

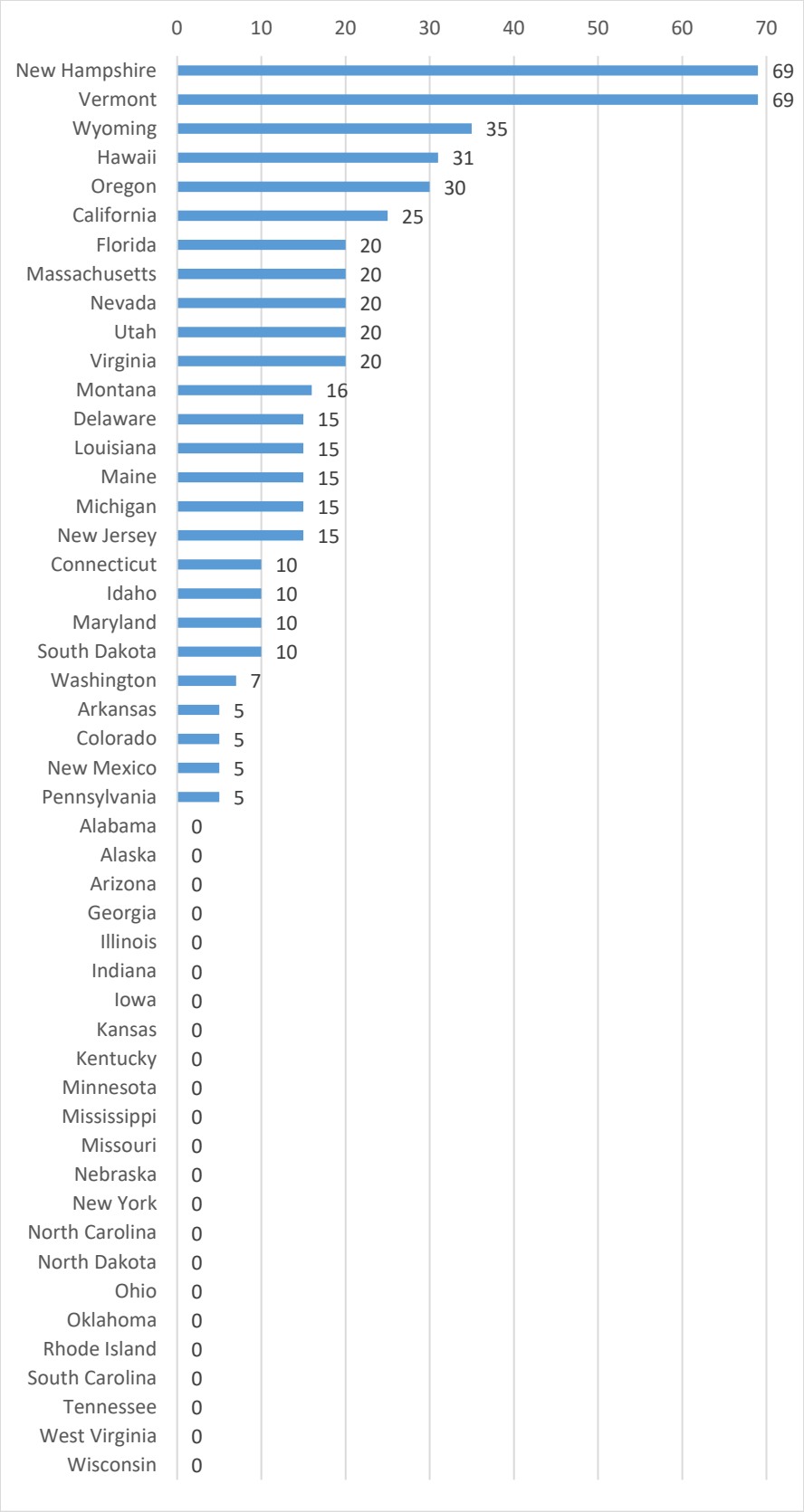
This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not, conduct an examination or review, the objective of which would be the expression of an opinion or a conclusion on the accounting records. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Organization and is not intended to be and should not be used by anyone other than those specified parties.

Novogradac & Company LLP

Austin Texas
October 11, 2019

Appendix A


0
10
20
30
40
50
60
70
New Hampshire 69
Vermont 69
Wyoming 35
Hawaii 31
Oregon 30
California 25
Florida 20
Massachusetts 20
Nevada 20
Utah 20
Virginia 20
Montana 16
Delaware 15
Louisiana 15
Maine 15
Michigan 15
New Jersey 15
Connecticut 10
Idaho 10
Maryland 10
South Dakota 10
Washington 7
Arkansas 5
Colorado 5
New Mexico 5
Pennsylvania 5
Alabama 0
Alaska 0
Arizona 0
Georgia 0
Illinois 0
Indiana 0
Iowa 0
Kansas 0
Kentucky 0
Minnesota 0
Mississippi 0
Missouri 0
Nebraska 0
New York 0
North Carolina 0
North Dakota 0
Ohio 0
Oklahoma 0
Rhode Island 0
South Carolina 0
Tennessee 0
West Virginia 0
Wisconsin 0

Appendix A

California
Regulation 10325(c)(6): All projects, except those [using tax-exempt bonds], will be subject to the minimum low income percentages chosen for a period of 55 years (50 years for projects located on tribal trust land).
https://www.treasurer.ca.gov/ctcac/programreg/2019/20190227/regulations-clean.pdf

Florida
Ch. 67-48 FAC(66): "Housing Credit Extended Use Period" means, with respect to any building that is included in a Housing Credit Development, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of:
(a) The date specified by the Corporation in the Extended Use Agreement, or
(b) The date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
https://www.flrules.org/gateway/chapterhome.asp?chapter=67-48

Extended Use Agreement form language: Notwithstanding anything to the contrary elsewhere in this Agreement, if the Owner has set aside one or more units in the Development for Low Income Tenants in perpetuity, [i.e., fifty (50) years, the Extended Use Period shall continue in perpetuity, i.e., fifty (50) years.] [the date that is the fifteenth (15th) anniversary of the last day of the Compliance Period, unless earlier terminated as provided in the Preamble of this Agreement]

New York State
no provision, resulting in the 30 year federal minimum
https://hcr.ny.gov/system/files/documents/2019/03/lihc-qap-2013.pdf

Pennsylvania
QAP Application Eligibility Criteria 8: Applications for Tax Credits must demonstrate a commitment to serve low income residents for a period of not less than 35 years.
https://www.phfa.org/forms/multifamily_news/news/2018/2019-2020-qap-final-news.pdf

Illinois
QAP Section VI(A): Projects receiving a Conditional Allocation, either through a Reservation Letter or 42(m) Letter, will be subject to an Extended Use Agreement setting forth income and occupancy restrictions for a total of thirty (30) years.
https://www.ihda.org/wp-content/uploads/2017/10/2018-2019_QAP_Final.pdf

Ohio
QAP Extended Use Agreement: All HTC developments shall commit to an extended use period of a minimum of 30 years of affordability at the time of application.
http://ohiohome.org/ppd/documents/2018-19-QAP-Final.pdf

Georgia
QAP Section 11(A): The [Land Use Restrictive Covenant] will be for the term of the Compliance Period and the Extended Use Period.
https://www.dca.ga.gov/sites/default/files/2019_qualified_allocation_plan.pdf

Appendix A

North Carolina
QAP Section VII(A)(5): Owners must record, prior to all other liens against the property in the registry of deeds in the county where the project is located, a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement).
https://www.nchfa.com/sites/default/files/page_attachments/QAP19-FinalQAP.pdf

Michigan
Scoring Criteria B(5): Projects that agree to commit to an extended use period longer than 15 years (i.e., beyond the minimum total commitment of 15 years compliance plus 15 years extended use = 30 years) will receive 0.34 points for each additional year, up to a maximum of 5 points. Fractional points will be rounded down. Thus, a project committing to a total affordability period of 45 years would earn the maximum 5 points.
https://www.michigan.gov/documents/mshda/mshda_li_qap_2019_2020_qap_final_627392_7.pdf
https://www.michigan.gov/documents/mshda/mshda_li_qap_2019_2020_score_sum_final_627393_7.pdf

New Jersey
5:80-33.15(a)(1)(i): Projects not located within a Targeted Urban Municipality which extend their compliance period for an additional 15 years [to 45 total] shall receive 20 points.
https://nj.gov/dca/hmfa/media/download/tax/qap/tc_qap_proposed_2019_2020.pdf

Virginia
13VAC10-180-60(7)(c): Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). (50 points for a 20-year commitment beyond the 30-year extended use period.)
https://www.vhda.com/BusinessPartners/MFDevelopers/LIHTCProgram/LowIncome%20Housing%20Tax%20Credit%20Program/2019-QAP-Final.pdf

Washington
Policies Section 2.11: If the Applicant makes a commitment for an Additional Low-Income Housing Use Period, the duration of the 22 years beyond the 15-year compliance period. If the Applicant opts for the longest extension, the total Project Compliance Period would be 37 years.
http://www.wshfc.org/mhcf/9percent/2020application/c.policies.pdf

Arizona
QAP Section 5.4: Pursuant to I.R.C. § 42, the state requires that all recipients of Tax Credits enter into an initial fifteen (15) year compliance requirement and an additional extended use restriction for at least an additional fifteen (15) years after the initial compliance requirement, extending the total commitment to a minimum of thirty (30) years.
https://housing.az.gov/sites/default/files/documents/files/2019-QAP-Final-12-11-18.pdf

Massachusetts
Section XII(H): DHCD will award three points in this category to applications whose sponsors commit to a term of affordability of 50 or more years.
https://www.mass.gov/files/documents/2018/08/31/20182019QAP.pdf

Appendix A

Tennessee
QAP Section 2: The Extended Use Agreement begins on the first day of the compliance period and ends the later of:
1. The date specified by THDA in the agreement; and
2. The date 15 years after the close of the compliance period.
https://s3.amazonaws.com/thda.org/Documents/Business-Partners/Multi-Family-Developers/LIHTC-Program/2019-2020-QAP-06.24.2019.pdf

Indiana
QAP Section 5.1(U): All Developments receiving reservations under this Allocation Plan must meet the full 30-year extended use period obligation.
https://www.in.gov/myihcda/files/Final%202020-2021%20QAP.pdf

Missouri
QAP Development Characteristics. It is important the development's characteristics are appropriate for the intended tenant population. The following characteristics will be reviewed closely:
c. The type of development being proposed is an important characteristic and affects how the other selection criteria are applied. Developments will be evaluated on how they contribute to the goal of this Plan and the mission of MHDC. Regardless of type, developments that obligate themselves to serve qualified tenants for the longest period of time are given extra consideration.
http://www.mhdc.com/rental_production/2019-fy-items/FY2019-QAP.pdf

Maryland
Program Guide Section 3.2.3: All projects requesting competitive LIHTC, RHFP funds, and/or RHW must agree to at least forty (40) years of low-income occupancy restrictions.
https://dhcd.maryland.gov/HousingDevelopment/Documents/lihtc/NEW-Final2019MDMFRentalFinancingProgramGuideSignedbyGovernor2-13-2019.pdf

Wisconsin
QAP Section II(A)(1)(d): Owners of developments funded from any HTC program will be required to enter into a Land Use Restriction Agreement (LURA) with WHEDA for a mandatory 30-year period.
https://www.wheda.com/HTC/Allocating/

Colorado
QAP Section 5.A(2): CHFA will award points for projects that receive federal Tax Credits that waive any rights to terminate the extended-use period:
15 Years of Compliance + 25 Years of Waiver – 38 points
http://www.chfainfo.com/arh/lihtc/LIHC_Documents/2019_QAP.pdf

Minnesota
Program Manual 3(Q): As a condition of receiving tax credits, a project will be subject to a Declaration of Land Use Restrictive Covenants (Declaration) between the owner and Minnesota Housing through which the owner commits the building(s) to low-income use for an extended use period of at least 15 years after the conclusion of the 15-year compliance period (a total of 30 years).
http://www.mnhousing.gov/sites/multifamily/taxcredits/archive

Appendix A

South Carolina
LIHTC Manual Section I(1)(i): 30 year compliance period.
http://www.schousing.com/library/Tax%20Credit/2019/Final%202019%20TC%20Manual.pdf

Alabama
QAP Section II(C)(14): All Projects must commit in writing to extend the Housing Credits low-income set-aside an additional 5 years beyond the 15-Year Compliance Period to 20 years.
http://www.ahfa.com/Content/Uploads/ahfa.com/files/AHFA_2019%20QAP_Final.PDF

Louisiana
QAP Part 2, Section III(A): Project will execute agreement in which Owner irrevocably waives its rights to Qualified Contract under the provisions of I.R.C. §42(h)(6)(E) and (F) until after the 45th year (7 points).
https://www.lhc.la.gov/resources-for-housing-development?description=&type=21

Kentucky
QAP Compliance Monitoring: The compliance monitoring procedure applies to all projects that receive or have received an allocation of Housing Credit and will continue throughout the 15-year compliance period. During the extended use period, KHC's Compliance Department has established procedures.
http://www.kyhousing.org/Development/Multifamily/Documents/2019-2020%20Qualified%20Allocation%20Plan.pdf

Oregon
QAP Section III(G): OHCS has established a threshold requirement that all competitively awarded housing tax credit Projects must remain affordable for 60 years.
https://www.oregon.gov/ohcs/HD/HRS/LIHTC/2016-QAP-Final.pdf
https://www.oregon.gov/ohcs/HD/MFH/LIHTC/QAP/2019-QAP-Draft-09042019.pdf

Oklahoma
330:36-1-4: "Extended Use Period" means the continuous period, a minimum of fifteen (15) years, following the close of the Compliance Period during which a Qualifying Building must satisfy all requirements of the Code and the Credit Program.
https://www.ok.gov/ohfa/documents/chapter-36-final-rules-tax-credit.pdf

Connecticut
QAP Section III(F)(2)(a): The proposed development must be ready to proceed as documented by the following Application Threshold items: Length of Extended Low Income Housing Commitment ("ELIHC") for a minimum of 40 years.
https://www.chfa.org/assets/1/6/2018_Qualified_Allocation_Plan_FINAL.pdf

Utah
QAP Section 4(D)(i): Projects must commit to an Extended Use Period which is 35 years after the close of the Compliance Period for a total of 50 years.
https://utahhousingcorp.org/pdf/2020-QAP.pdf

Iowa
QAP Appendix 2: Extended Use Period (Long Term Compliance Period): the time frame which begins the first day of the Initial 15-year Compliance Period, in which the building is a part of a qualified low-

income housing Project and ends 15 years after the close of the Initial 15-year Compliance Period, or the date specified by IFA in the LURA.
http://www.iowafinanceauthority.gov/Home/DocumentSubCategory/236

Nevada
QAP Section 14.3.6: A maximum of four (4) points will be awarded to Applicants/Co-Applicants that extend the period of affordability beyond the required 30 years. Applications will receive one preference point for each additional 5- year period of affordability, not to exceed 50 years.
https://housing.nv.gov/uploadedFiles/housingnvgov/content/programs/LIH/2019%20QAP%20Final%20-%202-7-19.pdf

Arkansas
Guidelines II(A)(12): The applicant must submit a signed statement which indicates the number 4 Points of years the period of affordability will be extended. To receive points, the period of affordability must be at minimum 35 years.
https://adfa.arkansas.gov/media/file/2019_Multifamily_Housing_Application_Guidelines.pdf

Mississippi
QAP Section 1.1(2): Affordability Period. IRC §42(h)(6) requires the development owner to enter into an "extended low-income housing commitment" that adds an additional 15-year low-income occupancy requirement to the initial 15-year compliance period.
https://archivemhc.com/htc/2019/2019_2020%20Qualified%20Allocation%20Plan.pdf

Kansas
QAP Compliance Monitoring (B)(15): Owner acknowledgement that the Extended Use Agreement binds the property for 30 years and prohibits the eviction of any income qualified tenant, other than for good cause, and prohibits any increase in the gross rent with respect to the low income unit not otherwise permitted under Section 42 during the 30 year term.
https://kshousingcorp.org/wp-content/uploads/2019/08/2019QAPFinal.docx

New Mexico
QAP Section III(E)(7): 35-year Affordability Period (15-year initial Compliance Period plus 20-year Extended Use Period) 5 points
http://www.housingnm.org/assets/content/Developer/QAP_2019_-_Posted_to_Web_Prior_to_Governor_Approval_11-20-2018.pdf

Nebraska
no provision, resulting in the 30 year federal minimum
https://www-nifa-org-files.s3.amazonaws.com/93b1-94161667-1%20-%20%202020%209%25%20Allocation%20Plan%20Final.pdf?versionId=uTe56nBv76AMnVQTOsshnxdTesZTMPwv

West Virginia
QAP Selection and Preference Criteria: 150 points will be awarded to an Applicant that commits the property to serving qualified low-income tenants, using the elected minimum set-aside requirement for the percentage (50% or 60%) of the area median gross income, and the applicable IRS rent restrictions for 15 years beyond the close of the initial 15-year Compliance Period.
https://www.wvhdf.com/wp-content/uploads/2019/03/2019-AND-2020-Allocation-Plan.pdf

Appendix A

Idaho
QAP Section 6.5(1): Developments which are obligated to provide low-income use 25 years beyond the initial 15-year compliance period. This 40-year obligation requires the waiver of the Qualified Contract provision.
https://www.idahohousing.com/documents/2019-approved-qap.pdf

Hawaii
QAP Section III(D), Criterion 10: Applicants electing to commit to an additional use period beyond the initial 15-year LIHTC compliance period (collectively the Extended Use Period) will be awarded points based on the table below.

61 years or more	7 points

https://dbedt.hawaii.gov/hhfdc/files/2018/12/2019_2020-QAP_FINAL.pdf

New Hampshire
109.10(A): The LURA shall remain in effect for a 99-year affordability period for projects awarded 9% LIHTCs.
https://www.nhhfa.org/assets/pdf/2019_QAP_4-26-18.pdf

Maine
QAP Section 5(A): Affordability. An Applicant must agree that the Project will comply with Section 42 of the Code and this QAP for a minimum period of 45 years.
http://www.mainehousing.org/docs/default-source/qap/2020-qap.pdf

Montana
QAP Section 9(D)(1): An Application in which the Applicant agrees to maintain units for low income occupancy beyond the Extended Use Period will receive points as indicated below.

31 or more years	100 points (46 years +)

https://housing.mt.gov/Portals/93/shared/docs/MultifamilyDevelopment/QAP/2020/2018Sept12The2020QAPGovApproved.pdf?ver=2018-10-30-112010-430

Rhode Island
Section I(E)(2)(a): A Declaration of Land Use Restrictive Covenants ("Declaration") committing to an extended use period of affordability for the qualifying units of at least thirty years.
https://www.rihousing.com/wp-content/uploads/State_of_Rhode_Island_2019_Qualified_Allocation_Plan-1.pdf

Delaware
QAP Scoring and Ranking: For increases beyond the initial fifteen (15)-year compliance period, five (5) additional points will be awarded for each additional five (5) years the applicant agrees to extend the compliance period.
0-15 points
http://www.destatehousing.com/Developers/lihtc/2019/2019_qap.pdf

South Dakota
QAP Section VII(B)(2): Applicants that make a commitment to increase the Extended Use Period an additional 10 years (to 40 years) will receive 30 points.
https://www.sdhda.org/images/docu/housing-development/QAP-2018-2019-Amended.pdf

Appendix A

North Dakota
QAP Section II(H): Prior to a final allocation of tax credits, the owner must… enter into an Extended Use Agreement which requires the owner and any successors to meet the applicable fraction of low-income occupancy for an extended use period of at least 15 years beyond the initial 15-year compliance period.
https://www.ndhfa.org/Development/LIHTC/2020LIHTCQAP.pdf

Alaska
QAP Rating Criteria (3)(b)(i): One (1) point will be awarded to applications that commit the project to an extended low-income use equaling 30 years.
https://www.ahfc.us/application/files/5415/6262/1088/GOAL_QAP_062619.pdf

Vermont
QAP Definitions: Extended-Use Period- The period described in Section 42(h)(6)(D). For projects receiving 9% (ceiling/allocated) credits, the extended use period is perpetual.
https://www.vhfa.org/documents/2018_qualified_allocation_plan.pdf

Wyoming
QAP Primary Criteria 5: A proposal will receive the following points for committing to a WCDA Compliance Period over and above HUD's Affordability or IRS' Compliance Period where the owner waives the right to a Qualified Contract and agrees to follow the restrictions as set forth in their Application:

65 Total Years Restricted 35 points

https://www.wyomingcda.com/wp-content/uploads/2019/08/2020-QAP_Final-approved-by-Gov_.pdf

(13) Texas Housing Group

Texas Housing Group Proposed QAP Comments
October 4th, 2019

The Texas Housing Group is a network of affordable housing leaders from Texas cities with populations over 500,000 working to create affordable housing opportunities for all Texans who need access to them. Participants engaged with the group are offering aligned comments for the draft 2020 Qualified Allocation Plan with the intent to demonstrated alignment and support across the largest cities in Texas for the following changes to the draft 2020 QAP:

Section 11.3. Housing De-Concentration Factors. (b) Two Mile Same Year Rule.
It is important cities can accommodate their rapidly growing population with an adequate supply of affordable units, and we are concerned the two-mile same year rule impedes this process. Newcomers of all incomes need to be able to live near jobs. The two-mile same year rule has limited the ability of large cities in Texas (with the exception of Houston) to support highly qualified developments that have the potential to significantly benefit the immediate area and the City as a whole.

In practice, this rule has caused developers to compete over the support and delay development, essentially negating the intent of the section. Having to wait two years between developments can create an unnecessary bottle neck in areas where there is a high demand for affordable housing and a concentration of jobs. We share TDHCA's desire not to concentrate poverty, but as developments increasingly tend towards mixed-income, we believe two developments can be in close proximity without concentrating poverty. Growing cities know their local landscape best and should be empowered to waive this rule if it is in the best interest of the city.

Proposed Amended Language:
Recommend additional language that any political subdivision subject to the Two-Mile rule (e.g. communities contained within counties with populations exceeding one million) have the ability to waive it if approved by local officials.

(d)(2) Commitment of Development Funding by Local Political Subdivision
When a county, municipality or other agency with jurisdiction provides a commitment of its HOME, CDBG or local funding to developments, it should be weighted more heavily compared to a transaction that secures $500 of in-kind contributions that are not material to the overall financing of a transaction. The scoring component under §11.9(e)(4) (Leveraging of Private, State, and Federal Resources) to prioritize transactions levering other sources may work against transactions with higher development costs. Large urban cities will likely continue to prioritize transactions within the urban core which reflect higher costs and may not benefit from this scoring item. We request this scoring item reflect an amount that is material to the overall financing of a transaction.

Proposed Amended Language:
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 if levered with HOME, CDBG, CDBG-DR or other locally funded subsidy. 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. 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 directly sourced by HOME, CDBG, CDBG-DR or other locally funded subsidy, including substantial fee waivers.

(d)(7) Concerted Revitalization Plan

The requirements outlined for Concerted Revitalization Plans are prescriptive and there is concern these prevent the municipality from determining what development plans are eligible, thus compromising local control. There is a need to better define a CRP and how it functions in the QAP. Many of the pending CRP plans identify the needs for an area to be funded with future Capital Improvement Projects cycles, however commitments for these items are not provided until each fiscal year. It is recommended that TDHCA provide some flexibility on this item to allow counties, municipalities and other agencies identify the potential sources within in the plan with commitments to be funded with identified sourced and to be committed in future years.

Municipalities should also have the opportunity to pass resolutions of objection as well as the current ability to offer support and/or no objection. If a project is truly detrimental to a community or to a cities priorities to the extent that the governing body is willing to pass a resolution of objection, then that project should be penalized in the state scoring mechanism

Proposed Amended Language

The adopted plan must have sufficient and documented ~~and committed~~ funding to accomplish its purposes on its established timetable. This funding must be flowing in accordance with the plan, such that the problems identified within the plan are currently being or have been sufficiently addressed.

Section11.101(a) (3) (B) (iv). Neighborhood Risk Factors- Schools

Per the Staff Draft, if the "Development Site is located within the attendance zone of an elementary school, a middle school or a high school that has a 2019 TEA Accountability Rating of D and a 2018 Improvement Required Rating by the Texas Education Agency. Any school in the attendance zone that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation. 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."

Proposed Amended Language:

We request that the Applicant have the ability to mitigate this neighborhood risk factor if the school district has district-wide or open enrollment, even if the closest school has received an F rating from the Texas Education Agency if the Applicant provides an adequate plan for transporting students to and from a school within the district with a passing rating. Additionally, provide the Applicant with the ability to mitigate this neighborhood risk factor regardless of if it does or does not have district-wide or open enrollment if there is a passing open enrollment charter school the Applicant is able to provide an adequate plan for transporting students to and from.

(14) National Housing & Rehabilitation Association

NH&RA
NATIONAL HOUSING & REHABILITATION ASSOCIATION

1400 16th St. NW
Suite 420
Washington, DC 20036
(202) 939-1750
Fax (202) 265-4435
www.housingonline.com

September 26, 2019

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Texas Proposed 2020 QAP Comment Letter

Dear Mr. Russell,

On behalf of the National Housing and Rehabilitation Association (NH&RA), I am writing to provide comments on Texas Department of Housing and Community Affairs' (TDHCA) proposed 2020 Qualified Allocation Plan. NH&RA appreciates the opportunity to provide comments regarding projects financed using the four percent Low-Income Housing Tax Credit (LIHTC or credit) and multifamily tax-exempt bonds.

Formed in 1971, NH&RA is a national trade association representing private and non-profit developers of multifamily affordable rental housing. Many of our members are active owners and developers of LIHTC, HUD-Assisted, USDA RD-515 and Public Housing Revitalization properties in Texas. After extensive dialogue and analysis with multifamily bond developers and state housing finance agencies, earlier this year NH&RA developed our Multifamily Tax-Exempt Bond Toolkit (attached), which is designed to highlight policies and best practices that will increase the production and preservation of affordable housing through the four percent LIHTC. The toolkit highlights policy best practices adopted by housing credit allocating agencies (HCAAs) from around the country. It was our goal to design a resource that individual jurisdictions could review and select strategies and policies that best suit their communities and needs. The following comments and recommendations are drawn from this toolkit and tailored to address potential opportunities to expand resources and outcomes in TDHCA's Proposed 2020 QAP.

1. Private Activity Bond Allocation Between Single-Family and Multifamily

NH&RA is pleased to see that S.B. 1474 -86 (R) increased the private activity bond (PAB) allocation for housing initiatives by over 8.5 percentage points. However, we are concerned that single-family receives six-percentage points more than multifamily tax-exempt bonds (TEB). Recognizing that TDHCA does not have the authority to change the split between multifamily and single-family housing volume cap, NH&RA still encourages the relevant state agencies and legislative bodies to dedicate more private-activity bond cap as well as other resources towards multifamily housing. Multifamily bonds are the only type of private activity bond that generate an additional federal subsidy, the four percent LIHTC. Given the shortage affordable housing in Texas and the ability of multifamily bond to leverage four percent LIHTC, we urge TDHCA and the other relevant state agencies to maximize volume cap allocations for multifamily affordable housing.

NH&RA
NATIONAL HOUSING & REHABILITATION ASSOCIATION

1400 16th St. NW
Suite 420
Washington, DC 20036
(202) 939-1750
Fax (202) 265-4435
www.housingonline.com

2. Eligible Basis Issues

The compelling financial attribute of the four percent LIHTC program is the "as of right" credits that come with meeting the Internal Revenue Code Section 142 requirements along with the threshold requirements set forth in a HCAA's QAP. While PAB volume cap is a limited resource, the credits associated with TEB transactions are only limited by the amount of eligible basis. This is a significant difference from the nine percent LIHTC program where the allocation of annual credit authority is capped. Given the competitiveness of the nine percent LIHTC program, it is wholly appropriate that HCAAs place limits on the total amount nine percent credits available to a sponsor and/or project. We believe QAPs should be structured to allow for differing credit limitations between the nine percent and four percent program.

One particular area to focus on in the Texas QAP relates to the current policy relating to Developer Fees. The proposed QAP restricts bond developers from taking developer fee on acquisition costs if there is an identity of interest. This may be an appropriate policy for projects financed utilizing the 9% LIHTC where the credit resource is limited; however, we believe this policy is problematic and harmful to preservation of existing affordable housing in a number of ways. Limitations on reasonable developer fees, hurts the financial viability of projects and disincentivizes committed, high-quality developers from participating in the program. Developers take on a large risk when submitting a LIHTC application. Both four and nine percent developers must take on risk in acquiring properties and forecasting construction pricing. The four percent tax credit tax-exempt bond transactions have a high proportion of foreclosable debt, for which the developer is ultimately responsible. The developer fee compensates developers for these risks, for which they may not receive any compensation for up to four to six years of pre-development work and overhead. These risks are inherent in all bond transactions, whether they are related or unrelated parties. We fear that in the long-term, the inability to take developer fee on acquisition basis on related party transactions creates a financial incentive for owners to sell properties on the open market where there is no guarantee that the buyer will preserve the property as affordable.

Furthermore, the developer fee generates additional eligible basis, which in turn generates more tax credits. Most preservation transactions financed by TEBs are financially constrained by the and reducing the amount of credits a project would otherwise be eligible for decreases a projects DSCR and results in lower project proceeds and reduced project scope. We believe TDHCA's current subsidy layering review and deferred developer fee policies along with an arm-length appraisal conducted by an approved and disinterested appraiser would better steward the agencies scarce resources and insure that projects are not over-subsidized. If THDCA feels further steps are necessary, we would encourage a different approach, namely to require paid developer fee over a certain amount for related party transactions rather than to adopt a wholesale remove of the fee attributable to acquisition basis.

It is worth briefly discussing some of the other roles developer fees serve in LIHTC developments. Given the rent and income restrictions associated with program, cashflow is very limited on LIHTC transactions. Developer fees serve as the primary form of compensation for LIHTC developers, which pays for overhead of essential functions, including accounting, human resources, information

NH&RA
NATIONAL HOUSING & REHABILITATION ASSOCIATION

1400 16th St. NW
Suite 420
Washington, DC 20036
(202) 939-1750
Fax (202) 265-4435
www.housingonline.com

technology, asset management, insurance and legal fees and many others. Developer fees also serve as the primary form of reimbursement for pre-development costs and resident services and are a de-facto construction contingency. In short, LIHTC developers have significant fixed costs outside of the sources and uses of a specific development that are critical to allowing a business to operate and build affordable housing. Developer fees must be sufficient to cover these costs and compensate for the risks inborn in affordable housing transactions if the industry wants to continue to attract and retain the highest quality developers. These risks are felt equally across related and un-related party transactions.

Maximizing developer fees, within reason and the constraints of the law and regulation, is a proven and successful method of increasing eligible basis, raising additional LIHTC equity and generating more production through the TEB program. In effect, progressive approaches to structuring developer fee policy can serve as an alternative to gap financing in a project, allowing HCAAs to prioritize soft dollars for other needs.

3. Differentiating Criteria Between Four and Nine Percent Credits

NH&RA recommends TDHCA separate the requirements for four and nine percent credits or limit four percent credits to threshold requirements. NH&RA believes the four percent and nine percent LIHTCs are qualitatively different programs and should be subject to different considerations in their administration. The four percent LIHTC can be a means to boost production and preservation of affordable housing and we encourage all HCAAs to limit four percent credit requirements to threshold requirements.

A Council of Development Finance Agencies report estimates that Texas used just $1.3 billion of its $7.6 billion volume cap in 2017.[1] After implementing some of the best practices within the Tax-Exempt Multifamily Bond Toolkit, Tennessee went from financing 512 units through the bond program in 2013 to 4,442 units in 2018; and Tennessee's nine percent LIHTC financed 1,526 units of affordable housing while the four percent LIHTC and private activity bonds financed 4,442 in 2017. We believe that by differentiating criteria between four and nine percent credits, Texas could see similar increases in affordable housing production and preservation through its four percent credit.

4. Rolling Application Deadline for Four Percent Credits

NH&RA commends TDHCA for reviewing four percent applications on a rolling basis. One of the most attractive features of the four percent LIHTC to developers is the speed of execution and relative certainty of the credit's availability. A rolling application deadline enables developers to take advantage of this program's defining feature. Application cycles make sense for the competitive nine percent credit, however, given the current velocity of sales of raw land and existing multifamily buildings, application cycles do not align well with the non-competitive four percent credit.

[1] Fisher, T. (September 2018). *CDFA Annual Volume Cap Report: An Analysis of 2017 Private Activity Bond & Volume Cap Trends*. Columbus, OH: Council of Development Finance Agencies. Retrieved from: www.housingonline.com/wp-content/uploads/2018/09/cdfa_annual_bond_volume_cap_2017_report_0918.pdf

NH&RA
NATIONAL HOUSING & REHABILITATION ASSOCIATION

1400 16th St. NW
Suite 420
Washington, DC 20036
(202) 939-1750
Fax (202) 265-4435
www.housingonline.com

5. Points for Local Support or Opposition

We recognize the mandate from the Texas Legislature that TDHCA must award or take away points from proposed developments with statements and resolutions of support or opposition from State Representatives and Local Governments. HB 1973 (86-R) gives TDHCA the discretion to set the maximum number of points that may be awarded for that applications with letters of support or opposition. NH&RA recommends that TDHCA reduce the total number of points from 25 to something that would have less of an impact on proposed developments. The National Low Income Housing Coalition estimates that there is a shortage of 594,631 units of affordable and available housing for Texans making 30 percent or less of area median income and 675,254 units for Texans making 50 percent or less of area median income.[2] This shortage impacts every community in Texas. The development of affordable housing should not place so much emphasis, in the form of QAP points, the opinions of elected officials. Furthermore, consistent opposition to affordable housing that results in failed LIHTC applications increases the likelihood of lawsuits alleging discriminatory intent as seen in the 2015 Supreme Court of the U.S. ruling in Texas Department of Housing and Community Affairs v. Inclusive Community Project, Inc.

Once again, NH&RA appreciates the opportunity to provide TDHCA with this feedback. We would be happy to discuss any specifics you might have regarding these comments or other subjects of concern. Please feel free to contact me directly with any questions at 202-939-1753.

Sincerely,

Thom Amdur
President

[2] *2019 Texas Housing Profile.* (Feb. 28, 2019). Washington, DC: National Low Income Housing Coalition. Retrieved from: nlihc.org/sites/default/files/SHP_TX.pdf

(15) Eureka Holdings Acquisitions, LP

EUREKA HOLDINGS ACQUISITIONS, L.P.

September 27, 2019

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Draft 2020 QAP Comments

Dear Mr. Russell.

I am writing you today to provide public comment on the 2020 QAP Draft. Specifically, my firm has serious concerns regarding Texas Education Agency rating requirements.

The automatic ineligibility of a site that has any school with low accountability ratings in 2019 and 2018 effectively redlines entire communities; for example, the entire Fifth Ward in Houston. We respectfully request that you recognize and understand this policy to be in direct conflict with the concerted community revitalization requirements of Chapter 42 of the Internal Revenue Code.

As you know, this section requires QAPs to give preference to projects in QCTs in neighborhoods with concerted community revitalization plans. The section further states that QAP selection criteria must include community revitalization plans. By automatically eliminating (redline) these areas, the QAP removes the foundation that a decent, safe and affordable home will improve the student's socioeconomic stability and consequently their educational performance.

I appreciate your time and attention in responding to these comments. If you need additional information, please do not hesitate to contact me at 214-363-2628, ext. 106 or by email at harris@eurekaholdings.com .

Very truly yours,

Harris Block
Eureka Holdings Acquisitions, LP

603 W. 8th Street ✦ Austin ✦ TX ✦ 78701
Phone: (214) 363-2628 ✦ Fax: 469-453-6635

(16) Dominium

DOMINIUM

September 30th, 2019

VIA: Email

Ms. Teresa Morales
Director of Multifamily Bonds
Texas Department of Housing & Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: 2020 Qualified Allocation Plan Draft

Ms. Morales:

Dominium is a developer, owner, and manager of low-income housing throughout the United States. At present, we own and operate 34,108 units in 22 states, with 5,739 units in Texas. We strive to provide safe, clean, high quality affordable housing for families and seniors.

We reviewed the draft 2020 Qualified Allocation Plan Draft and have the following comments:

Subchapter B – (a)(3)(B)(i)
As written, the draft does not allow re-syndications to occur if the poverty rate exceeds 40%. We view this as a detriment to existing affordable housing stock. By not allowing re-syndications, poverty within those tracts will only be exacerbated. We suggest modifying the language to allow a carve out for rehabilitation of existing affordable properties.

Subchapter D – (e)(a)(D)(7)(C)(3)
As written, related party acquisition developer fees are capped at 5%. We believe that this should be increased from 5% to 15% with a requirement that at least two-thirds be deferred.

To convey the benefit of this policy change, we have prepared a comparison based on a real-life example of a 190-unit development we are planning to preserve called Hickory

Manor. A simple breakdown comparison along with the TDHCA Development Cost and Sources Schedule tabs are attached as Exhibit A.

Our reasoning can be summarized with the following outline:

Increase in Allowable Basis & Renovation Costs
As shown in Exhibit A, increasing developer fee from 5% to 15% will generate and additional $522,360 of tax credit equity for this project which, when adjusted for credit affected construction costs, would allow us to perform approximately $755,000 ($4,000/unit) of additional renovations to the project while maintaining the same level of paid developer fee (within a 5% cap on paid acquisition developer fee). Given that related party developments are all over 15 years old, every dollar matters when renovating these developments to ensure they can continue to provide safe, clean, and decent housing for the next credit period.

Increased Feasibility of Re-Syndications
There are many transactions that are not feasible with a 5% acquisition developer fee cap, but would be feasible with a 15% acquisition developer fee cap. If current owners cannot make a re-syndication feasible, the only two options are: (1) continue to operate the property and forego the capital investment needed to better ensure they can continue to operate without a financial burden, or (2) sell the project to a sponsor who may not be incentivized preserve the affordable housing, maintain the housing at a decent level or even remove it from the affordable program – all of which would be a negative outcome for that community and the State as a whole. Changing the developer fee cap would incentivize the preservation of affordable housing units.

Example of Paid Developer Fee Cap
The state of Tennessee is burdened by lower median incomes than most areas in Texas, however, low income housing is still being produced and rehabilitated because they allow a higher developer fee, a portion of which must be deferred. As stated on page 16 of their Multifamily Tax-Exempt Bond Authority Program Description for 2019, they cap the amount of paid fee at 15% while allowing developers to charge a total of 25%. This language is included in Exhibit B. As illustrated above, this change brings more equity into the deal, allowing for an increased construction budget. We recommend that the Department consider similar language for their 2020 Qualified Allocation Plan.

Finally, we would like to point out a possible typo throughout Section 11.301(e)(7)(C). The language for the Acquisition Developer Fee Section refers to “Rehabilitation/New Construction eligible costs” where we believe it should be “Acquisition eligible costs” or “Adjusted Acquisition Costs” as the 5% or 15% Acquisition Developer Fee is, to our understanding, calculated off of the Adjusted Acquisition Costs.

We appreciate the Department's continued efforts of providing high quality housing and look forward to our continued partnership. Please feel free to reach out to us should you have any questions about our comments.

Respectfully,

Jeff Spicer
Jeff.spicer@dominiuminc.com
763-392-9875

Neal Route
nroute@dominiuminc.com
763-354-5640

Exhibit A

Acquisition Developer Fee Comparison - 5% vs. 15%

Acquisition Developer Fee Analysis		5%			15%	
Total Eligible Acquisition Costs	$	17,601,990		$	19,278,370	
Less: Acquisition Developer Fee		(838,190)			(2,514,570)	
Net Eligible Acquisition Costs	$	16,763,800		$	16,763,800	
Acquisition Developer Fee	$	838,190		$	2,514,570	
Applicable %		3.28%			3.28%	
Annual Tax Credits	$	27,493		$	82,478	
Total Tax Credits	$	274,926		$	824,779	
Tax Credit Pricing	$	0.95		$	0.95	
Equity Generated	$	261,180		$	783,540	
Net Difference from 5%	**$**	**-**		**$**	**522,360**	
Acquisition Developer Fee	$	838,190		$	2,514,570	
Restricted Paid Fee - 5%	$	838,190		$	838,190	
Earned Developer Fee Summary			*% of Fees*			*% of Fees*
Acquisition Developer Fee	$	838,190	*49%*	$	2,514,570	*71%*
Construction Developer Fee		886,600	*51%*		1,025,922	*29%*
Total Earned Developer Fee	$	1,724,790	*100%*	$	3,540,492	*100%*
Paid Developer Fee Summary						
Acquisition Developer Fee	$	475,234		$	700,081	
Construction Developer Fee		502,682			285,627	
Total Paid Developer Fee	$	977,916		$	985,708	

Development Cost Schedule

Self Score Total: 0

This Development Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All Applications must complete the total development cost column and the Tax Payer Identification column. Only HTC applications must complete the Eligible Basis columns and the Requested Credit calculation below:

	TOTAL DEVELOPMENT SUMMARY			
	Total Cost	Eligible Basis (If Applicable)		Scratch Paper/Notes
		Acquisition	New/Rehab.	
ACQUISITION				
Site acquisition cost	486,200			Land
Existing building acquisition cost	16,763,800	16,763,800		Building/Personal Property/Site Improvem
Closing costs & acq. legal fees				
Other (specify) - see footnote 1	0			
Other (specify) - see footnote 1	0	0	0	Seller Note
Subtotal Acquisition Cost	$17,250,000	$16,763,800	$0	
OFF-SITES[2]				
Off-site concrete	0			
Storm drains & devices	0			
Water & fire hydrants	0			
Off-site utilities	0			
Sewer lateral(s)	0			
Off-site paving	0			
Off-site electrical	0			
Other (specify) - see footnote 1	0			
Other (specify) - see footnote 1	0			
Subtotal Off-Sites Cost	$0	$0	$0	
SITE WORK[3]				
Demolition	0			
Asbestos Abatement (Demolition Only)	0			
Detention	0	0	0	
Rough grading	0	0	0	
Fine grading	0	0	0	
On-site concrete	0	0	0	
On-site electrical	0	0	0	
On-site paving	0	0	0	
On-site utilities	0	0	0	
Decorative masonry	0	0	0	
Bumper stops, striping & signs	0	0	0	
Other (specify) - see footnote 1	0	0	0	
Subtotal Site Work Cost	$0	$0	$0	
SITE AMENITIES				
Landscaping	0	0	0	
Pool and decking	0	0	0	
Athletic court(s), playground(s)	0	0	0	
Fencing	0	0	0	
Other (specify) - see footnote 1	0	0	0	
Subtotal Site Amenities Cost	$0	$0	$0	
BUILDING COSTS*:				
Concrete	4,439,252	0	317,089	Total Hard Costs Lumped Together
Masonry	0	0	0	
Metals	0	0	0	
Woods and Plastics	0	0	0	
Thermal and Moisture Protection	0	0	0	
Roof Covering	0	0	0	
Doors and Windows	0	0	0	
Finishes	0	0	0	
Specialties	0	0	0	
Equipment	0	0	0	
Furnishings	142,500	0	142,500	FF&E
Special Construction	0	0	0	

Conveying Systems (Elevators)		0	0	0		
Mechanical (HVAC; Plumbing)		0	0	0		
Electrical		0	0	0		
Individually itemize costs below:						
Detached Community Facilities/Building		0	0	0		
Carports and/or Garages		0	0	0		
Lead-Based Paint Abatement		0	0	0		
Asbestos Abatement (Rehabilitation Only)		0	0	0		
Structured Parking		0	0	0		
Commercial Space Costs		0				
Other (specify) - see footnote 1		0	0	0		
Subtotal Building Costs Before 11.9(e)(2)		$4,581,752	$0	$459,589		
Voluntary Eligible Building Costs (After 11.9(e)(2))* Enter amount to be used to achieve desired score.			#DIV/0!			

If NOT seeking to score points under §11.9(e)(2), E77:E78 should remain BLANK. True eligible building cost should be entered in line items E33:E74. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E77:E78 that produces the target cost per square foot in D77:D78. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

TOTAL BUILDING COSTS & SITE WORK (including site amenities)		$4,581,752	$0	$459,589		
Contingency	7.26%	$332,500	$0	332,500		Construction Contingency
TOTAL HARD COSTS		$4,914,252	$0	$792,089		
OTHER CONSTRUCTION COSTS	**%THC**				%EHC	
General requirements (<6%)	2.71%	133,178	0	133,178	16.81%	General Requirements
Field supervision (within GR limit)		0	0	0		
Contractor overhead (<2%)	0.90%	44,393	0	44,393	5.60%	Overhead
G & A Field (within overhead limit)		0	0	0		
Contractor profit (<6%)	2.71%	133,178	0	133,178	16.81%	Builder's Profit
TOTAL CONTRACTOR FEES		$310,748	$0	$310,748		
TOTAL CONSTRUCTION CONTRACT Before 11.9(e)(2)		$5,225,000	$0	$1,102,837		
Voluntary Eligible "Hard Costs" (After 11.9(e)(2))* Enter amount to be used to achieve desired score.			#DIV/0!			

If NOT seeking to score points under §11.9(e)(2), E96:E97 should remain BLANK. True eligible cost should be entered in line items E83 and E87:E91. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E96:E97 that produces the target cost per square foot in D96:D97. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

SOFT COSTS[3]						
Architectural - Design fees		152,000	0	152,000		Architect Design
Architectural - Supervision fees		119,250	0	119,250		Architect Supervise, Architect Reimbursab
Engineering fees		0	0	0		
Real estate attorney/other legal fees		195,000	0	87,500		Borrower Counsel - Local/Partnership
Accounting fees		12,000	0	12,000		Cost Cert
Impact Fees		0	0	0		
Building permits & related costs		0	0	0		
Appraisal		7,500	0	7,500		Appraisal
Market analysis		7,500	0	7,500		Market Research
Environmental assessment		4,000	0	4,000		Environmental
Soils report		0	0	0		Soils
Survey		7,500	0	7,500		Survey
Marketing		0				
Hazard & liability insurance		0	0	0		
Real property taxes		0	0	0		
Personal property taxes		0	0	0		
Tenant Relocation		47,500				
PLEASE SPECIFY - see footnote 1		16,195	0	16,195		Physical Needs Assessment, Submittal Excl
PLEASE SPECIFY - see footnote 1		50,000	0	50,000		Soft Cost Contingency
PLEASE SPECIFY - see footnote 1		18,000	0	18,000		Lender - Inspecting Architect/Construction
Subtotal Soft Cost		$636,445	$0	$481,445		

FINANCING:						
CONSTRUCTION LOAN(S)[3]						
Interest		174,777	0	124,175		Construction Period Interest Bridge Loan
Loan origination fees		46,549	0	46,549		Orig Fee
Title & recording fees		0	0	0		
Closing costs & legal fees		15,000	0	15,000		Lender Counsel - Bridge
Inspection fees		0	0	0		
Credit Report		0	0	0		
Discount Points		0	0	0		
PLEASE SPECIFY - see footnote 1		5,000	0	5,000		Bridge Loan Costs
PLEASE SPECIFY - see footnote 1		13,500	0	13,500		Appraisal & Other Third Party Reports
PERMANENT LOAN(S)						
Loan origination fees		0				
Title & recording fees		111,411				Filing Fees, Recording Fees, Mtg Regisratio
Closing costs & legal		105,500				Bond & Issuer Counsel, Citi Legal Fees
Bond premium		0				
Credit report		0				
Discount points		0				
Credit enhancement fees		0				
Prepaid MIP		0				
PLEASE SPECIFY - see footnote 1		40,379				Freddie Mac Application Fee
PLEASE SPECIFY - see footnote 1		172,200				Commitment Fee/Short Term Interest
BRIDGE LOAN(S)						
Interest		0	0	0		
Loan origination fees		0	0	0		
Title & recording fees		0	0	0		
Closing costs & legal fees		0	0	0		
Other (specify) - see footnote 1		0	0	0		
Other (specify) - see footnote 1		0	0	0		
OTHER FINANCING COSTS[3]						
Tax credit fees		41,137				HTC Commitment Fee, Application Fee, Bl
Tax and/or bond counsel		0	0	0		
Payment bonds		0				
Performance bonds		0	0	0		
Credit enhancement fees		0	0	0		
Mortgage insurance premiums		0	0	0		
Cost of underwriting & issuance		84,850	0	0		Up-Front Issuer Fee
Syndication organizational cost		75,000				Tax-Credit Syndicator DD Fee/ Up-Front A
Tax opinion		0				
Refinance (existing loan payoff amt)		0				
PLEASE SPECIFY - see footnote 1		64,970	0	0		Trustee Setup and Initial Fee/Waiver of 5%
PLEASE SPECIFY - see footnote 1		101,430	0	0		TX Bond Review/Attorney General's Exam
Subtotal Financing Cost		$1,051,703	$0	$204,224		
DEVELOPER FEES[3]						
Housing consultant fees[4]						
General & administrative						
Profit or fee		1,724,790	838,190	886,600		Developer Fee/Owner Contractor Fee
Subtotal Developer Fees	7.61%	$1,724,790	$838,190	$886,600	9.30%	
RESERVES						
Rent-up - new funds		102,175				Lease-Up Reserve, DMS Startup, Start-Up
Rent-up - existing reserves*		0				
Operating - new funds		403,330				LP Operating Reserve
Operating - existing reserves*		0				
Replacement - new funds		0				
Replacement - existing reserves*		0				
Escrows - new funds		0				
Escrows - existing reserves*		0				
Subtotal Reserves		$505,505	$0	$0		

***Any existing reserve amounts should be listed on the Schedule of Sources.**

TOTAL HOUSING DEVELOPMENT COSTS[5]	$26,393,444	$17,601,990	$2,675,106	
The following calculations are for HTC Applications only.				
Deduct From Basis:				
Federal grants used to finance costs in Eligible Basis				
Non-qualified non-recourse financing				
Non-qualified portion of higher quality units §42(d)(5)				
Historic Credits (residential portion only)				
Total Eligible Basis		$17,601,990	$2,675,106	
**High Cost Area Adjustment (100% or 130%)			130%	Yes, QCT
Total Adjusted Basis		$17,601,990	$3,477,638	
Applicable Fraction		100%	100%	
Total Qualified Basis	$21,079,628	$17,601,990	$3,477,638	
Applicable Percentage[6]		3.28%	3.28%	
Credits Supported by Eligible Basis	$691,412	$577,345	$114,067	

Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	MF Direct Loan Const. to Perm. (Repayable)	$0			$ -	0.00%	30	0		
TDHCA	MF Direct Loan Const. Only (Repayable)	$0	0.00%							
TDHCA	Multifamily Direct Loan (Soft Repayable)	$0	0.00%		$ -	0.00%		0		
TDHCA	Mortgage Revenue Bond	$0	0.00%		$ -	0.00%	0	0		
1st Mortgage	Tax Ex Bonds-Other Issuer	$16,970,000	4.11%	1st	$ 17,410,000	4.11%	35			
Equity Bridge Loan	Conventional Loan	$6,206,526	5.07%	N/A	$ -		N/A			
Third Party Equity										
TBD Investor	HTC $ -	$ 1,235,486		N/A	$ 8,236,570					
Grant										
	§11.9(d)(2)LPS Contribution									
Deferred Developer Fee										
DeSoto Leased Housing Associates	Deferred Developer Fee	$ -		N/A	$ 746,874					
Other										
	Direct Loan Match									
	Total Sources of Funds	$ 24,412,011			$ 26,393,444					
	Total Uses of Funds				$ 26,393,444					

Development Cost Schedule

Self Score Total: 0

This Development Cost Schedule must be consistent with the Summary Sources and Uses of Funds Statement. All Applications must complete the total development cost column and the Tax Payer Identification column. Only HTC applications must complete the Eligible Basis columns and the Requested Credit calculation below:

	TOTAL DEVELOPMENT SUMMARY			
	Total Cost	Eligible Basis (If Applicable)		Scratch Paper/Notes
		Acquisition	New/Rehab.	
ACQUISITION				
Site acquisition cost	486,200			Land
Existing building acquisition cost	16,763,800	16,763,800		Building/Personal Property/Site Improvem
Closing costs & acq. legal fees				
Other (specify) - see footnote 1	0			
Other (specify) - see footnote 1	0	0	0	Seller Note
Subtotal Acquisition Cost	$17,250,000	$16,763,800	$0	
OFF-SITES[2]				
Off-site concrete	0			
Storm drains & devices	0			
Water & fire hydrants	0			
Off-site utilities	0			
Sewer lateral(s)	0			
Off-site paving	0			
Off-site electrical	0			
Other (specify) - see footnote 1	0			
Other (specify) - see footnote 1	0			
Subtotal Off-Sites Cost	$0	$0	$0	
SITE WORK[3]				
Demolition	0			
Asbestos Abatement (Demolition Only)	0			
Detention	0	0	0	
Rough grading	0	0	0	
Fine grading	0	0	0	
On-site concrete	0	0	0	
On-site electrical	0	0	0	
On-site paving	0	0	0	
On-site utilities	0	0	0	
Decorative masonry	0	0	0	
Bumper stops, striping & signs	0	0	0	
Other (specify) - see footnote 1	0	0	0	
Subtotal Site Work Cost	$0	$0	$0	
SITE AMENITIES				
Landscaping	0	0	0	
Pool and decking	0	0	0	
Athletic court(s), playground(s)	0	0	0	
Fencing	0	0	0	
Other (specify) - see footnote 1	0	0	0	
Subtotal Site Amenities Cost	$0	$0	$0	
BUILDING COSTS*:				
Concrete	5,193,925	0	370,995	Total Hard Costs Lumped Together
Masonry	0	0	0	
Metals	0	0	0	
Woods and Plastics	0	0	0	
Thermal and Moisture Protection	0	0	0	
Roof Covering	0	0	0	
Doors and Windows	0	0	0	
Finishes	0	0	0	
Specialties	0	0	0	
Equipment	0	0	0	
Furnishings	142,500	0	142,500	FF&E
Special Construction	0	0	0	

Conveying Systems (Elevators)		0	0	0		
Mechanical (HVAC; Plumbing)		0	0	0		
Electrical		0	0	0		
Individually itemize costs below:						
Detached Community Facilities/Building		0	0	0		
Carports and/or Garages		0	0	0		
Lead-Based Paint Abatement		0	0	0		
Asbestos Abatement (Rehabilitation Only)		0	0	0		
Structured Parking		0	0	0		
Commercial Space Costs		0				
Other (specify) - see footnote 1		0	0	0		
Subtotal Building Costs Before 11.9(e)(2)		$5,336,425	$0	$513,495		
Voluntary Eligible Building Costs (After 11.9(e)(2))* Enter amount to be used to achieve desired score.			#DIV/0!			

If NOT seeking to score points under §11.9(e)(2), E77:E78 should remain BLANK. True eligible building cost should be entered in line items E33:E74. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E77:E78 that produces the target cost per square foot in D77:D78. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

TOTAL BUILDING COSTS & SITE WORK (including site amenities)		$5,336,425	$0	$513,495		
Contingency	7.29%	$389,025	$0	389,025		Construction Contingency
TOTAL HARD COSTS		$5,725,450	$0	$902,520		
OTHER CONSTRUCTION COSTS	**%THC**				%EHC	
General requirements (<6%)	2.72%	155,818	0	155,818	17.26%	General Requirements
Field supervision (within GR limit)		0	0	0		
Contractor overhead (<2%)	0.91%	51,939	0	51,939	5.75%	Overhead
G & A Field (within overhead limit)		0	0	0		
Contractor profit (<6%)	2.72%	155,818	0	155,818	17.26%	Builder's Profit
TOTAL CONTRACTOR FEES		$363,575	$0	$363,575		
TOTAL CONSTRUCTION CONTRACT Before 11.9(e)(2)		$6,089,025	$0	$1,266,094		
Voluntary Eligible "Hard Costs" (After 11.9(e)(2))* Enter amount to be used to achieve desired score.			#DIV/0!			

If NOT seeking to score points under §11.9(e)(2), E96:E97 should remain BLANK. True eligible cost should be entered in line items E83 and E87:E91. If requesting points under §11.9(e)(2) related to Cost of Development per Square Foot, enter the true or voluntarily limited costs in E96:E97 that produces the target cost per square foot in D96:D97. Enter Requested Score for §11.9(e)(2) at the bottom of the schedule in D202.

SOFT COSTS[3]						
Architectural - Design fees		177,600	0	177,600		Architect Design
Architectural - Supervision fees		138,063	0	138,063		Architect Supervise, Architect Reimbursab
Engineering fees		0	0	0		
Real estate attorney/other legal fees		195,000	0	87,500		Borrower Counsel - Local/Partnership
Accounting fees		12,000	0	12,000		Cost Cert
Impact Fees		0	0	0		
Building permits & related costs		0	0	0		
Appraisal		7,500	0	7,500		Appraisal
Market analysis		7,500	0	7,500		Market Research
Environmental assessment		4,000	0	4,000		Environmental
Soils report		0	0	0		Soils
Survey		7,500	0	7,500		Survey
Marketing		0				
Hazard & liability insurance		0	0	0		
Real property taxes		0	0	0		
Personal property taxes		0	0	0		
Tenant Relocation		47,500				
PLEASE SPECIFY - see footnote 1		16,195	0	16,195		Physical Needs Assessment, Submittal Excl
PLEASE SPECIFY - see footnote 1		50,000	0	50,000		Soft Cost Contingency
PLEASE SPECIFY - see footnote 1		18,000	0	18,000		Lender - Inspecting Architect/Construction
Subtotal Soft Cost		$680,858	$0	$525,858		

FINANCING:						
CONSTRUCTION LOAN(S)[3]						
Interest		195,917	0	138,513		Construction Period Interest Bridge Loan
Loan origination fees		52,586	0	52,586		Orig Fee
Title & recording fees		0	0	0		
Closing costs & legal fees		15,000	0	15,000		Lender Counsel - Bridge
Inspection fees		0	0	0		
Credit Report		0	0	0		
Discount Points		0	0	0		
PLEASE SPECIFY - see footnote 1		5,000	0	5,000		Bridge Loan Costs
PLEASE SPECIFY - see footnote 1		13,500	0	13,500		Appraisal & Other Third Party Reports
PERMANENT LOAN(S)						
Loan origination fees		0				
Title & recording fees		111,411				Filing Fees, Recording Fees, Mtg Regisratio
Closing costs & legal		105,500				Bond & Issuer Counsel, Citi Legal Fees
Bond premium		0				
Credit report		0				
Discount points		0				
Credit enhancement fees		0				
Prepaid MIP		0				
PLEASE SPECIFY - see footnote 1		40,379				Freddie Mac Application Fee
PLEASE SPECIFY - see footnote 1		172,200				Commitment Fee/Short Term Interest
BRIDGE LOAN(S)						
Interest		0	0	0		
Loan origination fees		0	0	0		
Title & recording fees		0	0	0		
Closing costs & legal fees		0	0	0		
Other (specify) - see footnote 1		0	0	0		
Other (specify) - see footnote 1		0	0	0		
OTHER FINANCING COSTS[3]						
Tax credit fees		45,158				HTC Commitment Fee, Application Fee, Bl
Tax and/or bond counsel		0	0	0		
Payment bonds		0				
Performance bonds		0	0	0		
Credit enhancement fees		0	0	0		
Mortgage insurance premiums		0	0	0		
Cost of underwriting & issuance		84,850	0	0		Up-Front Issuer Fee
Syndication organizational cost		75,000				Tax-Credit Syndicator DD Fee/ Up-Front A
Tax opinion		0				
Refinance (existing loan payoff amt)		0				
PLEASE SPECIFY - see footnote 1		64,970	0	0		Trustee Setup and Initial Fee/Waiver of 5%
PLEASE SPECIFY - see footnote 1		105,451	0	0		TX Bond Review/Attorney General's Exami
Subtotal Financing Cost		$1,086,923	$0	$224,599		
DEVELOPER FEES[3]						
Housing consultant fees[4]						
General & administrative						
Profit or fee		3,540,492	2,514,570	1,025,922		Developer Fee/Owner Contractor Fee
Subtotal Developer Fees	15.00%	$3,540,492	$2,514,570	$1,025,922	18.85%	
RESERVES						
Rent-up - new funds		105,576				Lease-Up Reserve, DMS Startup, Start-Up
Rent-up - existing reserves*		0				
Operating - new funds		403,330				LP Operating Reserve
Operating - existing reserves*		0				
Replacement - new funds		0				
Replacement - existing reserves*		0				
Escrows - new funds		0				
Escrows - existing reserves*		0				
Subtotal Reserves		$508,907	$0	$0		
***Any existing reserve amounts should be listed on the Schedule of Sources.**						

TOTAL HOUSING DEVELOPMENT COSTS[5]	$29,156,204	$19,278,370	$3,042,473	
The following calculations are for HTC Applications only.				
Deduct From Basis:				
Federal grants used to finance costs in Eligible Basis				
Non-qualified non-recourse financing				
Non-qualified portion of higher quality units §42(d)(5)				
Historic Credits (residential portion only)				
Total Eligible Basis		$19,278,370	$3,042,473	
**High Cost Area Adjustment (100% or 130%)			130%	Yes, QCT
Total Adjusted Basis		$19,278,370	$3,955,215	
Applicable Fraction		100%	100%	
Total Qualified Basis	$23,233,585	$19,278,370	$3,955,215	
Applicable Percentage[6]		3.28%	3.28%	
Credits Supported by Eligible Basis	$762,062	$632,331	$129,731	

Schedule of Sources of Funds and Financing Narrative

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	MF Direct Loan Const. to Perm. (Repayable)	$0			$ -	0.00%	30	0		
TDHCA	MF Direct Loan Const. Only (Repayable)	$0	0.00%							
TDHCA	Multifamily Direct Loan (Soft Repayable)	$0	0.00%		$ -	0.00%		0		
TDHCA	Mortgage Revenue Bond	$0	0.00%		$ -	0.00%	0	0		
1st Mortgage	Tax Ex Bonds-Other Issuer	$16,970,000	4.11%	1st	$ 17,410,000	4.11%	35			
Equity Bridge Loan	Conventional Loan	$7,011,525	5.07%	N/A	$ -		N/A			
Third Party Equity										
TBD Investor	HTC $ -	$ 1,378,713		N/A	$ 9,191,420					
Grant										
	§11.9(d)(2)LPS Contribution									
Deferred Developer Fee										
DeSoto Leased Housing Associates	Deferred Developer Fee	$ -		N/A	$ 2,554,784					
Other										
	Direct Loan Match									
	Total Sources of Funds	$ 25,360,238			$ 29,156,204					
	Total Uses of Funds				$ 29,156,204					

Exhibit B

(15) years from the required placed in service date. The replacement of any component of buildings or the site with a Remaining Useful Life of less than 15 years, must be included in the scope of work as specified using the Fannie Mae Estimated Useful Life Table. It is expected that substantially the same scope of work will occur in all units including, without limitation, painting the entire unit, consistent flooring throughout the development and matching cabinetry within each unit. Certification from the design architect will be required following the issuance of the MTBA Firm Commitment Letter. Confirmation from the supervising architect will be required prior to any partial refund of the Incentive Fee pursuant to Section 10 of this MTBA Program Description.

d. An applicant may submit a written request for an exception to the maximum MTBA listed in this Section 5-A and/or the Noncompetitive Housing Credit limit. The written request must include sufficient supporting documentation and information to substantiate the additional MTBA and or Noncompetitive Housing Credit as determined by THDA, in its sole discretion. Only one (1) written request for an exception to the maximum MTBA and or Noncompetitive Housing Credit limit per application will be considered. Written requests for exceptions to the maximum MTBA and or Noncompetitive Housing Credit limit may be granted or denied by THDA, in its sole discretion.

3. All rehabilitation expenditures must satisfy the requirements of Section 42(e)(3)(A)(ii) of the Code.

B. Maximum Amount of MTBA per Developer or Related Parties

Prior to July 1, 2019, the maximum amount of MTBA that may be committed to a single applicant, developer, owner, or related parties shall not exceed sixty million dollars **($60,000,000)**. After June 30, 2019, the maximum amount of MTBA that may be committed to a single applicant, developer, owner, or related parties shall not exceed thirty four percent (34.0%) of the maximum amount of MTBA available for 2019. THDA will determine, in its sole discretion, if related parties are involved and apply this limitation.

C. Limit on Developer's Fee for MTBA with Noncompetitive Housing Credits

1. Notwithstanding the provisions of Section 3-H of the 2019-2020 QAP, the sum of developer and consultant fees reflected in THOMAS on the development costs page may not exceed twenty five percent (25%) of total development costs less cash reserves (see 5 below). If the sum of developer and consultant fees reflected in the development costs worksheet exceeds the amount allowable for related or unrelated parties (see 2 and 3 below), then all developer and consultant fees in excess of the amount allowable for related and unrelated parties (see 2 and 3 below) must be reflected as deferred fees and included in the sources of permanent financing.
2. If the developer and the contractor are **unrelated**, the *non-deferred* developer and consultant fees cannot exceed fifteen percent (15%) on the portion of the basis attributable to acquisition (before the addition of the fees), and cannot exceed fifteen percent (15%) of the portion of the basis attributable to new construction or to rehabilitation (before the addition of the fees).
3. If the developer and contractor are **related** parties, then the *non-deferred* combined fees for contractor's profit, overhead, and general requirements plus the developer's and consultant's fees, cannot exceed fifteen percent (15%) of the portion of the basis attributable to acquisition (before the addition of the fees), and cannot exceed twenty five percent (25%) of the portion of the basis attributable to new construction or to rehabilitation (before the addition of the fees).
4. If the **deferred** developer and consultant fees are **greater than** twenty five percent (25%) of total development cost minus the amount described in 2 and 3 above, then the application must include evidence satisfactory to THDA, in its sole discretion, that the deferred developer and consultant fees will be repaid and will not jeopardize the financial feasibility of the development.
5. For purposes of this Section cash reserves are excluded from total development costs.

6. Documentation on the terms of the deferred developer fee portion must be provided with the Initial Application.

(17) Jennifer Hicks - True Casa Consulting

October 4, 2019

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: 2020 DRAFT QAP and MF Rule Comments

Dear Patrick –

Thank you for the opportunity to comment on the DRAFT 2020 Qualified Allocation Plan. I want to commend TDHCA staff for their thoughtful approach to the rules this year and their open ears in evaluating comments from industry professionals. The result is a seemingly balanced QAP. I am especially grateful for staff's work on the Supportive Housing definition. With the exception of one fatal issue, I believe the definition is the best representation of how this high-impact, mission-based housing model truly operates and underwrites.

Section 11.1(d)(122) – Definition of "Supportive Housing":

Suggested language:

(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for ~~all Units~~ at least 25% of the units or operating budget for the entire affordability period, and meet all of the criteria.

I have dedicated my entire career to the development of mission-based and deep-impact Supportive Housing. These projects are so very challenging, but there IS a secret recipe. That recipe is one part mission-based non-profit with experience in serving the special need population, one part Developer with experience working with mission-based nonprofits (if not the non-profit), one part City support as a recognized tool for addressing homelessness, one part assemblance of vouchers to serve those with minimal to no income, two parts philanthropy to help fund the larger than average capital gap and expansive services and finish off with a GIANT heap of luck.

I am very much in support of the proposed changes in Sections A-D of the Supportive Housing Definition in the DRAFT 2020 QAP. The focus on services and the assurance of a financial safety net are both appropriate and responsible revisions to the definition.

My sole comments lay in Section E (ii) that adds a clause allowing for debt. **First off, I wholeheartedly support the allowance of Supportive Housing to carry hard debt.** If by allowing debt, TDHCA is able to fund more Supportive Housing units and assist Texas Cities that are grappling with the impacts and stresses of homelessness, then why wouldn't we? Just like any TDHCA-financed affordable housing project, the development will have to go through underwriting and meet the strict standards of financial

feasibility. **The sole issue with the new language is the requirement for the project to have 100% vouchers in order to take on hard debt. This is simply not realistic nor is it a good practice with Supportive Housing.**

I honestly don't think the project needs to have any sort of voucher requirement, as often times Supportive Housing communities have a percentage of units that are filled by tenant-based vouchers from a variety of programs – Veterans Administration Supportive Housing vouchers (VASH), Continuum of Care Supportive Housing Program vouchers, Shelter Plus Care vouchers, or HOPWA vouchers. These vouchers enable the project to serve a variety of target populations in need of Supportive Housing: Youth Aging out of Homelessness, Chronic Homeless, Persons Living with HIV/AIDS, etc. Not having a specific PROJECT-BASED voucher threshold allows these projects to have the flexibility they need to serve the variety of populations that are desperate for supportive housing units.

That being said, I can understand the assurance that comes with a project-based voucher allocation. If the threshold percentage of project-based vouchers is maintained in the 2020 QAP, **I STRONGLY suggest this threshold be reduced to 25% (the project can always have more, but no less than 25%.)**

The reasons for this suggestion follow:

1) I don't know any Texas public housing authority that makes a habit of project-basing 100% of units in a project. In the 839 project-based vouchers awarded to projects by the Houston Housing Authority since 2011, not a single project received vouchers on 100% of the units. The average percentage of units was 37% and this is coming from one of the largest housing authorities in the nation! The reasons are two-fold: 1) lack of project-based voucher availability – some housing authorities simply do not have a large number of vouchers to project-base. In the last decade, Housing Authorities have moved toward voucher portability. Most vouchers are tenant-based. Also, Housing Authorities prioritize different target populations – some target families, some target chronic homeless, some target homeless families. Finally, some Housing Authorities have tenant selection criteria that might screen out homeless or special needs populations in need of low-barrier housing.
2) It does not seem like a good practice to concentrate an entire property to a high-need population. The supportive service requirements to properly support the property would lean heavily on community homeless, mental health and substance abuse service providers who are already cash-strapped at current client capacity. The supportive service budget and fundraising for such a large concentration of high-need individuals would be unattainable. Anything less would be a detriment and disservice to the residents. Further, it is the belief that integration vs. isolation is a more welcoming approach to supportive housing. A Supportive Housing Development should be allowed to serve a continuum of folks within its walls – a single individual on a fixed income, chronic homeless individual with minimal supports, a working poor individual living paycheck to paycheck, a person with a disability who is in need of stable, accessible housing. To these individuals, the wrap-around supportive services will be critical - some will rely more heavily than others and that is okay.

11.204 (6)(A) Experience Requirement:

Suggested language: 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. For purposes of this sub-paragraph only, a unit may include a motel, hotel or extended-stay hotel unit. 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:

The developer of motel, hotel or extended stay units have an on-par development experience especially transferable to the development of single room occupancy supportive housing. I believe we shouldn't leave out experienced developers who may want to partner with developers and sponsors to contribute to our affordable housing stock. A single-family developer might meet the TDHCA experience requirement, but would provide minimal directly transferrable experience. I don't see any negative to this addition. Here are a few reasons that I feel this change would be pertinent and qualified:

1) Input on design efficiencies that will yield cost-efficient operations and long-term durability. A hotel/motel/extended stay hotel developer can provide input on major systems, finishes and furniture that will be able to better withstand the pressure residents. This is especially true to a Supportive Housing population.
2) These developers have good relationships with vendors that can deliver highly durable finishes and furnishings that a normal multifamily developer would not have.
3) From site plan to permitting to inspections to certificate of occupancy, Motel/Hotel/Extended Stay Hotel Developers can trouble shoot and plan ahead in this extremely difficult-to-develop climate.
4) Motel/Hotel/Extended Stay Hotel Developers are used to delivering projects within a budget and a tight timeline for their investors. These skills are paramount to an affordable housing product that is utilizing public funding.

11.9 (c)(7) – Proximity to Urban Core:

Suggested language: A Development in a Place, as defined by the US Census Bureau, with a population over ~~200,000~~ 195,000 may qualify for points under this item.

When studying the populations of the Urban Sub-Regions in Texas, the cut off of 200,000 seems to leave only one sub-region at a severe level of unbalance. Urban Region 1 contains only two Places: Lubbock (pop 247,323) and Amarillo (pop 197,823.) Lubbock can currently gain Urban Core points when Amarillo cannot even though Amarillo does have an Urban Core and quite similar urban characteristics as Lubbock. The next largest place in Urban Region 1 is Plainview (pop 21,365), which is incomparable to the Urban characteristics of Lubbock and Amarillo. Amarillo is the ONLY Urban place in Texas that has a population so close to the threshold and yet cannot score. Allowing this change will provide parity to the two (and only) larger Urban places in Urban 1 without providing any other consequence across the State. A win-win for Urban Region 1.

Even with the new Proximity to Jobs section, Amarillo is still at a scoring disadvantage. Lubbock can score in the Urban Core category as it is over 200k population AND it can score in the Proximity to Jobs as it has clusters of 16,500 jobs and higher per square mile. Either way, projects in Lubbock have a way to get a full 6 points in this category.

Amarillo cannot get the Urban Core points because its population is not 200k and it cannot max out points in the Proximity to Jobs as the max number of jobs per square mile in Amarillo is 15,918. So, Amarillo will always be at least one point lower than the highest score in Lubbock. This shuts Amarillo out of the annual competition.

I very much support the new Proximity to Jobs scoring. I support Urban Core and Proximity to Jobs being mutually exclusive, so that you can pick one or the other, but not both. I also support staggering points within the Proximity to Jobs scoring category as TDHCA has identified.

Chapter 13 Multifamily Direct Loan Rule - Supportive Housing/Soft Repayable set-aside - 13.8 c (7) – 20% Equity:

Suggested language: (7) If the Direct Loan is the only source of permanent Department funding for the Development, the Development Owner must provide:

(A) Equity in an amount not less than 20% of Total Housing Development Costs. An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 20%. For projects that meet the requirements of the Supportive Housing/Soft Repayable Set-Aside, grants sourced from foundations, corporations and individuals, as well as forgivable soft loans from non-federal local government sources count toward this equity amount. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely. This support case will be reviewed by staff, and staff will provide their assessment and recommendation to the Board. The Applicant's support should include all mitigating or supporting factors including, by way of example, and not by way of limitation, performance bonds or collateral, lines of credit, or intercreditor agreements. "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement.

This rule plays a severe disadvantage to smaller mission-based non-profits who want to develop Supportive Housing or ELI units and have to meet this 20% owner equity requirement. If the non-profit can demonstrate a solid fundraising track record through sourcing foundation, corporate and individual gifts and grants, then this should count. In addition, major sourcing for Supportive Housing developments are from the Federal Home Loan Bank Affordable Housing Program, which is a grant, and through local non-federal local funding which should be soft and forgivable. Both of these sources should very much count toward this requirement. I believe this rule is brought for waiver on most all non-tax credit MFDL projects by non-profits.

My Best,

Jenn Hicks

(18) National Church Residences

National Church Residences
EXCELLENCE THAT TRANSFORMS LIVES

October 7, 2019

Mr. Patrick Russell
Texas Department of Housing and Community Affairs

Mr. Russell
Thank you for the opportunity to present recommendations to the Draft 2020 Qualified Allocation Plan (QAP). Please consider the below recommendations by National Church Residences.

1. **Sponsor Characteristics**
   We strongly oppose the added language to receive 1 point for HUB or Non-Profit organization participation prohibiting a relationship to the Developer. Due the narrow definition of the Qualified Non Profit definition, regional and national non-profits cannot take advantage of the 2 point Sponsorship line item for having a Non Profit as primary developer. However, non-profit organizations such as National Church Residences provide unique, service enriched, high quality housing for Texans and TDHCA should be encouraging, not discouraging these developers to participate in the program.

   Please add language "excluding Qualified Non-Profits per S.42 when such Non-Profit is the Managing Member of the General Partnership".

2. **Appraisals for Identity of Interest transactions**
   We oppose the addition of requiring a 2nd review of an appraisal for transactions involving identity of interest and/or developer fee associated with acquisition for identity of interest developments.

   Appraisals are done by licensed and experienced professionals and must abide by the standards of USPAP (Uniform Standards of Professional Appraisal Practice). After speaking with our appraisal group, Vogt Insights, they would not be able to give an opinion on a 3rd party appraisal without doing the work themselves. Given their feedback and the tight timeline for 3rd party reports during the application round, we would be forced to engage in 2 appraisals simultaneously, adding an undue burden to an already very expensive application. This would make any kind of secondary review impossible, regardless, as there is absolutely not enough time in the 9% application timeline to complete a review of a 3rd party report by another professional.

   We strongly request that TDHCA remove this item. Alternately, TDHCA could publish a list of approved appraisers to eliminate any previous providers that caused concern.

We appreciate the opportunity to provide comments, and would be happy to provide any additional information.

Sincerely,

Tracey Fine
Senior Project Leader
Cell: 773.860.5747
tfine@nationalchurchresidences.org

(19) Craig Alter

Patrick Russell

From: Craig Alter <c.alter@commonwealthco.net>
Sent: Tuesday, October 08, 2019 10:54 AM
To: HTC Public Comment
Cc: Ginger Nelson; gina.dowd@texas.senate.gov; nancytanner@mypottercounty.com; Four (Walter) Price (rep.fourprice@gmail.com); Clay Stribling; Puff Niegos; Wesley Luginbyhl; Robert W.Goodrich; Nicole Luper; Brady Clark; Alan & Nancy Abraham; Allen, Angela; James Tudman; Andrew Freeman; Keralee Clay; Elisha Demerson; Mary Emeny; Mildred Darton
Subject: 2020 QAP, Urban Core Population Threshold

Dear Patrick:

The 200,000 population threshold defining Urban Core in Section 11.9(c)(7)(A) produces an unfair and unnecessary advantage to Lubbock over Amarillo in Region 1. Although the Proximity to Jobs scoring factor introduced in Section 11.9(c)(7)(B) was intended to provide access to alternate application points to the Urban Core scoring factor, it fails to do so. Applications in Lubbock will continue to outscore those in Amarillo simply by selecting the Urban Core scoring factor when proximity to jobs produces less points. Amarillo applicants should be entitled to the same choice.

The 245,000 population of Lubbock is not significantly different than the 198,000 population of Amarillo. Furthermore, Lubbock and Amarillo share the distinction of being mathematically significantly different than the next largest Place in Region 1 having a population of 21,000. Finally, Amarillo and Lubbock share the distinction of being the only two Urban Places within this Region. **ALL** other communities in Region 1 are classified as Rural Places.

A corrective revision to the QAP is to reduce the Urban Core population threshold to 190,000 persons. In doing so, TDHCA will instill equality among equal communities in Region 1 without affecting any other Region. This minor population adjustment will correct a major shortcoming of the QAP regarding Region 1 applications.

Thank you for your consideration.
Craig

CRAIG B. ALTER
VICE PRESIDENT OF DEVELOPMENT | THE COMMONWEALTH COMPANIES

11612 BEE CAVES ROAD, BLDG.. 2, SUITE 152, AUSTIN, TX 78738
DIRECT: 512-956-5432
C.ALTER@COMMONWEALTHCO.NET
WWW.COMMONWEALTHCO.NET
FOLLOW US ON FACEBOOK OR ON TWITTER

WE OPEN DOORS TO OPPORTUNITY.

(20) Herman & Kittle Properties, Inc.

HERMAN & KITTLE PROPERTIES, INC.

Real Estate Development • General Contracting • Property Management

October 9, 2019

Via Email:
marni.holloway@tdhca.state.tx.us

RE: Feedback on 2020 Qualified Allocation Plan

Dear Ms. Holloway:

Herman and Kittle Properties Inc. is committed to developing housing across the State of Texas. A large part of our strategy is to use bonds to fund development for sites located in Qualified Census Tracts (QCTs). In the draft of the 2020 Qualified Allocation Plan (QAP) listed in the Texas Registry, it disqualifies sites that are located in areas where schools have received an "F" rating by the Texas Education Agency (TEA). Statewide, there are only 402/9,555, or roughly 4% schools with an "F" rating. However, there is a concentration of those failing schools located in QCTs. Of the 409 schools receiving an "F", 37% statewide are located in QCTs. Evaluating the five major urban areas in Texas, the percentage increases to 66% of "F" schools are located in QCTs.

Prohibiting sites that are served by schools with an "F" rating by TEA will disproportionately adversely impact our ability to locate eligible sites that are within QCTs. We acknowledge that a provision to allow for mitigation for schools scoring an "F" in 2019 and meeting standard the prior year, however many schools are on long term improvement plans that may take several years to execute and yield results. Given the long term nature of our commitment, we would like to continue to support adding housing in communities that are actively working towards improvement.

It is essential that affordable housing continue to be developed in urban areas, especially in areas of southeast Texas that have been adversely impacted by recent storms. Additionally, residential housing is needed as the costs to live in the urban areas continues to rise in parallel with heightened interest in living near the urban core of major Texas cities. For your reference, please see the attached document with maps of the five urban areas mentioned above.

Thank you for your consideration of our feedback. Should you have any questions, please do not hesitate to email or call our Texas Development Director Jessica Mullins at jmullins@hermankittle.com or (713) 344-7055.

Sincerely,

Jeffrey L. Kittle
President and Chief Executive Officer

cc: Patrick Russell, patrick.russell@tdhca.state.tx.us

“F” schools are disproportionately located in QCTs

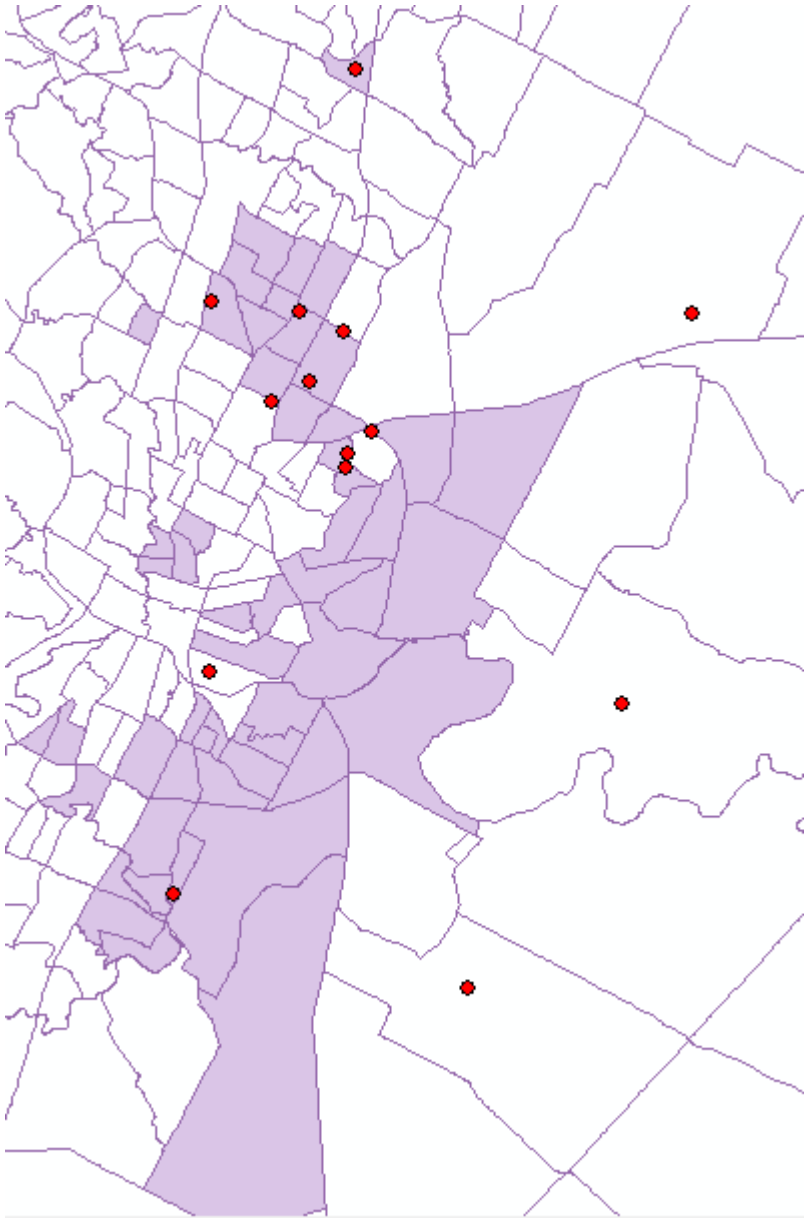
Statewide Results

- 402/9555 (4%) of schools received an “F” rating
- Of those, 148/404 (37%) of “F” rated school are located in QCTs.

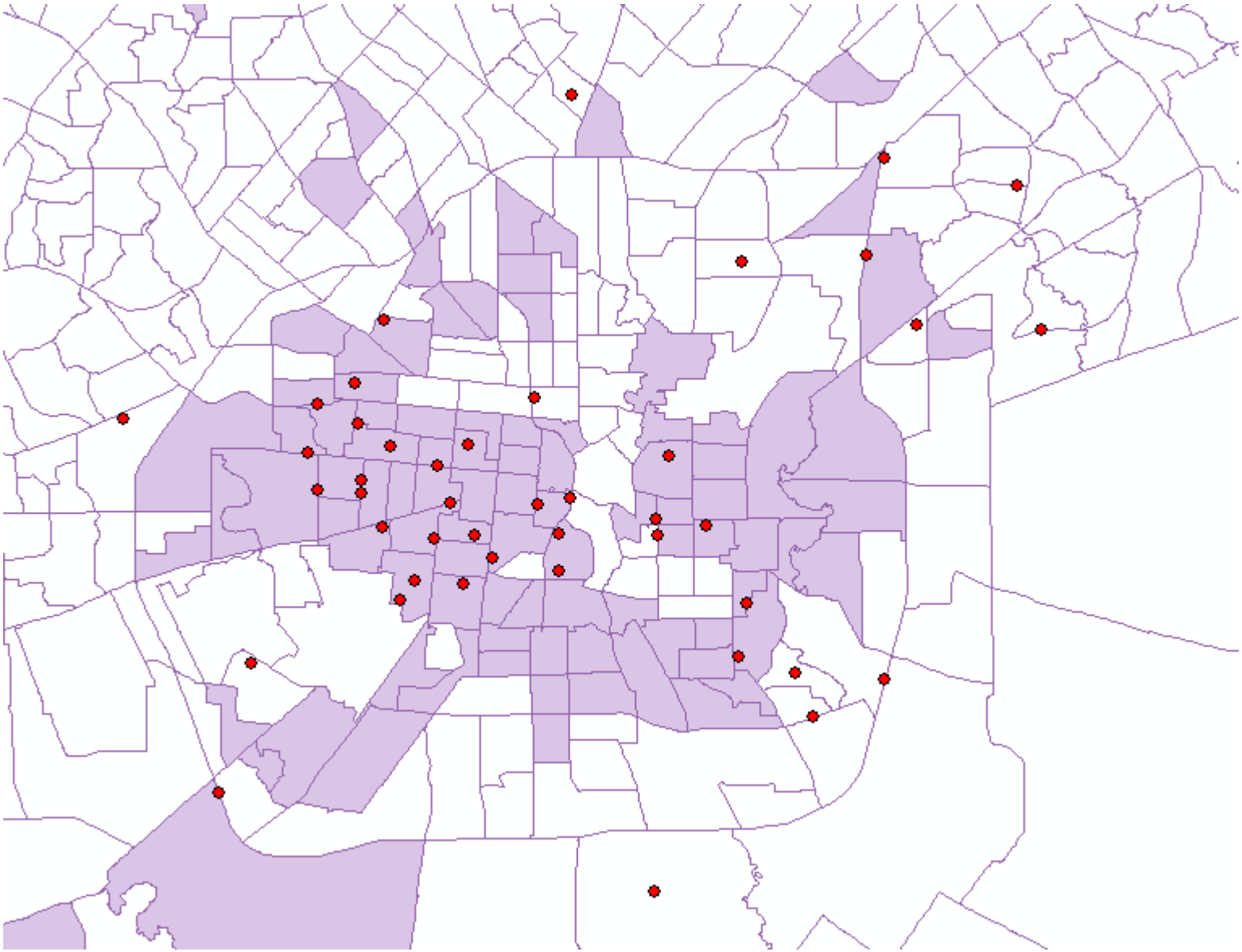
Major Urban Areas

- The five largest cities – 99/151 (66%) of “F” rated schools are located in QCTs

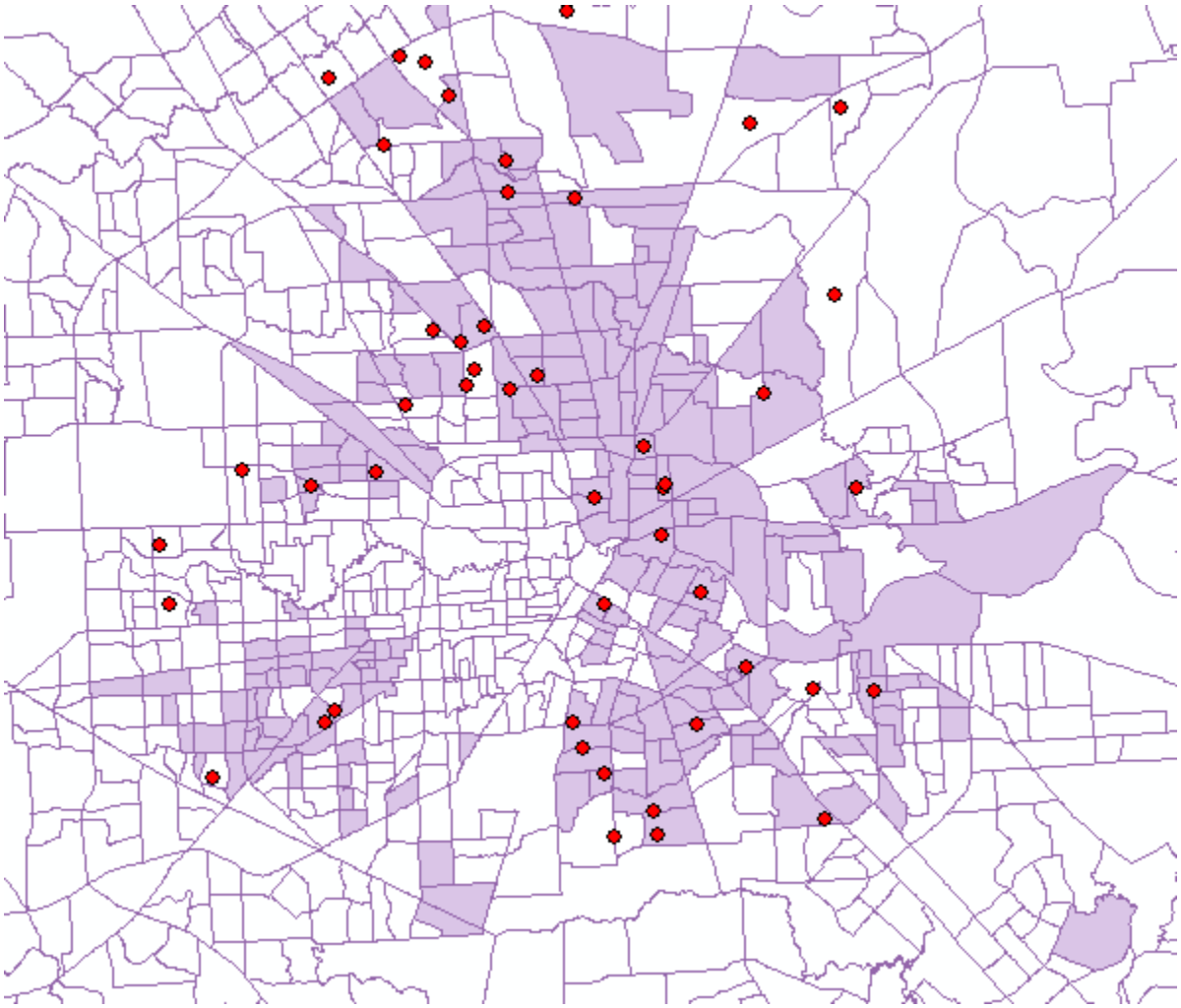
Austin:
10/14 (71%) F schools are in QCTs.



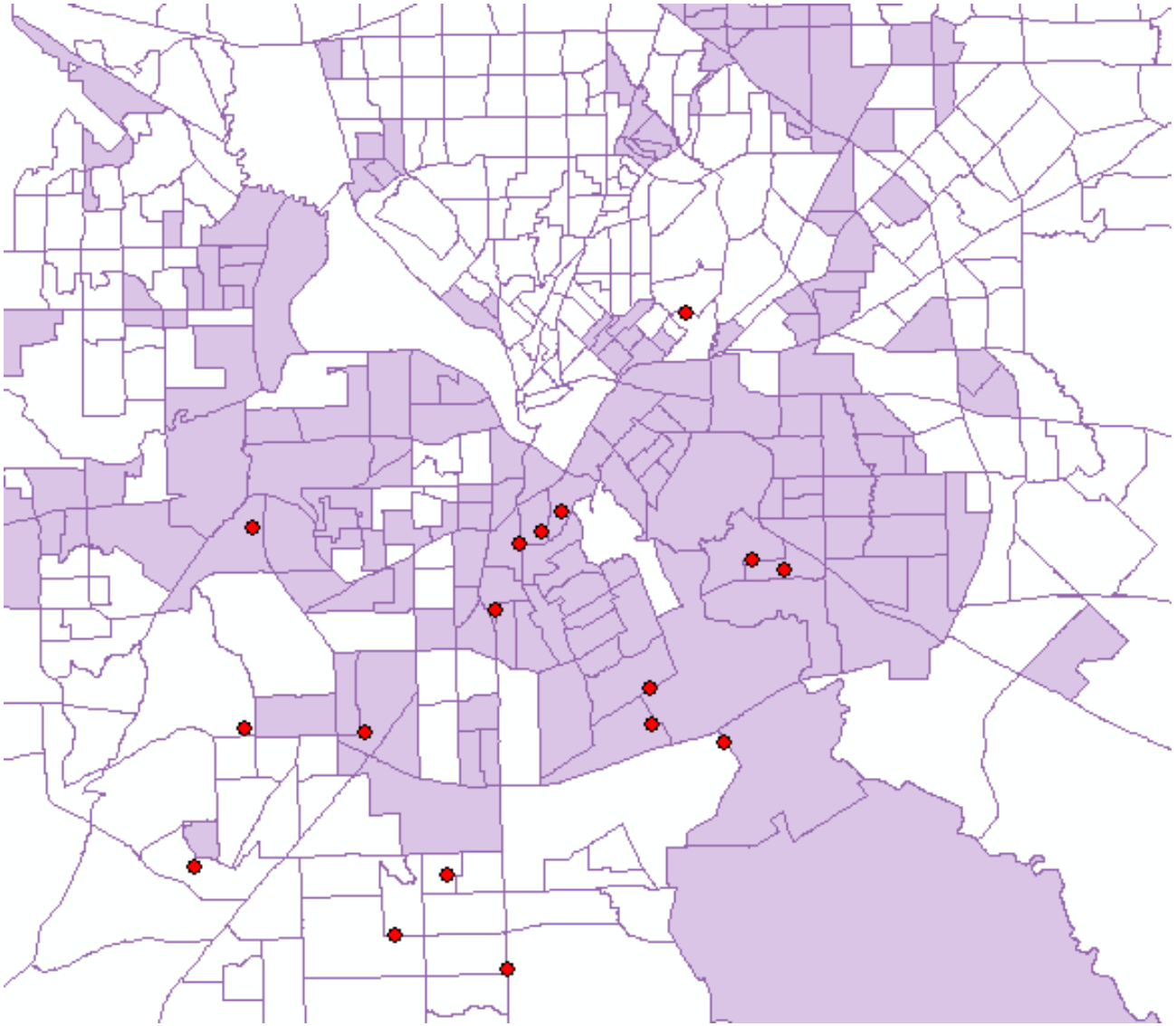
San Antonio: 31/44 (70%) F schools are in QCTs.



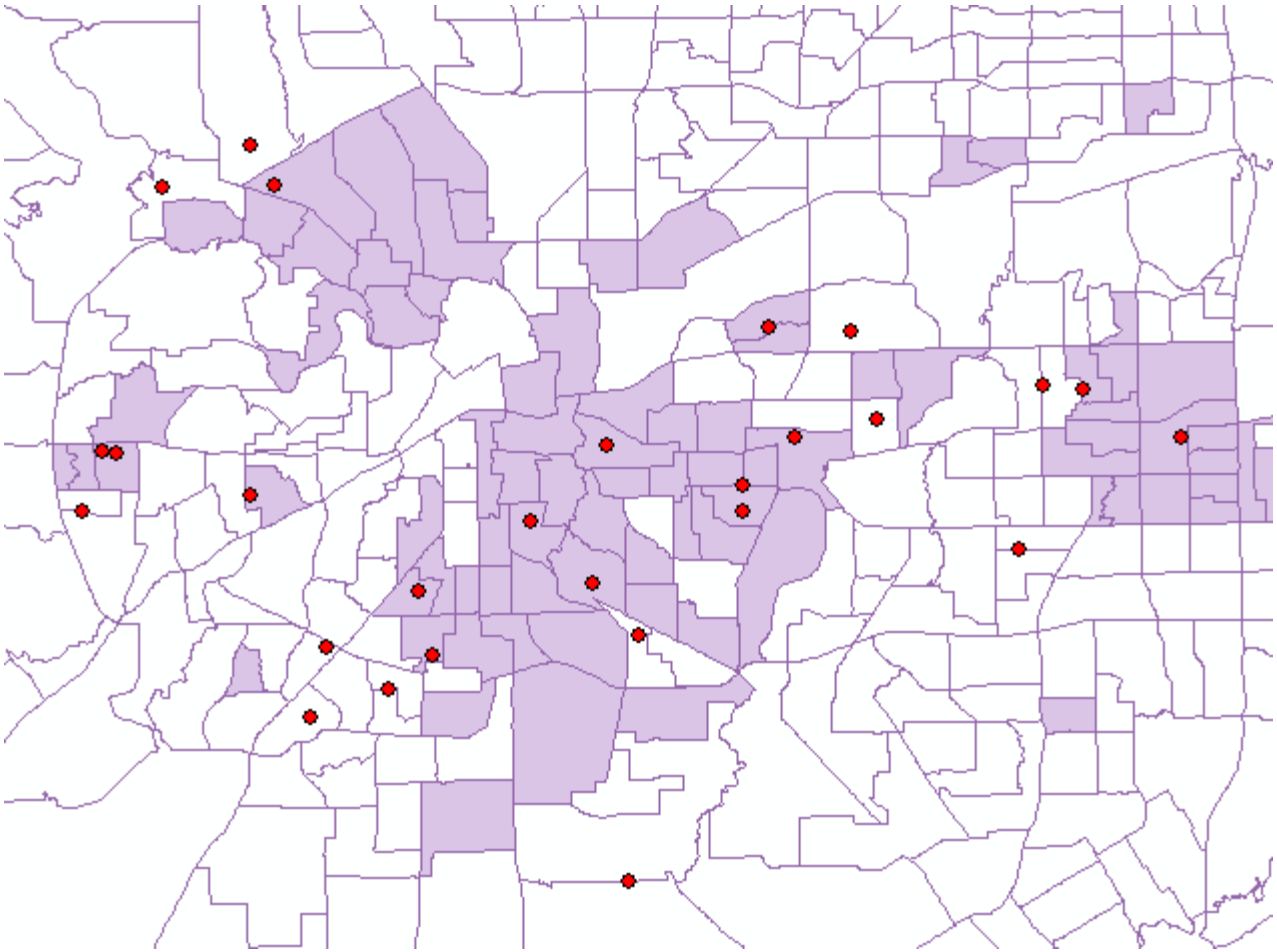
Houston: 32/49 (65%) F schools are in QCTs.



Dallas County: 11/17 (65%) F schools are in QCTs.



Tarrant County: 15/27 (56%) F schools are in QCTs.



(21) Alyssa Carpenter

October 10, 2019

Patrick Russell
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: Comment on the Draft 2020 Qualified Allocation Plan

Dear Mr. Russell:

The following comments are in response to the draft 2020 Qualified Allocation Plan. I thank Staff for their work on this document throughout the year and the opportunity to provide input.

11.1(d) Definitions.
The definition of Development Site currently states as follows:

> (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.

This definition does not make any reference to ingress/egress easements, and in prior years, access easements were deemed to not be a part of a Development Site. With the language change in the Site Control section regarding easements to a public right of way, I ask that the definition of Development Site be clarified as to whether it does or does not include ingress/egress easements.

11.7. Tie Breaker Factors.
The second tiebreaker concerns distance to the nearest HTC assisted development awarded less than 15 years ago and states as follows:

> (2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development 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.

Does this include developments that received subsequent tax credit allocations (that were not for a rehab)? For example: according to the property inventory, 04287 Villa Hermosa received a subsequent HTC allocation of $726 on 10/12/06, but was originally awarded on 7/28/04. Would a development that received a small subsequent allocation be considered to be "awarded less than 15 years ago" for the tiebreaker even if the original allocation was more than 15 years ago? Can this please be clarified in this section of the QAP?

11.9(c)(5) Underserved Area
This item was confusing in 2019 and required clarification via the email list. I have two suggestions for clarifications. First, I received email confirmation from Ms. Sharon Gamble in 2016 that this section included any (even small) subsequent tax credit allocations after the original tax credit award. I propose that this be explicitly included in this section. Second, please make it explicitly clear what "most recent year of award" is to be used for this section. There are two columns containing "years" in the property inventory tab: "Year" and "Board Approval" and they are not always the same.

11.9(c)(7)(B) Proximity to Jobs

I thank TDHCA for proposing an alternative to the Urban Core scoring item. While I think that there are changes that could be made to the distances and totals in this section in order to create more equalization between areas, I ask that no changes be made to the distances and totals in the final 2020 QAP because the development community has been working with these figures for several weeks. I suggest that any changes be made for the 2021 QAP only after an analysis has been conducted on the applications in the 2020 cycle.

However, I would like to propose that this section specifically be treated similarly to the crime data obtained from Neighborhoodscout in that the data must be obtained after October 1 and before the Pre-Application Final Delivery Date. While the onthemap.ces.census.gov is census data, it is not American Community Survey data and thus appears to be updated at different intervals. For example, it was on 8/29/19 that both 2016 and 2017 data was released with the note that it does not contain information on federal workers but that "Data for these workers may be added to LODES and OnTheMap in the future." It is possible that federal workers could be added or 2018 data could be released in February 2020 and that could change the score of an Application. Please add that documentation for this scoring item must be dated after October 1 2019 and prior to the Pre-Application Final Delivery Date for applications submitting a preapplication. The "Print Chart/Map" output generates a PDF that includes the date.

11.204(6) Experience Requirement.

What is the reasoning for the change to require that the necessary 150 units be developed and placed in service "in the ten years preceding submission"? Is this anything other than an arbitrary number? Does someone who developed 150 units in 2009 really have less experience than someone who developed 150 units in 2010? What about someone who developed 140 units in 2017, but the remaining 10 units needed for the experience cert were from a 2009 development with 250 units? I am not sure why one person would have less experience than the other because of a 1-year difference?

Relatedly, what point in the development process would count for the date to use for the ten years preceding submission? When the last building received a Certificate of Occupancy? Or for a tax credit development upon signature of the 8609s? Something else?

I propose that the 10-year requirement should be deleted. Or, at the very least, it should be waived for those who have 150 units of experience with HTC developments that are currently under compliance.

11.8(b) Pre-Application Threshold Criteria and 11.203 Public Notifications (§2306.6705(9))

These sections concern the notifications that must be made by an Applicant regarding an Application. Section 11.8(b)(2) states the following:

> (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 and that a reasonable search for applicable entities has been conducted. (§2306.6704)

The section references Section 2306.6704. Section 2306.6704 states the following regarding notifications:

> The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application

Chapter 11.203 references Section 2306.6705(9). Section 2306.6705(9) states the following:

> evidence that the applicant has notified the following entities with respect to the filing of the application

Both of these sections specifically reference Tx Govt Code Chapter 2306. Both instances of Chapter 2306 state that the Applicant must notify "entities." It does not say "individuals" or "officials" or "persons." While the QAP has been specific on notifying the correct "official" in office at the time of preapplication and then re-notifying if there was a change in "official" at full application, I do not believe this follows Chapter 2306. My reading and understanding of Chapter 2306 is that the entity and not necessarily a person should be notified, and it does not specify that the entity be renotified upon changes to the entity.

Based on the term "entities" in Chapter 2306, I propose that an applicant need only notify the "entity," which should mean the office. A notification to the Office of the "County Judge" or "ISD Board President" and addressed to "Community Leader" without reference to the name of the individual should be sufficient. In fact, there was an instance in 2019 where an Applicant addressed a notification letter to "Community Leader" and addressed it to a person who was no longer in office at the time of mailing or preapplication, but the Application was not terminated because the Applicant proved that the office received the notification. If this was acceptable in 2019 and the Application was not terminated because the office did indeed receive the notification, I propose that Applicants need only notify the office when submitting a pre-application or full application without reference to a specific person's name. Precedent was set when that 2019 application was not terminated for not notifying the correct official in office at the time of pre-application.

Please note that Chapter 2306 has different requirements for the Applicant and TDHCA. Section Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION states as follows. Note that the Department must notify the "persons" according to this section, whereas the Applicants must notify the "entities" according to the sections referenced above.

> Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION. (a) Not later than the 14th day after the date an application or a proposed application for housing funds described by Section 2306.111 has been filed, the department shall provide written notice of the filing of the application or proposed application to the following persons

A proposed language change from "official" or "individual" to "entity or office" also still meets the intent of the statue, which is that the "entity" is notified of the Application. As currently written, these sections of the QAP create "gotcha" scenarios where an Application could and should be terminated for addressing a notification letter to the wrong person. Because an Application was not terminated in 2019 when it did not notify the correct official in office, I propose that this section be changed to eliminate the "gotcha" scenario and make it equal for all Applicants in 2020. Furthermore, it should not be necessary to re-notify between preapplication and full application because the entity would still have the original notification and inform the incoming person. A change from requiring Applicants to notify specific persons and instead notify the office would avoid issues and timing errors when there is a change in person due to elections, resignations, or other events close to or during the Application cycle.

Thank you for your attention to these comments. Please contact me with any questions.

Regards,

Alyssa Carpenter
ajcarpen@gmail.com

(22) Pedcor Investments, LLC

PEDCOR INVESTMENTS
A Limited Liability Company

October 9, 2019

Patrick Russell
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941

Re: Comment on the draft of the 2020 Housing Tax Credit Program Qualified Allocation Plan ("QAP")

Dear Mr. Russell:
Please accept this letter as public comment to the 2020 draft of the QAP. Before submitting such comment, we do want to thank the TDHCA staff and Governing Board for their thoughtfulness in preparing the draft and for the consideration of this comment. Pedcor Investments, A Limited Liability Company ("Pedcor") is a national housing development company and has utilized the tax credit program in 19 states across the country. We have received 13 tax credit awards in Texas over the last 7 years and have plans to submit more applications in 2020. These comments are made from that perspective, that we may be able to continue to provide affordable housing to low-income Texans.

First, we agree with comments made by the Texas Affiliation of Affordable Housing Providers ("TAAHP") regarding §§11.101(a)(2) and 11.101(a)(3) related to Undesirable Site Features and Neighborhood Risk Factors, respectively. Specifically, we believe the following language be deleted:

- If staff determines that the Development Site cannot be found eligible and the Applicant appeals that decision to the Board, the Applicant may not present new information at the Board meeting;" and
- "Except for…a Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation."

We agree with TAAHP that staff determinations of eligibility are always appealable to the Board per Statute and that no one factor (crime, poverty, schools, etc.) should carry so much weight that the other factors are not able to be considered. In addition, we agree that there are instances where it is appropriate to present new information, particularly after application reviews and discussion reveal the specific concerns of staff and/or the Board.

Secondly, we also agree with TAAHP comments regarding §11.201(2)(B) related to Bond Developments, Non-Lottery Applications and request either a reversion to 2019 language allowing an application for Priority 3 transactions to be submitted up to 30 days prior to the issuance of the Certificate of Reservation, or removal of language in §11.201(6) regarding "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" which "may not be reviewed or underwritten…" Other revisions to this section will allow a longer time period for staff review, which we appreciate may be necessary. However, with the new legislation regarding the cap on the bond reservations, it is much more likely that applications will be submitted throughout the year. If some of those applications are not reviewed by staff due to when they were submitted, there is significant risk of the Certificate of Reservation expiring before reviews and underwriting are complete.

Finally, we request a change to the language in §11.4(c) related to Increase in Eligible Basis. Specifically, this section calls for applicants in certain census tracts to obtain a resolution "stating that the Governing Body of the appropriate municipality or county containing the Development has by vote specifically allowed for the construction of the new Development." We are not asking that the requirement for the resolution be removed, only that the specific language requirement "allowed for the construction" be revised. We have spoken with city attorneys and staff members who are understandably uncomfortable with

this language, since it could imply that the development is being permitted for construction. We suggest the following language, which is consistent with language required in other resolutions and does not imply approval of development plans:

"New Construction or Adaptive Reuse Developments located in a QCT that has in excess of 20% Housing Tax Credit Units per total households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development Site pursuant to §42(d)(5) of the Code, unless the Application includes a resolution acknowledging that the Development is located in a census tracts that has more than 20% Housing Tax Credits Units per total households and 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~~ no objection to the Application."

We would like to note that this resolution (unlike those required under §11.3(c) and §11.204(4)) is not a statutory requirement, and so we believe there is flexibility in the rule language. We suggest a similar revision to §11.3(e) related to Limitations on Developments in Certain Census Tracts, for the sake of consistency:

"…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~~adopted a resolution stating the proposed Development is consistent with the jurisdiction's obligation to affirmatively further fair housing and that the Governing Body of the appropriate municipality or county containing the Development has no objection to the Application."

Please feel free to contact me with any questions, and thank you for your consideration.

Sincerely,

Jean Latsha

Jean Marie Latsha
Vice President - Development

(23) LEDG Capital, LLC

Patrick Russell

From: Chris Lischke <chris@ledgcapital.com>
Sent: Friday, October 11, 2019 10:29 AM
To: Marni Holloway; Patrick Russell; Jacob Levy; Dmitry Gourkine
Subject: QAP Comment - School Ratings

Marni and Patrick,

We are writing to ask you to reconsider the 2020 QAP requirement that schools with an F rating be ineligible for credits. We have been keeping an eye on school ratings for every transaction that we do, and this is disproportionately going to impact 4% bond transactions. When looking in major metros across Texas, its obviously that failing schools are overwhelmingly located in QCT's. Discouraging development in QCT areas is only going to exacerbate the issues with quality and quantity of affordable housing across Texas.

We strongly encourage you to reconsider this ruling and would be open to discussing further.

Thanks,
Chris

Chris Lischke | LEDG Capital, LLC
chris@LEDGcapital.com | 314-749-2038

(24) Sierra Club, Lone Star Chapter

To: Texas Department of Housing and Community Affairs
Att: Patrick Russell
Email: htc.public-comment@tdhca.state.tx.us
From: Cyrus Reed, Lone Star Chapter of Sierra Club
Re: Comments on the TDHCA Proposed QAP for 2020

The Lone Star Chapter of the Sierra Club is the Texas chapter of the Sierra Club, a 501-C-4 advocacy organization with over 3 million members and supporters. In Texas, we have more than 180,000 members and supporters. The QAP is an important tool for the construction of affordable multi-family units in Texas. With a changing climate assuring that these buildings are modern, water and energy efficient and resilient is important.

The Lone Star Chapter is pleased to provide these brief comment on the proposed 2020 QAP plan. Our comments are limited to issues related to green building and energy efficiency measures overall.

Our main and most important comment is that we believe TDHCA should and must adopt minimum energy efficiency standards for overall energy use as well as for installed appliances that all applicants should meet as a threshold criteria. TDHCA should as part of both the QAP but also for all of its programs related to multifamily standards adopt minimum energy efficiency standards, as required by Texas Government Code 2306.187 and by the Texas Health and Safety Code. Indeed, recently TDHCA has already taken this action for its single-family programs, a proposal supported by the Sierra Club.

Thus, we would suggest that as we have stated previously, TDHCA should adopt the 2015 IECC as a minimum standard for all applicants applying to the QAP, as required by state law, while also making sure that new and replacement fans, electrical fixtures, equipment and appliances, as well as ductless heating and cooling systems and windows meet Energy Star certification requirements and that plumbing fixtures are WaterSense. These should be required for all applicants.

We do note that in (4) Mandatory Development Amenities the QAP does require certain efficient appliances. However, we are concerned by the words “or equivalently” when discussing required Energy Star appliances and measures found in the 2020 QAP. While there might be a legitimate reason for including these words, we believe it could undermine efforts to improve energy efficiency as part of the QAP. We are concerned there will be no way to measure energy efficient appliances without them being designated as “Energy Star.” Again, we would also support adding watersense plumbing appliances to the these required

mandatory development amenities rather than having them be “extra” points to be earned.

We do support the addition of the 2018 IGCC as a new “Green Building Standard” that applicants can earn additional points if they show they can meet these standards. We believe the addition of the 2018 IGCC will encourage some developers to seek additional points by meeting these standards, which represent an above-code green building program. We would also encourage the TDHCA to also add passive solar standards as another standard that could earn up to four points. In the U.S., the certification for such buildings is known as the PHIUS+ 2015 passive building energy standard.

We appreciate the special attention put in the document to “Construction, and Energy and Water Use Efficiency” added to the document in Section 11.101 (b) (6) (B). However, we believe many of these measures are already required as mandatory and it doesn’t make sense to give additional points for these measures. Thus, energy-star dishwashers and refrigerators are already required as mandatory, so why give additional points just because they have an ice-maker or are front-loading?

We also question the need to give points for LED recessed lighting or LED lighting fixtures in kitchen and living areas. LED lights are now the standard are in essence required for all new construction in Texas under the 2015 IECC. Giving developers extra points for what is essentially the standard is unnecessary.

We would also suggest that an even higher rated HVAC system such as an 18 or 20 SEER HVAC system be added for up to two points.

Finally we would note that there appears to be no mention of a PV rooftop solar option as a feature for which a developer could earn points. We would suggest that somewhere in the document a PV system that could provide some percentage of the buildings total energy use be eligible for extra points. Thus, we would suggest adding a PV-system that supplies at least 10 percent of the overall energy use as eligible for one point as well.

The Lone Star Chapter is pleased to offer these comments, and hopes you will consider modifications to the proposed 2020 QAP based upon these comments. Again, our main comment is that TDHCA should add the 2015 IECC as the minimum threshold standard.

Please don't hesitate to contact me if you have questions or concerns.

Sincerely,

Cyrus Reed
Interim Director
Lone Star Chapter, Sierra Club.
512-740-4086
cyrus.reed@sierraclub.org

(25) LeadingAge Texas

Patrick Russell

From: Alyse Meyer <alyse@leadingagetexas.org>
Sent: Friday, October 11, 2019 12:45 PM
To: HTC Public Comment
Subject: comments on draft 2020 QAP

Dear Mr. Russell,

Thank you for the opportunity to present recommendations to the Draft 2020 Qualified Allocation Plan (QAP). Please consider the below recommendations on behalf of LeadingAge Texas. LeadingAge Texas advocates on behalf of not-for-profit mission driven affordable senior housing providers.

Sponsor Characteristics
We oppose the added language to receive 1 point for HUB or Non-Profit organization participation prohibiting a relationship to the Developer. Due the narrow definition of the Qualified Non Profit definition, regional and national non-profits cannot take advantage of the 2 point Sponsorship line item for having a Non Profit as primary developer. However, non-profit
organizations provide unique, service enriched, high quality housing for Texans and TDHCA should be encouraging, not discouraging these developers to participate in the program.

Please add language “excluding Qualified Non-Profits per S.42 when such Non-Profit is the Managing Member of the General Partnership”.

Thank you,

Alyse Meyer
VP of Advocacy
LeadingAge Texas
512-467-2242 ext. 105

(26) The NRP Group, LLC

The NRP Group
1228 Euclid Ave., 4th Floor
Cleveland, Ohio 44115
Phone (216) 475-8900

200 Concord Plaza Drive
Suite 900
San Antonio, Texas 78216
Phone (210) 487-7878

www.nrpgroup.com

October 11, 2019

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, TX 78701
Patrick.Russell@tdhca.state.tx.us

RE: 2020 Staff Draft Qualified Allocation Plan (QAP) – Public Comment

Dear Mr. Russell,

As one of the leading affordable multifamily providers in Texas, we ask that you take into consideration our comments on §11.101(a)(3) of the QAP in order to help facilitate the goals and objectives of TDHCA, namely to develop high quality affordable housing allowing Texas communities to thrive.

The 2020 Draft QAP, §11.101(a)(3) Neighborhood Risk Facts, eliminates the opportunity for mitigation for potential development sites that are in attendance zones that of a school that has a 2019 TEA Accountability Rating of "F" and a 2018 Improvement Required Rating. We believe that this proposed language in clause (iv) be eliminated from the draft as the new regulations would prohibit any efforts by a developer to work with the school district and third party consultants to help craft and implement a mitigation plan to help improve school rating and by providing resident services such as our afterschool program, Homework First, which has been statistically shown to improve a student's average grade by a full letter. While on the surface, it may seem reasonable to not concentrate communities in locations with underperforming schools, the opportunity to appeal to staff to show that efforts have been made to address the issue must be maintained. The result would be two pronged, more affordable housing units across the states, and efforts by ***developers*** to work with schools to improve and promote the quality of schools within the attendance zone of a potential development.

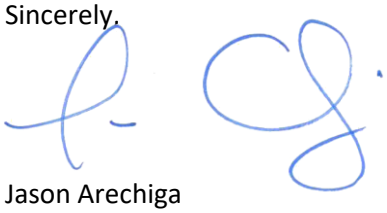
Moreover, the attached maps, (Exhibit A), indicate that a good portion of Qualified Census Tracts (QCTs) will be potentially ineligible for housing tax credits based on the new proposed rule. Specifically, at the State level, 37% of "F" schools and in major urban areas, 66% of "F" schools are located in QCTs resulting in large areas potentially ineligible for housing tax credits. While this analysis only looks at 2019 ratings, it is safe to say that these numbers would be similar should 2018 data be included. However, as a case study (Exhibit B), a full analysis with data from 2018 and 2019 was conducted for Harris County and 86 of 156 or ***58%*** of QCTs would be considered ineligible under the proposed language.

While the proposed rule stems from good motives, it has the unintended consequence of further neglecting and alienating neighborhoods. To preserve a holistic approach to site suitability, we ask that TDHCA allow developers the opportunity to work with communities to not only build much needed

housing, but also the ability to be an agent of change to encourage the strengthening of schools throughout our great state.

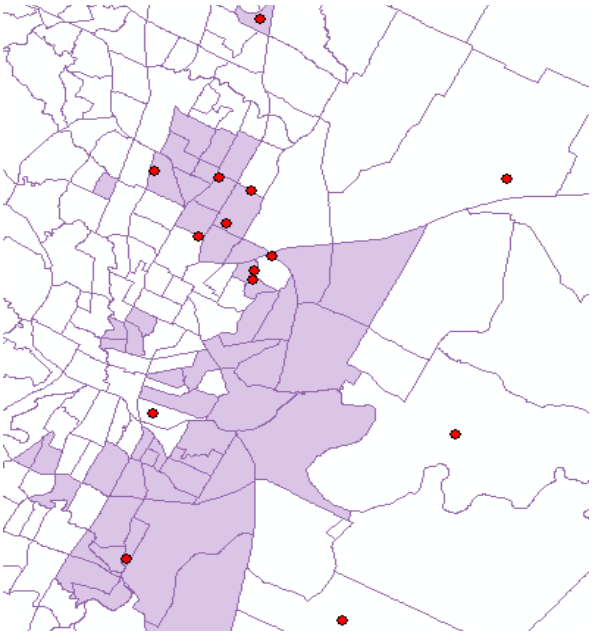
Thank you for your time and consideration. We look forward to our continued partnership in making a real difference in the lives of Texans.

Sincerely,

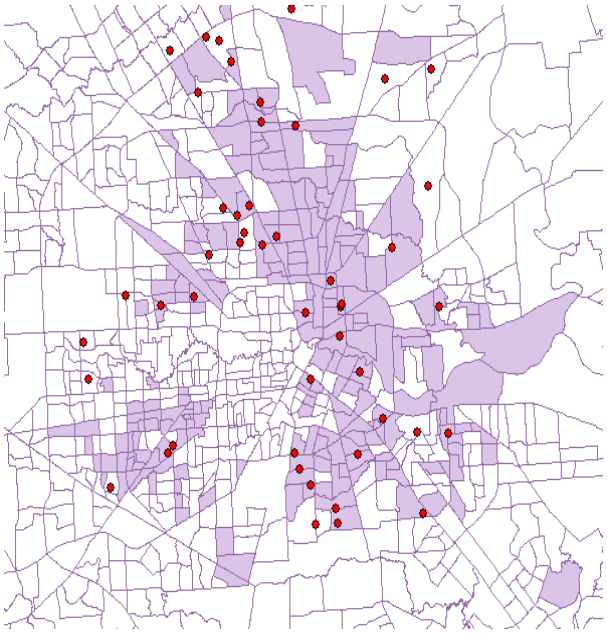


Jason Arechiga
Senior Vice President of Development

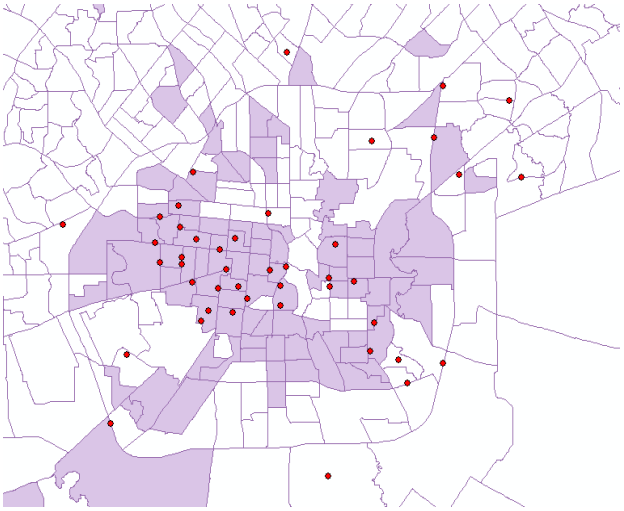
Exhibit A



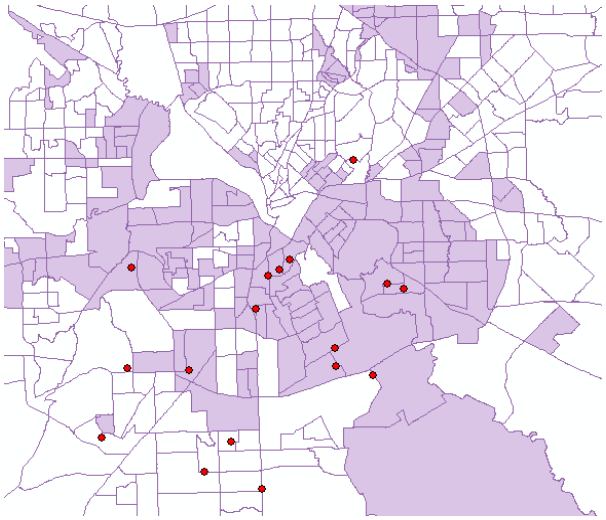
Austin: 71% “F” Schools are in QCTs



Houston: 65% “F” Schools are in QCTs

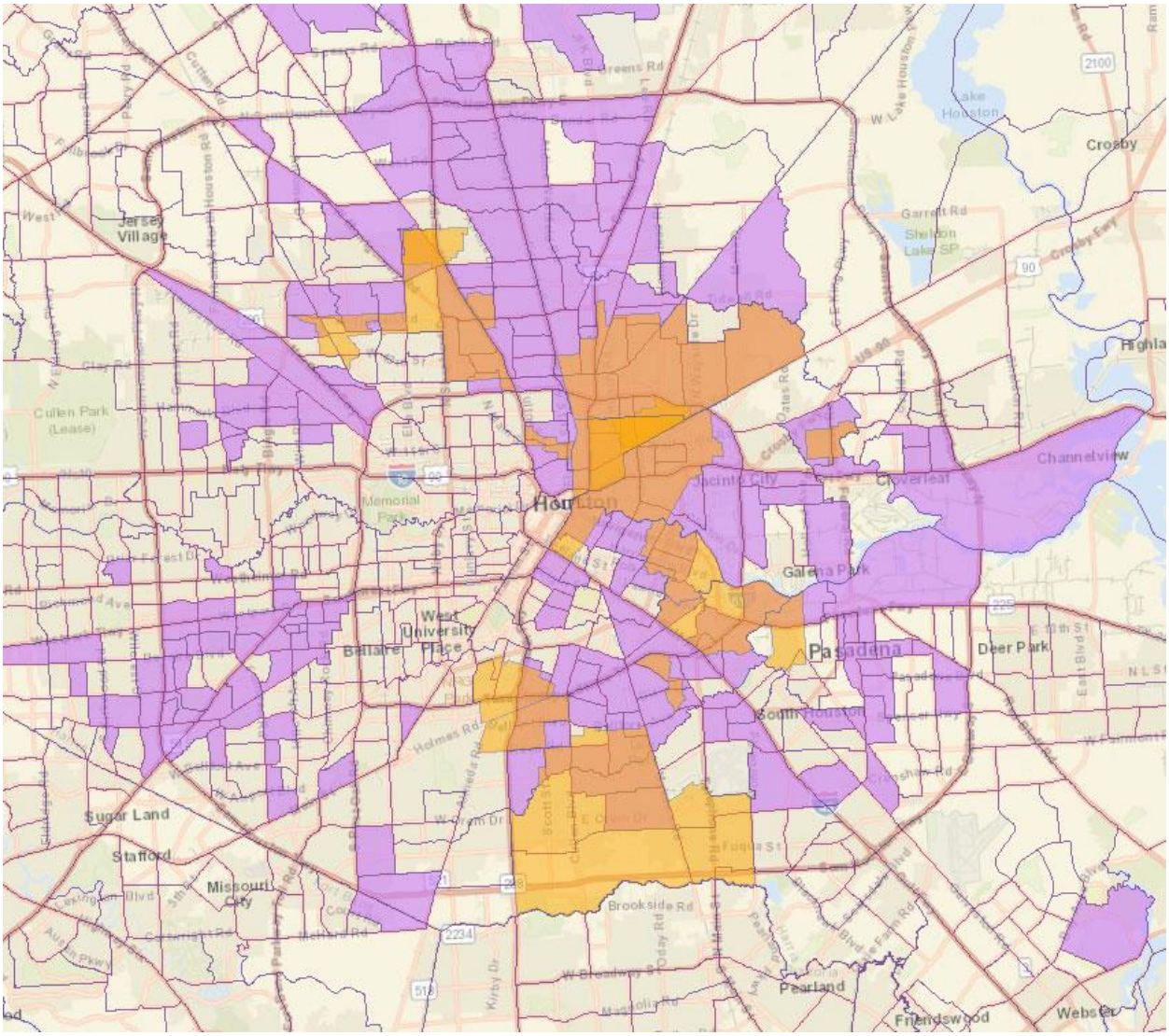


San Antonio: 70% “F” Schools are in QCTs



Dallas: 65% “F” Schools are in QCTs

Exhibit B



Harris County: 86 of 156 or 58% of QCTs ineligible for HTCs based on revised school rating rule

(27) Saigebrook Development

October 10, 2019

Ms. Marni Holloway
Multifamily Finance Director
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

Via email: marni.holloway@tdhca.state.tx.us

RE: 2020 QAP Draft

Dear Ms. Holloway:

Please accept these comments on the 2020 draft QAP specifically regarding the new points added to the draft for extended affordability periods (40 and 45 years). We are in support of both TAAHP and TXCAD's comments requesting that the affordability period revert to the 35 years found in the 2019 QAP. As a developer and owner of affordable housing properties, we are not opposed to having extended affordability periods, however, there are multiple issues and concerns surrounding extended affordability that need to be addressed in conjunction with extending affordability.

As an example, developments need to have the ability to rehabilitate and modernize properties as they age and become functionally obsolete. It is not in the best interest of anyone in our industry to have properties deteriorate without the ability to renovate. The ability to conduct this renovation is contingent raising capital and/or refinancing. Opportunities to do so are complicated by a developments inability to generate sufficient proceeds due to the long-term rent and income restrictions. When underwriting a development, many developments' cash flows trends downward over time. TDHCA currently requires underwriting through year 30 and a require that a development must maintain positive cash flow throughout the 30 year period. To my knowledge, an analysis has not been done to determine how cash flow is affected when affordability is extended to 40 or 45 years. In many instances I think we will find when it is extended, many properties will have cash flow projections that are negative after year 30 and certainly before year 45. Prior to extending affordability periods via either points or threshold in the QAP, we would like to request that staff undertake an analysis of the financial impacts to extended affordability.

Further, extended affordability periods are discussed as a partial solution to preservation. However, adding extended affordability to new developments does not address the expiring affordability of TDHCA existing portfolio. We would like to see in the 2021 QAP discussions a

220 Adams Drive, Ste. 280, #138, Weatherford, TX 76086
352-213-8700 lisa@saigebrook.com

focus on how to effectively encourage preservation of expiring affordable units. There are currently several impediments in the draft QAP that discourages applications with expiring units from re-applying for funding and thereby extending their affordability periods. A couple of examples are below:

1. Site characteristics and ineligible site features including school scoring: Existing developments do not have the flexibility to relocate, yet they are serving existing affordable populations. If those units are at risk of being lost because of expiring affordability, then low income residents are at risk of being displaced. Further, if no new development can be constructed in a nearby area due to the above site characteristics, then when these units are lost as affordable units, there are not new options where those residents can move to.
2. Readiness to proceed in the At Risk Set Aside: Due to the points available for readiness to proceed counties, many at risk development in non-readiness to proceed locations may not be applying because they fear being non-competitive as compared to a readiness to proceed transaction.
3. ROFR: The QAP currently requires for an existing tax credit development to re-apply for credits that the ROFR process has been completed. This complicates and lengthens the process for an applicant that otherwise could re-apply for credits and thereby agree to a new extended use period.

NCSHA in their most recent best practices recommends that Agencies should consider the preservation needs of Housing Credit properties that are reaching the end of their initial 15-year compliance period. Specifically, they recommend the following steps:

1. Review the QAP and other Agency policies regarding preservation of existing affordable housing to ensure that those policies are consistent with the Agency's identified strategic preservation objectives and to eliminate any impediments to preservation.
2. Develop QAP policies on the use of 9 percent and 4 percent Credits for preservation, including specific policies on Housing Credit resyndication.
3. Assess whether Housing Credits and/or other recapitalization financing are necessary for each development as part of an overall preservation strategy and to determine the most efficient means of preservation.
4. For developments with extended affordability periods (30+ years), the extended use agreement on the original development does not go away at the time of resyndication. Agencies should develop policies on amendment of the original extended use agreement that can be applied in resyndications.

NCSHA recognizes that "Agencies are challenged to balance the preservation needs of the existing affordable housing stock and consider their needs for production of new affordable housing with finite Housing Credit resources. Moreover, while Housing Credit developments with post-1989 allocations are subject to extended use restrictions that require an additional 15-year minimum low-income use, the physical condition and financial viability of certain developments may suggest a need for recapitalization before those developments reach the end of their affordability period."

Finally, based on the report prepared by Novogradac we learned that extended affordability periods, beyond the federally required 30 years, are not the norm or the industry standard. Approximately 50% of states nationwide have some additional affordability periods but there is no consistency among those states. Extended affordability periods range from 5 years to 69 years. Further inquiries conducted by Novogradac determined that many states offer a variety of incentives and/or financial solutions to assist with refinancing, recapitalization and rehabilitation. Some examples were property tax relief, income and rent restriction relief, and/or resyndication opportunities with 9% tax credits.

Based on the above, we respectfully request that prior to implementing extended affordability periods beyond those in the 2019 QAP, TDHCA undertake a full analysis of all the issues surrounding the preservation of both existing portfolio developments as well as financial feasibility for new construction developments.

Respectfully,

Lisa M. Stephens
President

cc: Bobby Wilkinson, Executive Director (via email)
Brent Stewart, Real Estate Analysis (via email)
Patrick Russell, Multifamily Policy Research Specialist (via email)

(28) Texas Housers

October 11, 2019

Patrick Russell
Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701
Via email: Patrick.Russell@tdhca.state.tx.us

Re: Texas Housers' Comments Regarding the Draft 2020 QAP

Dear Mr. Russell:

For over 30 years Texas Housers has been a committed advocate on behalf low-income income Texans' right to safe, affordable housing in high-quality neighborhoods. The Low-Income Housing Tax Credit (LIHTC) program is the most significant source of affordable housing in Texas, making it vital that the program is implemented in a manner that best serves our most vulnerable renters in a manner that overcomes past practices of racial residential segregation and discrimination.

We thank the Texas Department of Housing and Community Affairs (TDHCA) staff for opportunities to participate in the 2020 Qualified Allocation Plan (QAP) roundtable process, particularly relating to the robust discussion around the preservation of LIHTC properties. We are appreciative of staff's hard work during the 2020 QAP planning process.

Education Criteria

1.Texas Housers generally supports the amendment to §11.9(c)(4)(B)(i)(XX) & ii(XX), which add points in the Opportunity Index for Applicants whose Development Sites in urban and rural regions are located in "the attendance zone of a general enrollment public school rated A or B by TEA for the past academic year."

However, we also urge TDHCA to allocate at **8 points** for satisfying this criterion because it is the most important consideration and need for low-income families in Texas. Access to high-rated schools should be worth more points than, for example, access to indoor or outdoor recreation facilities.

In Texas, low-income renters are generally highly limited in their housing choices, in large part because of the Texas Legislature's decision to allow landlords to discriminate against voucher holders. LIHTC developments are frequently the only choice that low-income renters have. It is critical, therefore, that TDHCA use the QAP to strongly incentivize placing LIHTC properties in the attendance areas of good schools, at all grade levels, because despite policies that are meant to provide low-income families with greater choice in school attendance, there is a

"persisting connection" between housing location and attendance at a high-performing school.[1] Moreover, in urban and metropolitan areas, the Affirmatively Furthering Fair Housing data shows that "areas with higher levels of black-white and Hispanic-white residential segregation tend to have larger disparities in access to high-performing elementary schools across race and ethnicity."[2] Policies dictating the location of affordable housing play a significant role in ensuring that low-income renters of color, in particular, have access to high-performing schools.

We also feel that, in the face of any suggestions that preventing developments in attendance zones with F-rated schools will make too many projects "infeasible," it is worth noting that the purpose of the QAP is to promote our State's policy to place affordable rental housing in neighborhoods where people with more housing choice—like those of us participating in this commenting process— ***want to live*.** That means, among other things, access to high-performing schools. If a Proposed Development is infeasible because it is located in a neighborhood with a poor-performing school, the QAP is doing exactly its job.

2. Texas Housers <u>opposes</u> the proposed change to §11.101(B)(iv) to the extent that Proposed Developments with existing LURAs are not required to present mitigating evidence if the Development is located in an attendance zone of a poorly-performing school.

Texas Housers generally opposes any Proposed Development in the attendance zone of a school that is less than B-rated. To that end, Texas Housers appreciates TDHCA's effort to preclude any effort to place a LIHTC property in the attendance zone of our most poorly-performing schools. However, existing LIHTC properties—if they want to secure additional federal subsidy—should also be required to mitigate if they are located in the attendance zone of a school encompassed by this section.

It is unreasonable to suggest that simply because a LIHTC property is already place, the children living in that property should be subjected to attending a poorly performing school. Particularly when it is likely that these families have limited options to move to a location near a high-performing school. TDHCA should not continue to invest in a LIHTC property that is not serving its residents. We recommend that TDHCA change this proposed rule to require Applicants with existing LURAs to submit evidence needed to mitigate its location near a poorly-performing school.

<u>Environmental Justice Criteria</u>

3. Texas Housers suggests further amendments of §11.101(a)(1) to increase Owners' responsibilities to protect residents in properties located within a 100-year floodplain.

Texas Housers does not support commitment of additional funding to either new construction or rehabilitation of existing LIHTC properties when those properties are located in a 100-year floodplain.

[1] https://www.urban.org/sites/default/files/publication/24271/412972-Moving-to-Educational-Opportunity-A-Housing-Demonstration-to-Improve-School-Outcomes.PDF
[2] https://howhousingmatters.org/articles/federal-fair-housing-data-can-tell-us-access-quality-schools/

In Texas, we have seen drastic changes in weather patterns in recent years and repeated record-breaking floods across the state. Whether LIHTC properties are in Houston or on the coast and subject to flooding from hurricanes and tropical storms, or in the Texas hill country's "Flash Flood Alley," the 100-year floodplain designations are significantly less reliable indicators than they once were.

While the rule should not permit funding Developments in the floodplain, if TDHCA feels compelled to do so, Texas Housers requests that TDHCA require any Development Owners seeking credits for projects located in a 100-year (or less) floodplain to hold flood insurance that covers the residents' personal property. While Texas Housers appreciates the notice requirement for Tenants that is included in this Staff Draft, it is extremely unlikely that the low-income residents served by LIHTC developments will be able to afford the necessary flood insurance.

Most lower-income residents do not have resources to exercise choice in their housing search. This is especially true of voucher holders given the States' action to allow landlords to discriminate against them. Simply warning renters of their home's location in a flood plain and telling those who come to a LIHTC property as a place of last choice to buy flood insurance that they likely cannot afford is not a substantive protection. Suggesting that these residents "take necessary precautions" is vague and less helpful to those living in developments that may be threatened by flooding because, realistically, their options for taking precautions are limited.

4. Texas Housers suggests that TDHCA Staff's amend §11.101(a)(2) to include proximity to highways or interstates as an Undesirable Site Feature.

Texas Housers recommends that TDHCA consider as an Undesirable Site Feature any highways, interstates, and other major roadways that are heavily trafficked and that are less than 1000 feet from any proposed project. People that reside near busy roadways suffer higher rates of asthma, reduced lung function, heart disease, cancer, and other health issues long associated with car and truck pollution.[3]

Economic Criteria

5. Texas Housers opposes TDHCA's change to §11.101(a)(3)(D)(i), which changes the supporting documentation needed to mitigate proposed Developments in a census tract with a high poverty rate.

Currently, an Applicant must provide evidence that, although the census tract is currently one of high poverty, there is evidence of nearby reinvestment and that nearby census tracts' poverty rates are declining. This information is vital to understanding whether or not a census tract may be a good location for new affordable housing, despite it currently having a relatively high poverty rate, because the neighborhood is changing and improving.

Changing this requirement to simply allowing the Applicant to obtain a letter from the local government "referencing this rule and/or acknowledging the high poverty rate" does nothing to ensure that this feature is actually mitigated by surrounding circumstances and is an inadequate

[3] American Lung Association, "Living Near Highways and Air Pollution," available at https://www.lung.org/our-initiatives/healthy-air/outdoor/air-pollution/highways.html (last visited August 9, 2019).

alternative to the evidence currently required. Texas Housers strongly opposes this proposed change.

Again, the goal of QAP is to ensure that LIHTC properties are built in high-opportunity areas and in a manner that addresses the years of discriminatory policies and affordable housing production in Texas that have disparately impacted low-income renters of color. Therefore, TDHCA should be highly critical of any proposed Development Site that is located in a high-poverty census tract and should place the burden on the Applicant to not only provide a "clear and compelling reason that the Development should be located at the Site," but also objective and irrefutable evidence the surrounding area is seeing significantly reduced poverty and reinvestment of public resources. Something that the proposed rule most certainly would not provide.

6. Texas Housers tentatively <u>opposes</u> TDHCA's §11.9(c)(7)(B), which adds proximity to jobs as a 6-point scoring item in the competitive HTC Selection Criteria.

Texas Housers appreciates TDHCA's purpose in attempting to use access to jobs as a metric by which LIHTC developments are located. Access to jobs is an important component of overcoming poverty. However, we are hugely skeptical of the weight that this criterion has related to other criteria which we feel are far more important to the purpose of the Fair Housing Act, such as access to a high-performing school.

The goal of the Fair Housing Act and the mandate to affirmatively further fair housing is to replace segregated neighborhoods with "truly integrated and balanced living patterns."[4] Access to jobs within one mile is not any more important to meeting this goal than access to fresh foods, a high-performing school, and low crime rates.

Moreover, this simplistic metric also does not take into account the **type** of jobs available to tenants and could easily result in tenants having access only to heavy industry or other types of jobs that present a health hazard.

While Texas Housers is not opposed to adding job proximity as a metric, this criterion and the criterion for urban core should be allocated fewer points so that they do not outweigh other neighborhood characteristics, such as access to a high-performing school--that are more important to LIHTC tenants and are likely to contribute more to escaping cyclical and generational poverty than this rough metric of access to jobs. Yet, as written, the QAP proscribes **6 times as many points** for Development Sites located in an urban core or within one mile of 16, 500 jobs. Job proximity and urban core points should be reduced to 2 or 3 points in order to reduce the weight given to these metrics over other important neighborhood characteristics

We also remain skeptical that the job-proximity criterion may create incentives to place Developments in areas that are otherwise neighborhoods in which families would not choose to live in or, alternatively, make less competitive those sites that are farther away from jobs, but are wealthier, higher-income neighborhoods with access to important resources like high-performing schools and grocery stores.

[4] *Tifficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972).

Should TDHCA choose to move forward with the job-proximity criterion, Texas Housers requests a caveat be put in place that would prevent Applicants from receiving these points if the Proposed Development is also in a neighborhood with other undesirable neighborhood characteristics, and that mitigation under these circumstances be disallowed.

Preservation Criteria

7. Texas Housers supports TDHCA Staff's amendment to §11.9(e)(5) to the extended affordability incentive, which added incentives to Applicants that commit to 35-45 years of affordability.

Although TDHCA did, for a number of years, provide incentives for Applicants to commit to up to 55 years of affordability, in recent years Texas has lagged behind the national trend towards increasing affordability requirements for LIHTC properties. By providing incentives in the scoring criteria for Applicants committing to up to 45 years of affordability, TDHCA is taking an important step towards ensuring the billions of dollars of investments in LIHTC properties in our state remain affordable for long-term use by our most vulnerable renters. Texas Housers thanks TDHCA for committing to longer-term affordability in our LIHTC inventory moving forward.

Texas Housers further requests, however, that TDHCA consider mandating, rather than incentivizing, longer affordability requirements and that the affordability term be a minimum of 55 years. **12 states** either require or incentivize LIHTC Applicants to commit to at least 55 years of affordability. It is certainly feasible that Texas could do the same.

8. Texas Housers opposes TDHCA's decision to remove the amendment to §11.204(16), which would makes a Right of First Refusal mandatory for all 9% LIHTC applications.

TDHCA staff, in the 2020 QAP Staff Draft, made an important change to the QAP, which would have made the provision of a Right of First Refusal a threshold requirement. Ensuring that nonprofits, housing authorities, tenant groups, and other mission-driven entities have the opportunity to purchase LIHTC properties is an important component of the long-term preservation of affordable housing in Texas should a Development Owner decide to sell a property or request a Qualified Contract. A Right of First Refusal (ROFR) is a sure way to give these qualified buyers the notice and opportunity to preserve LIHTC properties, where possible.

Although it is true that *most* competitive HTC applicants already choose to include a ROFR, this item should not be a choice or an incentive. A ROFR should be mandated for all LIHTC properties. Further, Texas Housers urges TDHCA to expand this requirement to include 4% applications, as well. As mentioned above, a ROFR is often the only stopgap for keeping a LIHTC property affordable should a Development Owner request a Qualified Contract or otherwise exit the program. There are hundreds of 4% properties across the state—many in high opportunity neighborhoods—that lack this protection.

Green Criteria

9. Texas Housers generally supports stronger incentives and mandates in the QAP to increase the use of green amenities.

First, Texas Housers thanks Staff for reinstating the 2-point criteria for Proposed Developments that include green amenities. However, we feel that the QAP could be doing significantly more to encourage Developers to use green and energy efficient appliances, which is not only going to make LIHTC properties more sustainable, but will help reduce the burden of utilities costs on tenants. The following are several recommended changes to the green amenities points in the QAP:

11.101(b)(4) Mandatory Development Amenities

- ~~At least one~~ An Energy-Star or equivalently rated ceiling fan ~~per Unit~~ in all bedrooms and living room;
- Energy-Star, LED, or equivalently rated lighting in all Units;
- EPA WaterSense or equivalent qualified toilets in all bathrooms
- EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms

11.101(b)(6)(B)(iii) Energy and Water Efficiency Features

- Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (~~2~~ 1.5 points);
- 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. 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 point);
- 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and
- A rainwater harvesting/collection system and/or locally approved greywater collection system (~~0.5~~ 1 points);
- Photovoltaic/Solar Hot Water Ready, consistent with local code requirements or Enterprise Green Communities scoring criteria (0.5 points)
- Provide either R-3.8 minimum continuous insulation at the exterior walls in addition to R-13 min. in the wall cavity; or provide R-20 min. insulation in the wall cavity (0.5 points)
- Provide either R-25 min. continuous insulation entirely above the roof desk or R-38 insulation in the attic (0.5 points)
- FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring in 100% of units (0.5 point)
- All interior paints, primers, adhesives, and sealants (including caulks) must have volatile organic compound (VOC) levels, in grams per liter, less than or equal to the thresholds established by South Coast Air Quality Management District (SCAQMD) Rule 1113 and 1168. Projects must follow the most recent revision available at time of product specification. For the latest rules: www.aqmd.gov/home/regulations/rules. (0.5)

We thank Staff, again, for the significant time and energy dedicated to creating this draft of the 2020 QAP and encourage Staff to please reach out if you have any questions about these comments.

Sincerely,

Lauren Loney

Lauren Loney
Advocacy co-director
Texas Housers

lauren@texashousing.org
(573) 355-1731

(29) Megan Lasch

Patrick Russell

From: Patrick Russell
Sent: Friday, October 11, 2019 2:16 PM
To: HTC Public Comment
Subject: FW: 2020 QAP Comments

From: Megan Lasch <megan@o-sda.com>
Sent: Friday, October 11, 2019 2:14 PM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Cc: Patrick Russell <patrick.russell@tdhca.state.tx.us>
Subject: 2020 QAP Comments

Hi Marni and Patrick

Please accept this email as my comments to the 2020 draft QAP specifically regarding the new points added to the draft for extended affordability periods (40 and 45 years). I am in support of both TAAHP and TXCAD's comments requesting that the affordability period revert to the 35 years found in the 2019 QAP. I am not opposed to extending affordability but I feel we need to take a holistic approach and address other issues that would arise from extended affordability.

Thanks you,

Megan Lasch
5501-A Balcones Dr. #302
Austin,Texas 78731
830-330-0762

(30) Sarah Anderson Consulting, LLC

SANDERSON CONSULTING

October 11, 2019

TDHCA
221 E. 11th Street
Austin, TX 78701
Attn: Patrick Russell

RE: 2020 Draft QAP Comments

Dear Mr. Russell:

Below are my comments for the 2020 Draft Qualified Allocation Plan.

11.1(d) Definitions.
The definition of Development Site currently states as follows:

> (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.

This definition does not make any reference to access easements, and in prior years, access easements were deemed to not be a part of a Development Site. With the language change in the Site Control section regarding easements to a public right of way, I would ask that the definition of Development Site be clarified as to whether it does or does not include access easements.

§11.101(3)(B)(iv) Site and Development Requirements and Restrictions (Neighborhood Risk Factors)
I am concerned about the impact of the following school language on 4%/Bond deals:

> *Any school in the attendance zone that is rated F by the Texas Education Agency will be considered ineligible with no opportunity for mitigation.*

To make 4% Tax Credit deals work financially, the development generally needs to be located in Qualified Census Tracts (QCT) so that they can receive the 30% credit boost. Unfortunately, there seems to be a disproportionate number of F ranked schools in QCTs, especially in urban areas.

There are 402/9,555, or roughly 4% schools with an "F" rating. Of those, 37% statewide are located in QCTs. When you look at the five major urban areas, that goes up to 66% of "F" schools located in QCTs

The unintended consequence of this rule seems to be a limitation of the production of affordable housing in the areas that may need it the most. I believe that 4% deals should be exempt from this part of the rule, or should be able to provide some sort of mitigation to allow for developments in these areas.

1305 E 6th Street • Suite 12 • Austin • TX • 78702
P: (512) 554-4721

11.7. Tie Breaker Factors.

The second tiebreaker concerns distance to the nearest HTC assisted development awarded less than 15 years ago and states as follows:

> (2) Applications proposed to be located the greatest linear distance from the nearest Housing Tax Credit assisted Development 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.

Does this include developments that received subsequent tax credit allocations (that were not for a rehab)? For example: according to the property inventory, 04287 Villa Hermosa received a subsequent HTC allocation of $726 on 10/12/06, but was originally awarded on 7/28/04. Would a development that received a small subsequent allocation be considered to be "awarded less than 15 years ago" for the tiebreaker even if the original allocation was more than 15 years ago? Can this please be clarified in this section of the QAP?

11.9(c)(5) Underserved Area

This item was confusing in 2019 and required clarification via the email list. I have two suggestions for clarifications. First, I received email confirmation from Ms. Sharon Gamble in 2016 that this section included any (even small) subsequent tax credit allocations after the original tax credit award. I propose that this be explicitly included in this section. Second, please make it explicitly clear what "most recent year of award" is to be used for this section. There are two columns containing "years" in the property inventory tab: "Year" and "Board Approval" and they are not always the same.

11.9(c)(7)(B) Proximity to Jobs

I thank TDHCA for proposing an alternative to the Urban Core scoring item. While I think that there are changes that could be made to the distances and totals in this section in order to create more equalization between areas, I ask that no changes be made to the distances and totals in the final 2020 QAP because the development community has been working with these figures for several weeks. I suggest that any changes be made for the 2021 QAP only after an analysis has been conducted on the applications in the 2020 cycle.

However, I would like to propose that this section specifically be treated similarly to the crime data obtained from Neighborhoodscout in that the data must be obtained after October 1 and before the Pre-Application Final Delivery Date. While the onthemap.ces.census.gov is census data, it is not American Community Survey data and thus appears to be updated at different intervals. For example, it was on 8/29/19 that both 2016 and 2017 data was released with the note that it does not contain information on federal workers but that "Data for these workers may be added to LODES and OnTheMap in the future." It is possible that federal workers could be added or 2018 data could be released in February 2020 and that could change the score of an Application. Please add that documentation for this scoring item must be dated after October 1 2019 and prior to the Pre-Application Final Delivery Date for applications submitting a preapplication. The "Print Chart/Map" output generates a PDF that includes the date.

11.9(e)(5) Extended Affordability

I am concerned with the affordability periods being extended via points to 45 years with no correlating consideration being given to 1) increasing construction costs for more sustainable product 2) updating underwriting standards to ensure longer term financial longevity of the developments and 3) providing solutions for rehabilitation and refinancing needs on the back end of the development (especially after year 30) to ensure continued sustainability of the developments.

The issues of Extended Affordability and Preservation are prioritized by statute, but have not necessarily evolved to address the most pressing needs of the newly constructed or existing portfolio. I believe that forethought and planning on both the front and back end of the lifecycle of developments need to be addressed before longer term affordability is incorporated into the 2020 QAP.

I recommend the following:

1. Revert the 2020 QAP back to the 2019 affordability periods, ie 35 years, and undertake a full evaluation of all the issues surrounding extended affordability and potential solutions for the 2021 QAP.
2. For 2021 QAP preservation of the existing TDHCA portfolio needs to be moved up in priority to help with expiring affordability state wide.
3. Extended affordability should not be considered in a vacuum but realistically considered in light of the life cycle of the physical product, needs for rehabilitation and likelihood of re-financing.

11.204(6) Experience Requirement.

I am opposed to the changes to the Experience Requirements. Specifically:

1. I do not think that there is a need for the addition of the "in the ten years preceding submission." There are a lot of strong tax credit developers who may have decided to stop production over 10 years ago, who have large portfolios that are still participating in the program, that will now find themselves not considered to be "experienced" by TDHCA. This doesn't seem to make sense.
2. I also do not see the need to have people get re-certified by TDHCA every 5 or so years. This is a waste of staff time – once someone has experience, I don't see how that experience goes away.

TDHCA should maintain a database for experience, and once it has been granted, it should be kept in perpetuity.

Sincerely,

Sarah Anderson
S. Anderson Consulting, LLC
(512)554-4721

(31) McDowell Housing Partners

McDOWELL
HOUSING PARTNERS
An Affiliate of McDowell Properties

October 11, 2019

VIA EMAIL

Ms. Marni Holloway, Multifamily Finance Director
Mr. Patrick Russell, Multifamily Policy Research Specialist
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: 2020 Qualified Allocation Plan – Public Comments

Dear Ms. Holloway and Mr. Russell,

McDowell Housing Partners appreciates the opportunity of providing comments on the draft 2020 Qualified Allocation Plan (QAP) and the Multifamily Housing Revenue Bond Rule (Bond Rule), that have been posted to the Texas Department of Housing and Community Affairs' (TDHCA) website.

Upon reviewing the latest draft QAP dated September 20, 2019, specifically Subchapter B, §11.101, (a), (3) Neighborhood Risk Factors where it is stated that: "a Development that falls within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating is ineligible with no opportunity for mitigation", our group became extremely concerned about the impact that that will cause in bond transactions.

As you may know, there are 402/9,555, or roughly 4% schools with an "F" rating. Of those, 37% statewide are located in Qualified Census Tracts. When we look at the five major urban areas, the number is even more alarming at 66% of "F" schools located in QCTs. By implementing a requirement that F rated schools are ineligible for mitigation, a large portion of urban areas will become ineligible for housing tax credits.

Our group has been extremely successful utilizing bond transactions in the creation of new high quality affordable housing (from 30% AMI to 80% AMI), but we believe there is still a lot to be done for the population. With that said, we kindly ask you to reconsider the F rated school rule to make it a requirement of competitive housing credits only, as opposed to bond transactions.

Sincerely,

Ariana Brendle
Development Manager

601 Brickell Key Drive, Suite 700
Miami, FL 33131

(32) Structure Development

STRUCTURE DEVELOPMENT

October 11, 2019

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Comments to the 2020 Draft QAP

Dear Mr. Russell:

Thank you for the opportunity to comment on the 2020 Draft QAP. I have three issues I would like to discuss: the length of the affordability period, the definition of Supportive Housing and the School Rating requirements under Neighborhood Risk Factors.

Affordability Period
At present, the Draft QAP proposes an extended affordability period of 45 years. This is not industry standard, as proposed by advocates for this item, nor does it align well with financing mechanisms, which extend to a maximum of 40-year amortization periods. As an advocate I understand and support these efforts to keep units affordable "in perpetuity", but while the idea has merit, I believe it warrants further study and exploration before it is placed in the QAP based on the input of a limited number of interested parties.

I am particularly concerned about the possibilities of needing to operate a development affordably at the end of the building's life cycle. I am on the board of an organization that has been in this situation and has operated units with questionable safety standards (lack of fire sprinklers, unreliable elevators) with few options to finance needed repairs. I urge you to consider tabling this item until more research is done.

Supportive Housing
The QAP currently includes two items in the definition of Supportive Housing that are well intentioned but too restrictive. First, the QAP states that Supportive Housing must meet the requirements of (i) or (ii) – the issue likes in item (ii):

> *(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and* ***must also be supported by project-based rental or operating subsidies for all Units*** *for the* ***entire*** *affordability period, and meet all of the criteria in subclauses (I) through (VIII) of this clause:*

Requiring all units to have an operating subsidy places Supportive Housing providers at the mercy of the local PHA, which in general controls most vouchers available in a local jurisdiction. Although HOPWA, VASH and other vouchers are available and generally controlled by the Continuum of Care or other Local Jurisdiction, easily 90% of all vouchers are under the jurisdiction of a PHA. In many cases PHAs may have a conflict of interest if they are proposing their own development in the jurisdiction. Or there may be other political reasons that they are not willing to provide vouchers for all units. Or, as in the case of Fort Worth, which was recently denied the use of PBVs from HUD, there simply may not be enough vouchers to go around.

Finally, it will be impossible for a development to obtain verification that vouchers will be available for the *entire* affordability period. A HAP contract is issued for a maximum of 15 years, and in most cases it is for 5 years with renewals available. A PHA may be able to pass a resolution or issue a letter stating its intent to provide vouchers for the entire period but will not be able to provide a guarantee of this fact. Moreover, a HAP contract is not even available until units are placed in service. The best an applicant would be able to provide is an Agreement to provide a Housing Assistance Payment (AHAP) document which is developed just prior to closing.

I propose that this be changed from ALL units to SOME units and the language about the entire affordability period be removed.

Secondly, the requirement that under item (ii), the applicant meet the following qualification is unrealistic and not really productive:

> *(V) a resident is or will be a member of the Development Owner or service provider board of directors;*

I applaud the Department's focus on the tenants and services in the definition. However, I have been in many board meetings in which members of the constituent group are included, both as attendees and members. These members do not typically benefit from the experience, nor is the Board made stronger. An organization that is including strong services and seeking constituent input on a continual basis, as required earlier in the definition, is obtaining the feedback it needs to design its programs with residents in mind. The appeals process required also ensures that programs meet constituents needs.

I realize that all supportive developments do not serve the same populations. However, expecting an organization to have a person who is homeless and has a co-occurring disorder such as severe and persistent mental illness and substance abuse disorders as an active board member, is not a realistic nor beneficial for the organization or the individual "tapped" to serve on the board. This is adding a burden of responsibility and attendance at meetings for a person, regardless of why he or she is eligible for supportive housing, who has multiple barriers to maintaining stable housing. Directors have a legal fiduciary duty to their organizations, and this may provide a conflict of interest for a tenant, or an undue hardship. Finally, the certifications required for participation in the Tax Credit program are difficult to understand, even for those who are dedicated to this type of development. Asking someone who is struggling to maintain housing to

read, decipher and make a pledge or promise under these certifications is not just unrealistic, it is unkind.

Finally, why make these conditions for a deal just because it has debt? If this is in the interest of insuring that unequipped organizations do not operate Supportive Housing for purely a profit motive, the other controls you have in place should eliminate that.

School Ratings
I understand why TDHCA wants to promote locations that are in successful school districts. However, the current language that provides no opportunity to mitigate a failing school is too restrictive. In particular, 4%/Bond transactions, which are reliant on being located in urban areas with high incomes, and QCTs or DDAs for the 130% "boost" will be unfairly limited by this restriction. The enclosed maps were developed by my staff and overlay failing schools with QCTS. As you can see, this rule would severely limit the areas in which a development can be proposed.

I encourage you to remove the restriction on mitigation, at a minimum for 4% Bond transactions**.**

Thank you so much for reviewing this response. We are looking forward to working with you for a successful 2020 LIHTC round. Feel free to call or email me if you have any questions

Sincerely,

Sarah Andre

“F” schools are disproportionately located in QCTs

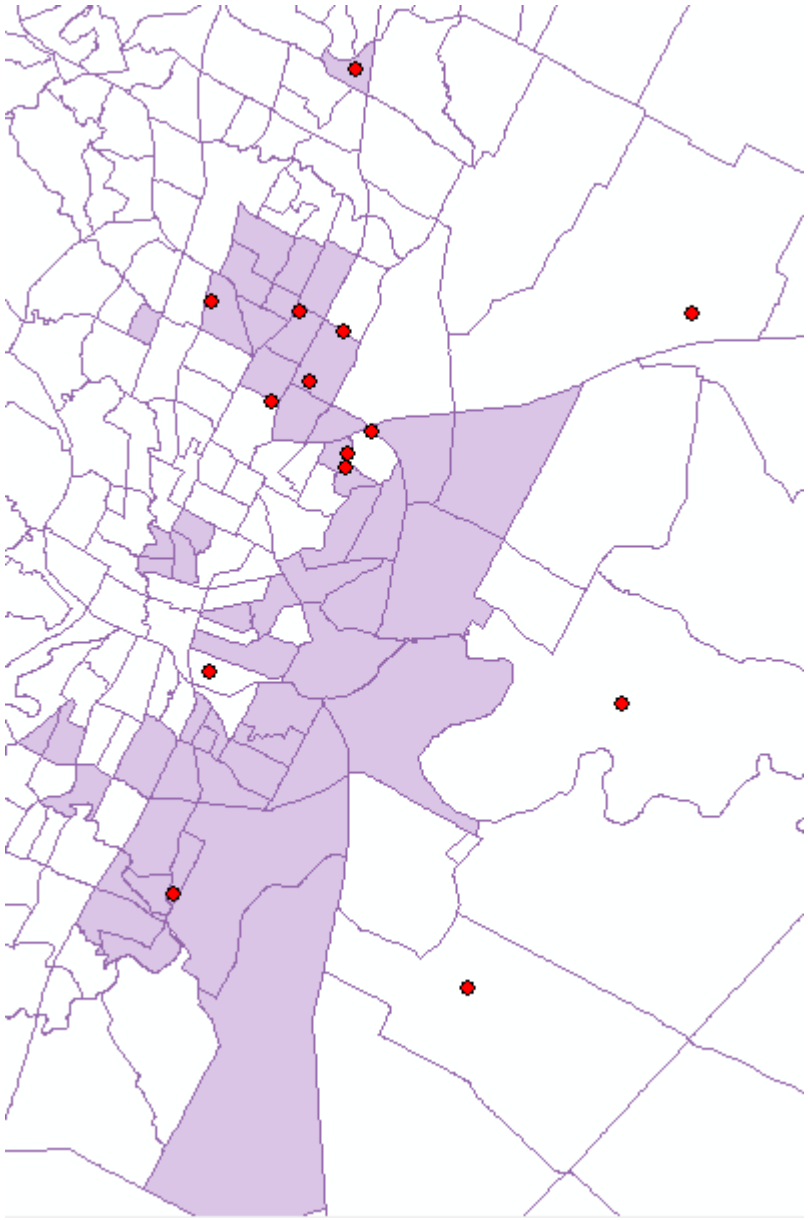
Statewide Results

- 402/9555 (4%) of schools received an “F” rating
- Of those, 148/404 (37%) of “F” rated school are located in QCTs.

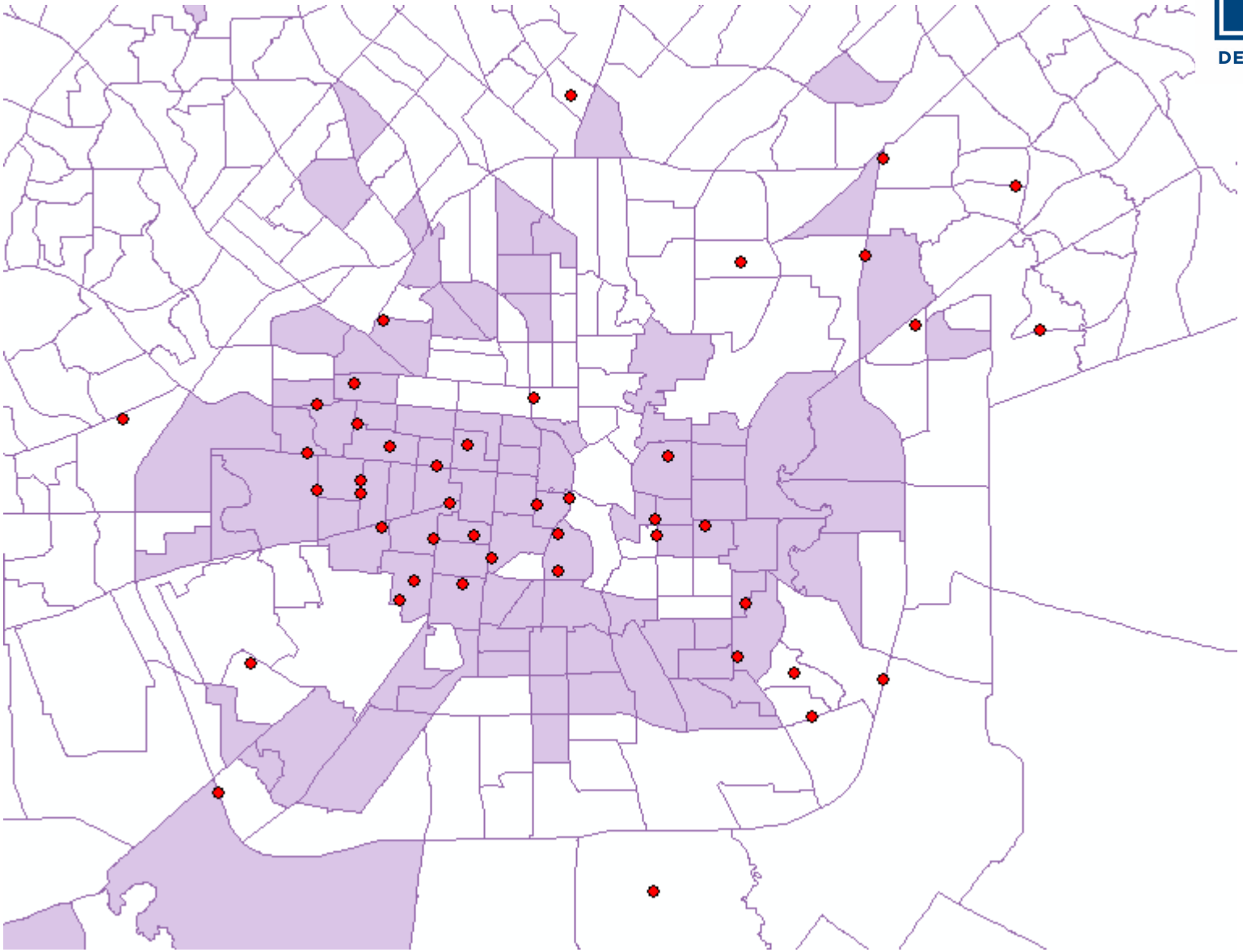
Major Urban Areas

- The five largest cities – 99/151 (66%) of “F” rated schools are located in QCTs

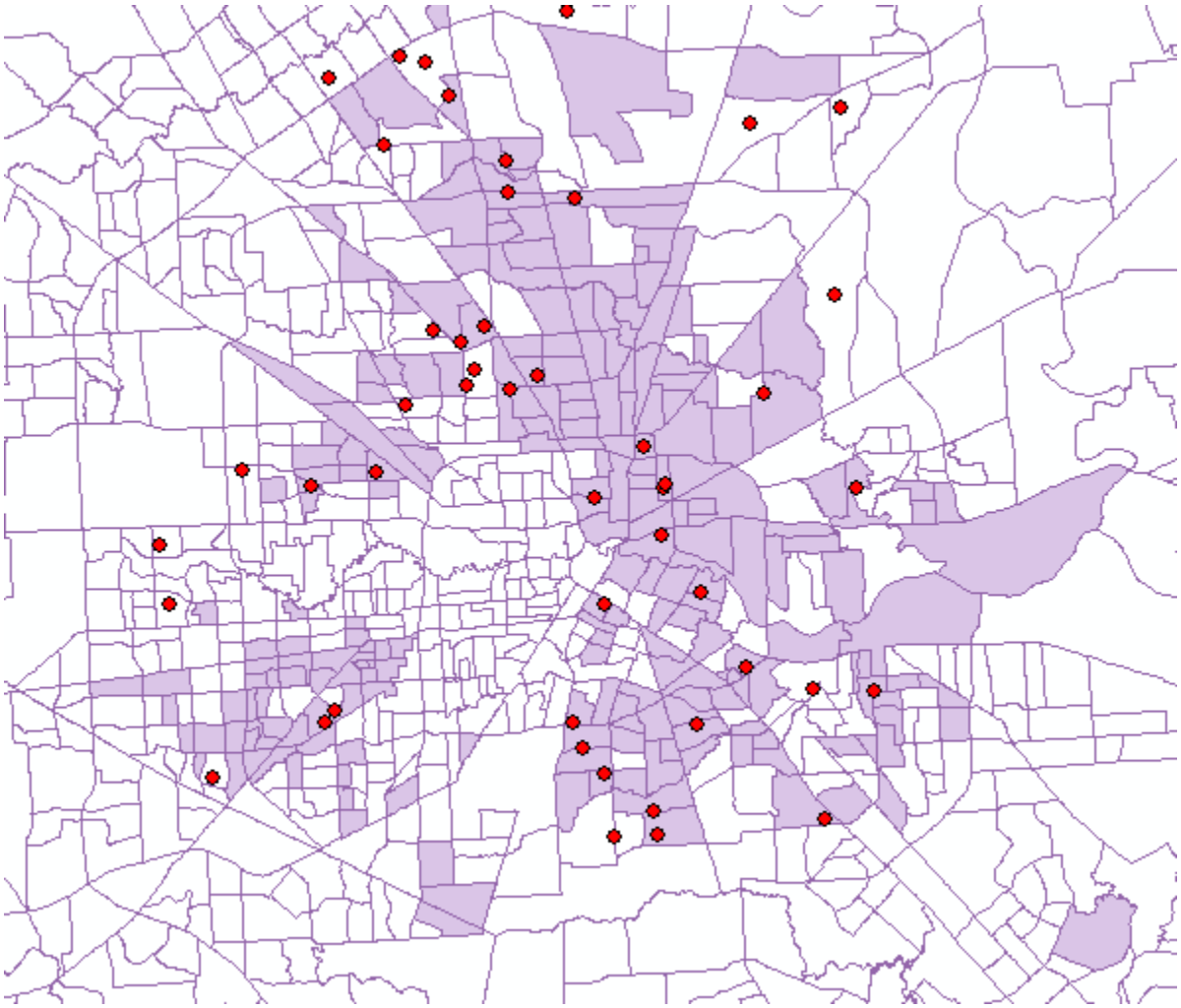
Austin:
10/14 (71%) F schools are in QCTs.



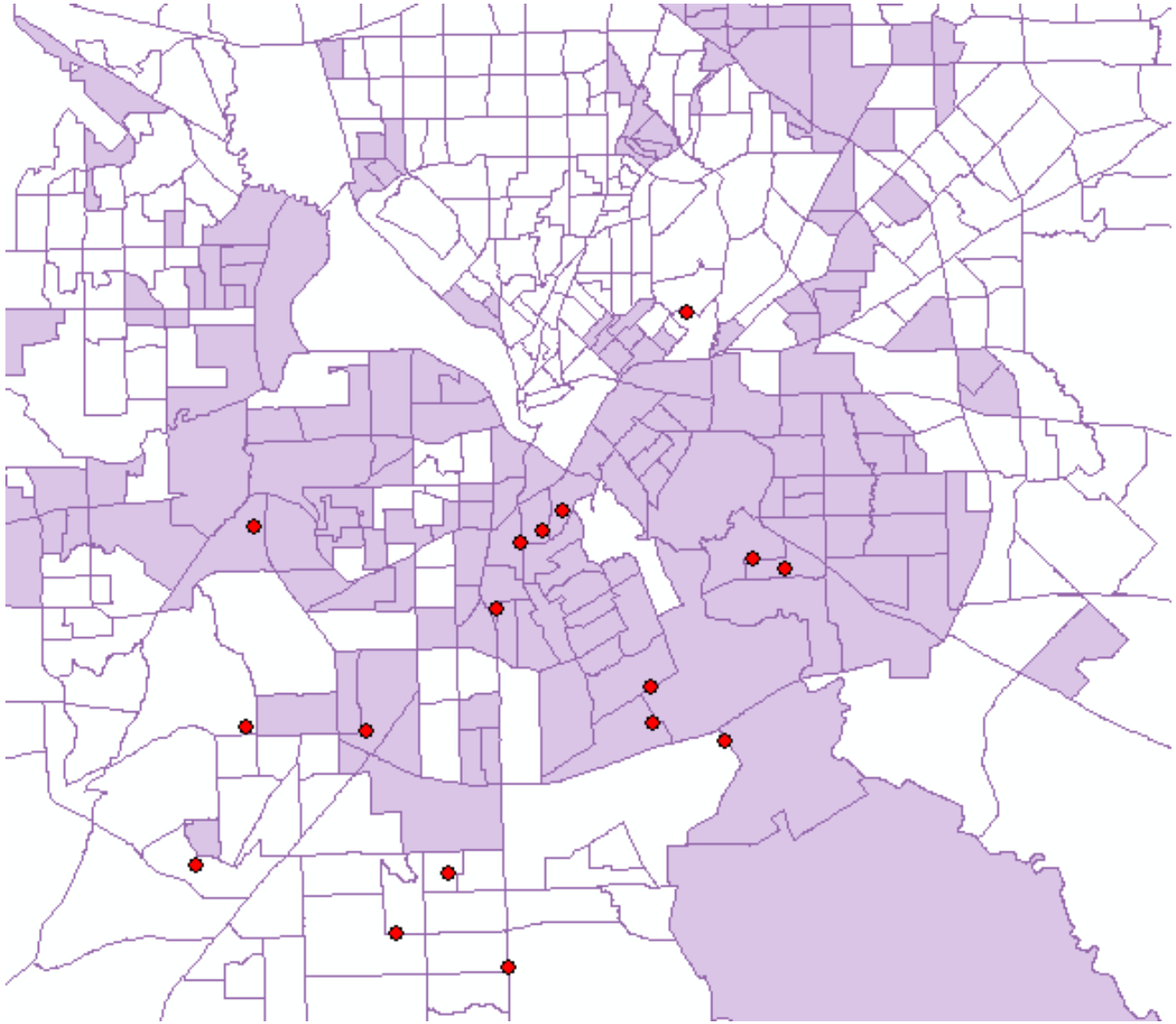
San Antonio: 31/44 (70%) F schools are in QCTs.



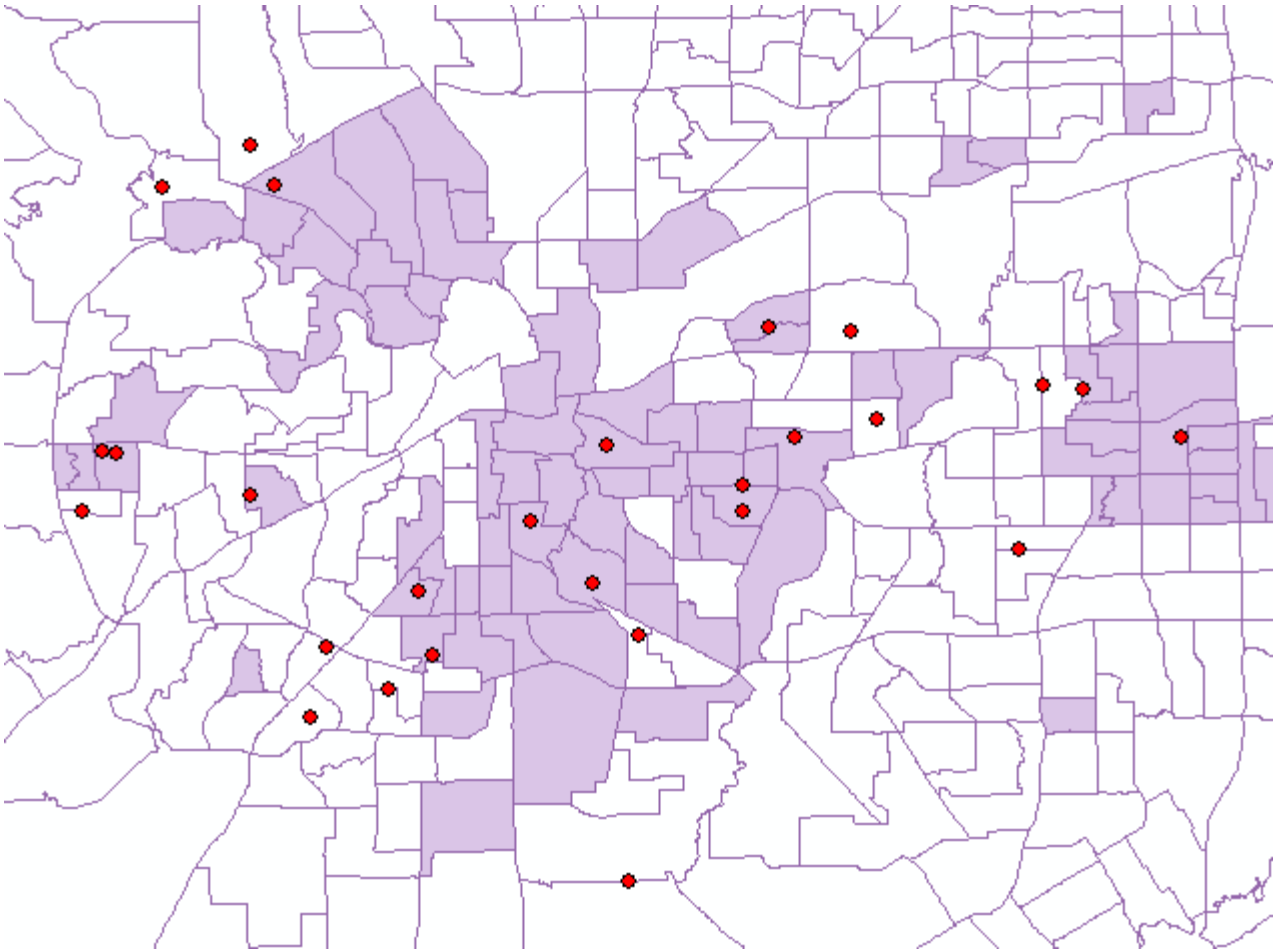
Houston: 32/49 (65%) F schools are in QCTs.



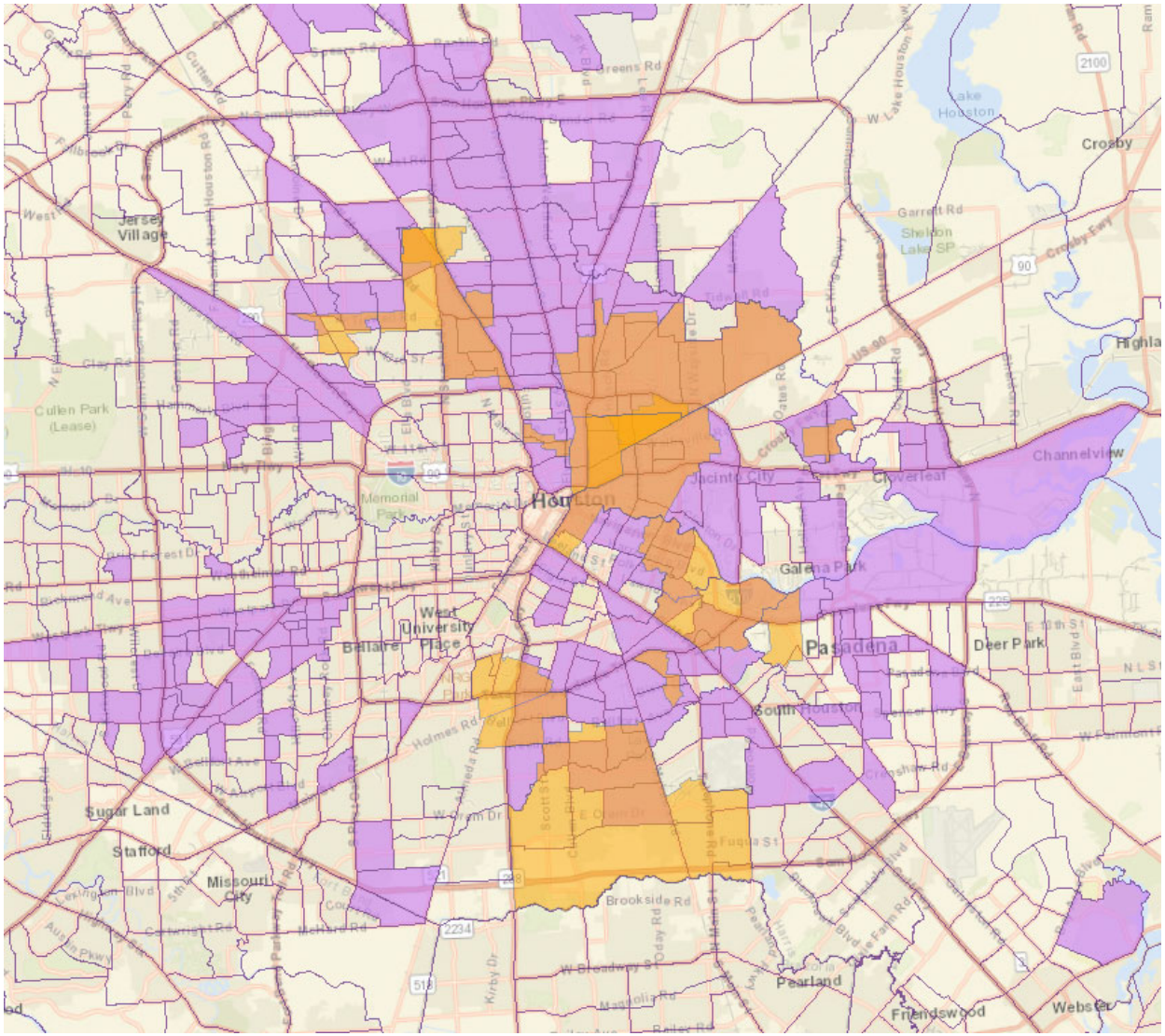
Dallas County: 11/17 (65%) F schools are in QCTs.



Tarrant County: 15/27 (56%) F schools are in QCTs.



Houston: This much of Houston is ineligible for HTCs based on the "F" school rating rule



City of Houston

Purple areas are QCTs.

Orange areas are "F" rated school attendance zones.

Orangish areas are where the F rated school zones intersect with QCTs.

(33) Coats Rose, P.C.

COATS | ROSE
A PROFESSIONAL CORPORATION

BARRY PALMER
DIRECTOR

BPALMER@COATSROSE.COM
DIRECT: (713) 653-7395
FAX: (713) 890-3944

October 11, 2019

Mr. Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

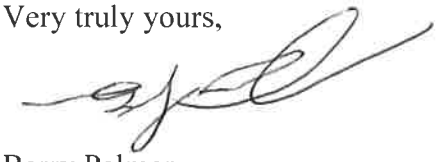
Dear Patrick:

In connection with the draft 2020 Qualified Allocation Plan, I would like to submit the following comment:

> Section 11.101(a)(3)(B)(iv) and 11.101(b)(1)(C). The proposed language regarding ineligibility with no opportunity to mitigate for those Developments that fall within the attendance zone of a school that has a 2019 TEA Accountability Rating of F and a 2018 Improvement Required Rating will preclude development in revitalization areas in the inner cities. For example, our client, the Houston Housing Authority ("HHA"), is losing the 296-unit Clayton Homes site as it is being taken by the Texas Department of Transportation in order to widen Highway 59. HHA has an obligation to replace the 296 units within 2 miles of the Clayton Homes site. HHA has identified a site within 2 miles of the Clayton Homes site and has the site under contract to replace a majority of the units. Under the proposed language, this replacement site would be deemed ineligible because of the high school's 2019 TEA Accountability Rating and 2018 Improvement Required Rating. The kids who live at Clayton Homes are already attending the high school and we want the ability to rebuild the housing that is being demolished. One mitigating factor in this case is that Houston has School Choice and charter schools that meet the standard. This is just one example of how the concept of a hard and fast rule with no ability to explain mitigating factors will lead to unjust results. Accordingly, we recommend the language return to that used in 2019.

Thank you for the opportunity to provide these comments. If you have any questions concerning them, please do not hesitate to call.

Very truly yours,



Barry Palmer

(34) Purple Martin Real Estate

PURPLE MARTIN
REAL ESTATE

October 11, 2019

Multifamily Finance Division
Texas Department of Housing and Community Affairs
Attn: Patrick Russell, Multifamily Policy Research Specialist
221 East 11th Street
Austin, Texas 78701

Re: Public Comment, 2020 Official Draft Qualified Allocation Plan

Dear Mr. Russell:

Thank you for the opportunities during the year to provide informal and formal comments related to the development of the Texas Department of Housing and Community Affairs ("TDHCA") 2020 Draft Qualified Allocation Plan ("QAP"). I am appreciative of TDHCA staff's incorporation of previously submitted comments into the official 2020 Draft QAP. Purple Martin Real Estate supports comments to the 2020 Draft QAP submitted to TDHCA by the Texas Affiliation of Affordable Housing Providers ("TAAHP"). In addition to the comments provided separately by TAAHP, please accept the following comments:

§11.101(a)(3) Neighborhood Risk Factors, School Quality – I am concerned about the effect of the new language in the 2020 Draft QAP stating that developments in attendance zones of schools with an F rating in 2019 and an Improvement Required rating in 2018 are ineligible with no ability to mitigate this Neighborhood Risk Factor. I believe this provision will disproportionately affect 4% housing tax credit ("HTC") / bond developments. These 4% HTC / bond developments are typically located in Qualified Census Tracts ("QCT") in part because the eligible basis increase available in these areas is necessary for financial feasibility. Research reveals that in the five major metropolitan areas of Texas, where most 4% HTC / bond developments are located, approximately 66% of F rated schools are located in QCTs (see attached Exhibit A). Eliminating the ability to mitigate the school quality Neighborhood Risk Factor will severely limit the ability to provide affordable housing through the 4% HTC / bond programs. The 4% HTC / bond programs are responsible for the production of more affordable housing in Texas than the 9% HTC program; therefore, the impact of this new language cannot be ignored.

Furthermore, the new 2020 Draft QAP language is likely to disproportionately impact existing developments owned by Public Housing Authorities ("PHAs") that are in need of rehabilitation and conversion through HUD's Rental Assistance Demonstration ("RAD") program. Very often, existing PHA developments are located in QCTs.

Each location proposed for affordable housing should be evaluated relative to the unique circumstances that exist in the surrounding area. No one factor (crime, poverty, schools, blight) should carry so much weight that the other factors are not able to be considered. As such I request the elimination of the proposed 2020 Draft QAP language stating that mitigation is impossible for developments in the attendance zones of schools with an F rating in 2019 and an Improvement Required rating in 2018. Additionally, I request expanding the exceptions to the school quality Neighborhood Risk Factor to include existing developments going through HUD's RAD conversion process. Public Housing Authorities need access to all available financing tools to preserve and modernize much needed existing affordable housing

2110 W. Slaughter Ln., Suite 107-394
Austin, TX 78748
(512) 658-6386
audrey@purplemartinre.com

stock throughout Texas. Prohibiting certain locations will result in a lost opportunity to preserve existing housing, counter to TDHCA's preservation goals.

Please contact me at (512) 658-6386 or Audrey@purplemartinre.com with any questions.

Sincerely,

Audrey Martin
Principal, Purple Martin Real Estate, LLC

Exhibit A

“F” schools are disproportionately located in QCTs

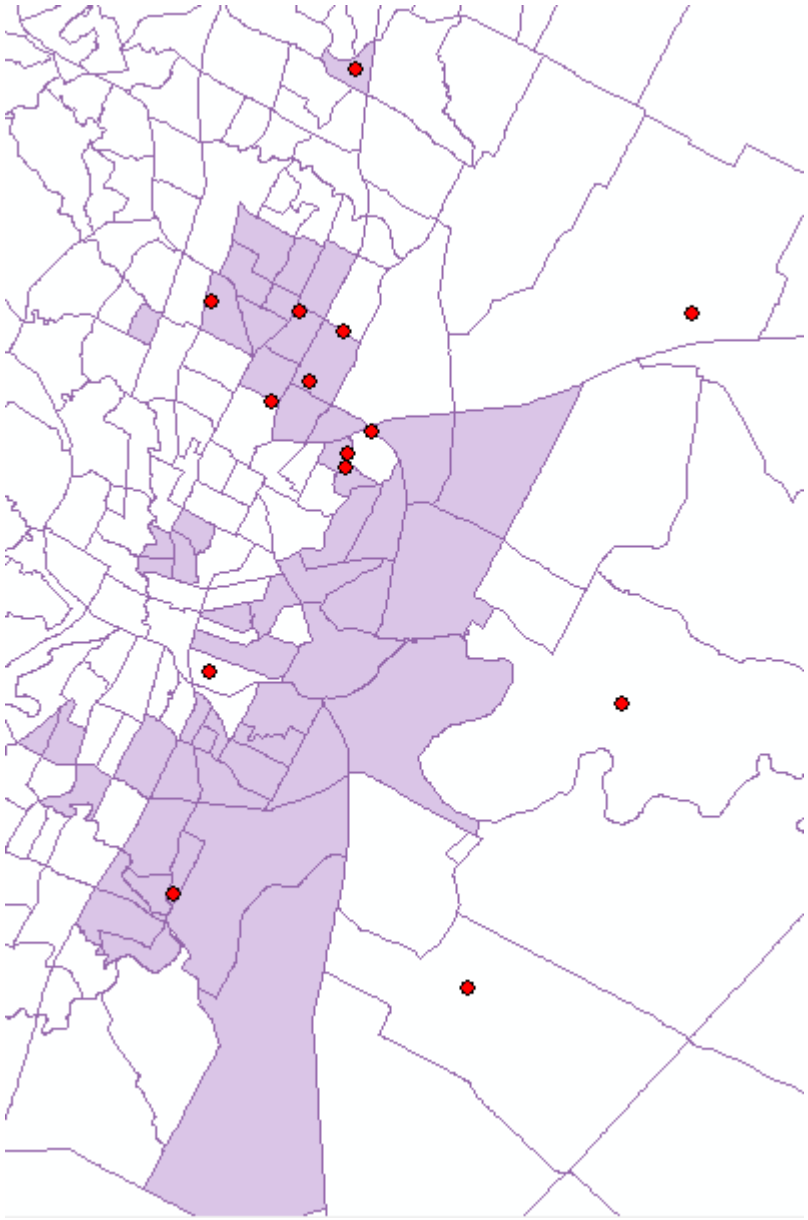
Statewide Results

- 402/9555 (4%) of schools received an “F” rating
- Of those, 148/404 (37%) of “F” rated school are located in QCTs.

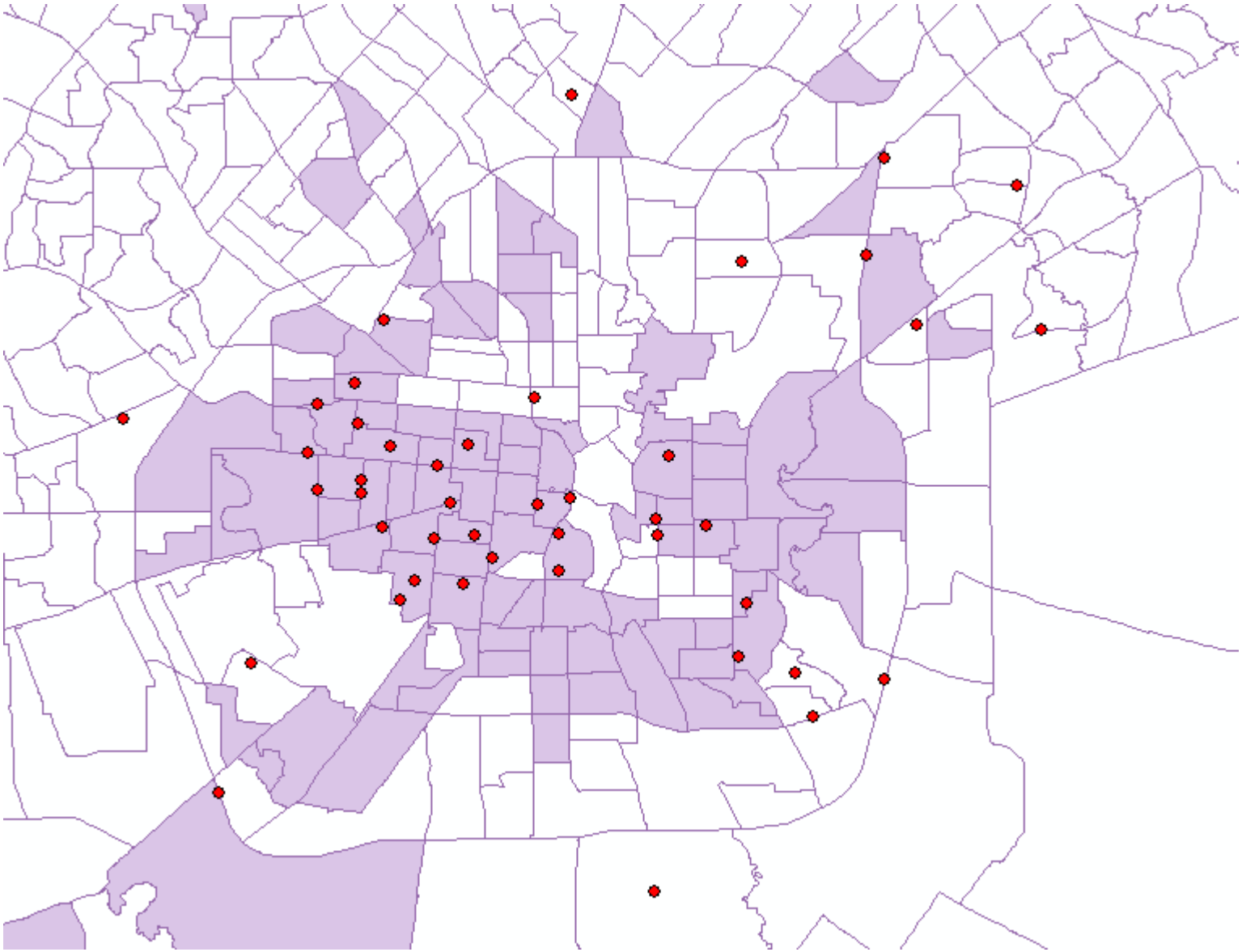
Major Urban Areas

- The five largest cities – 99/151 (66%) of “F” rated schools are located in QCTs

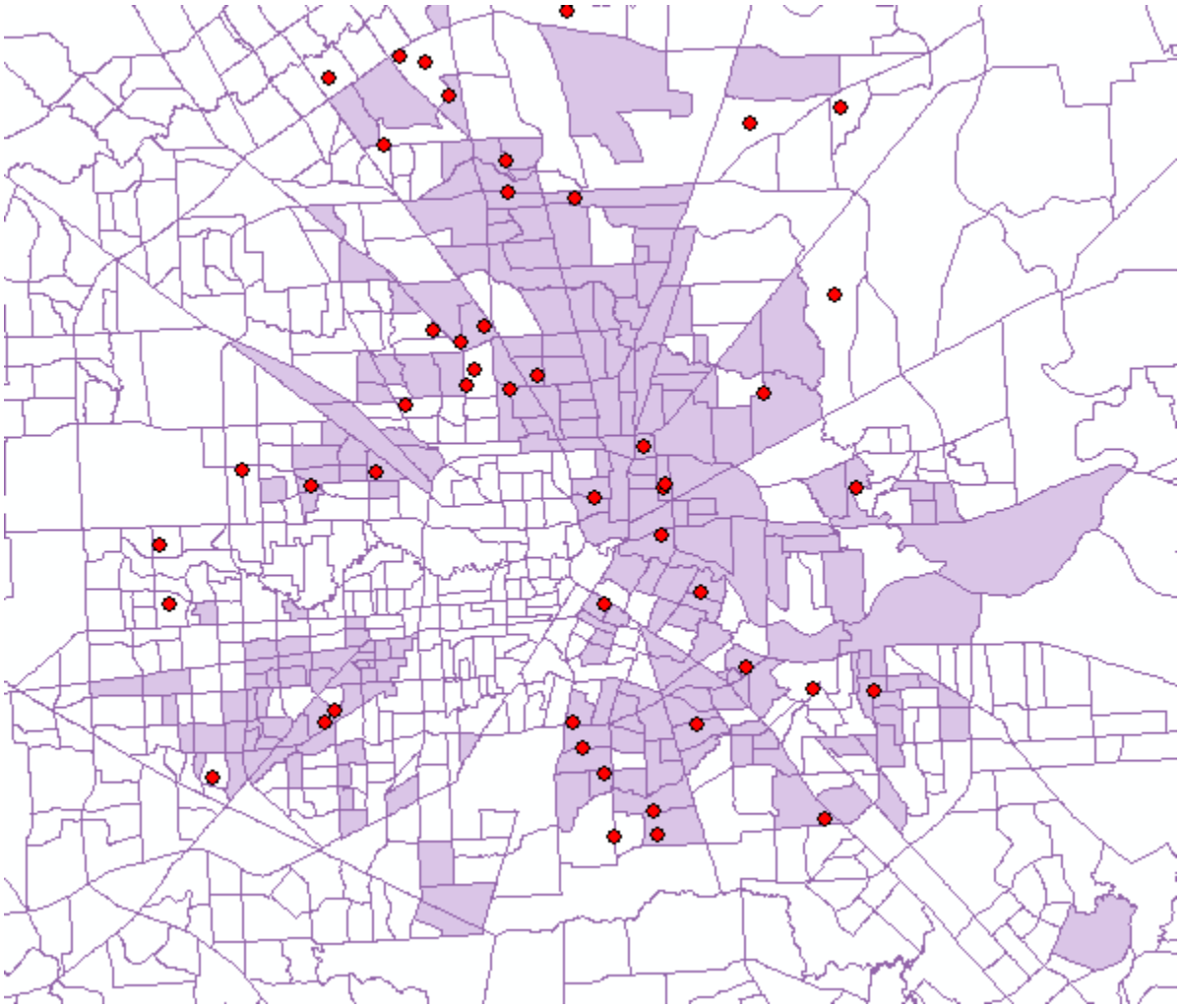
Austin:
10/14 (71%) F schools are in QCTs.



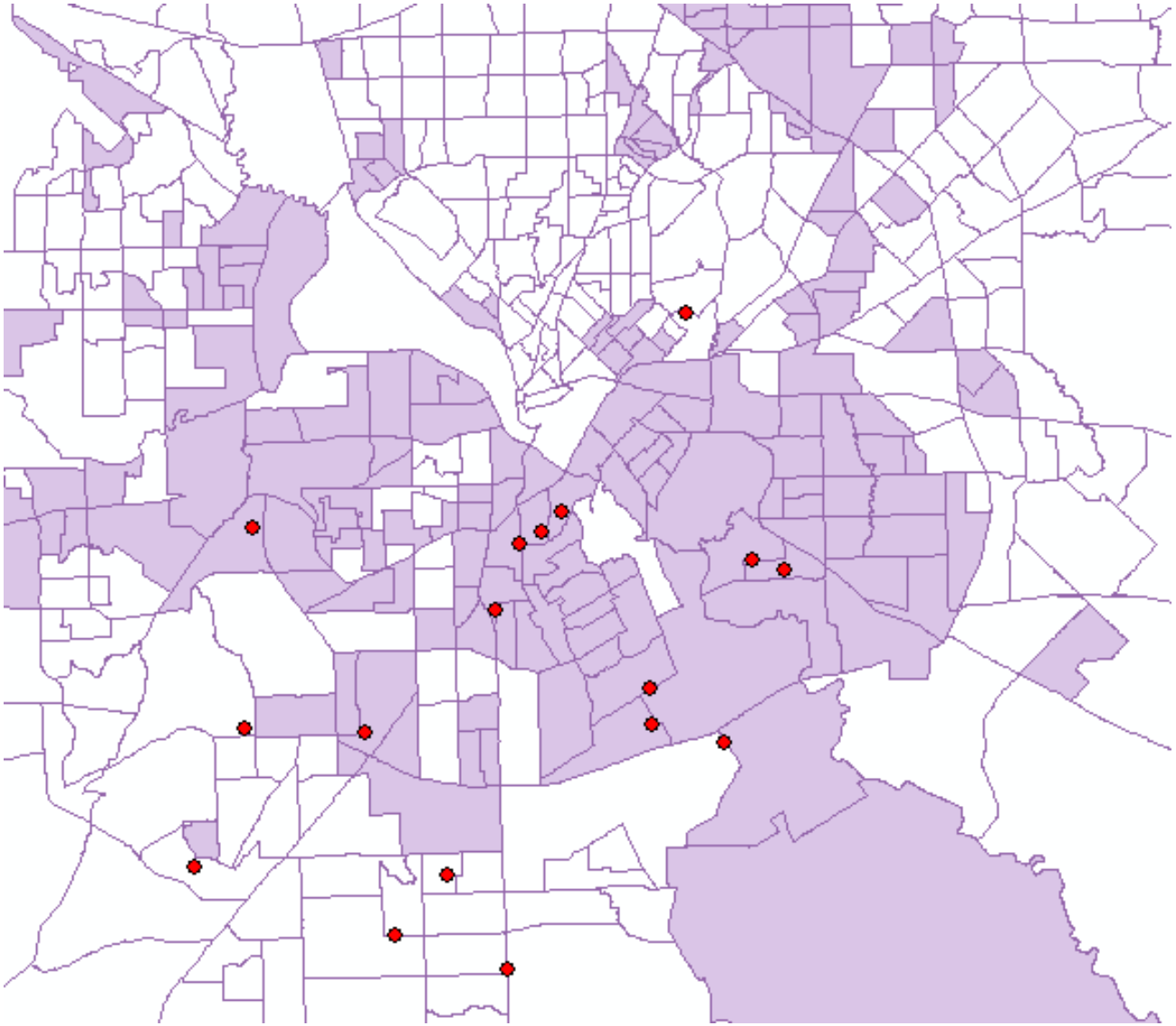
San Antonio: 31/44 (70%) F schools are in QCTs.



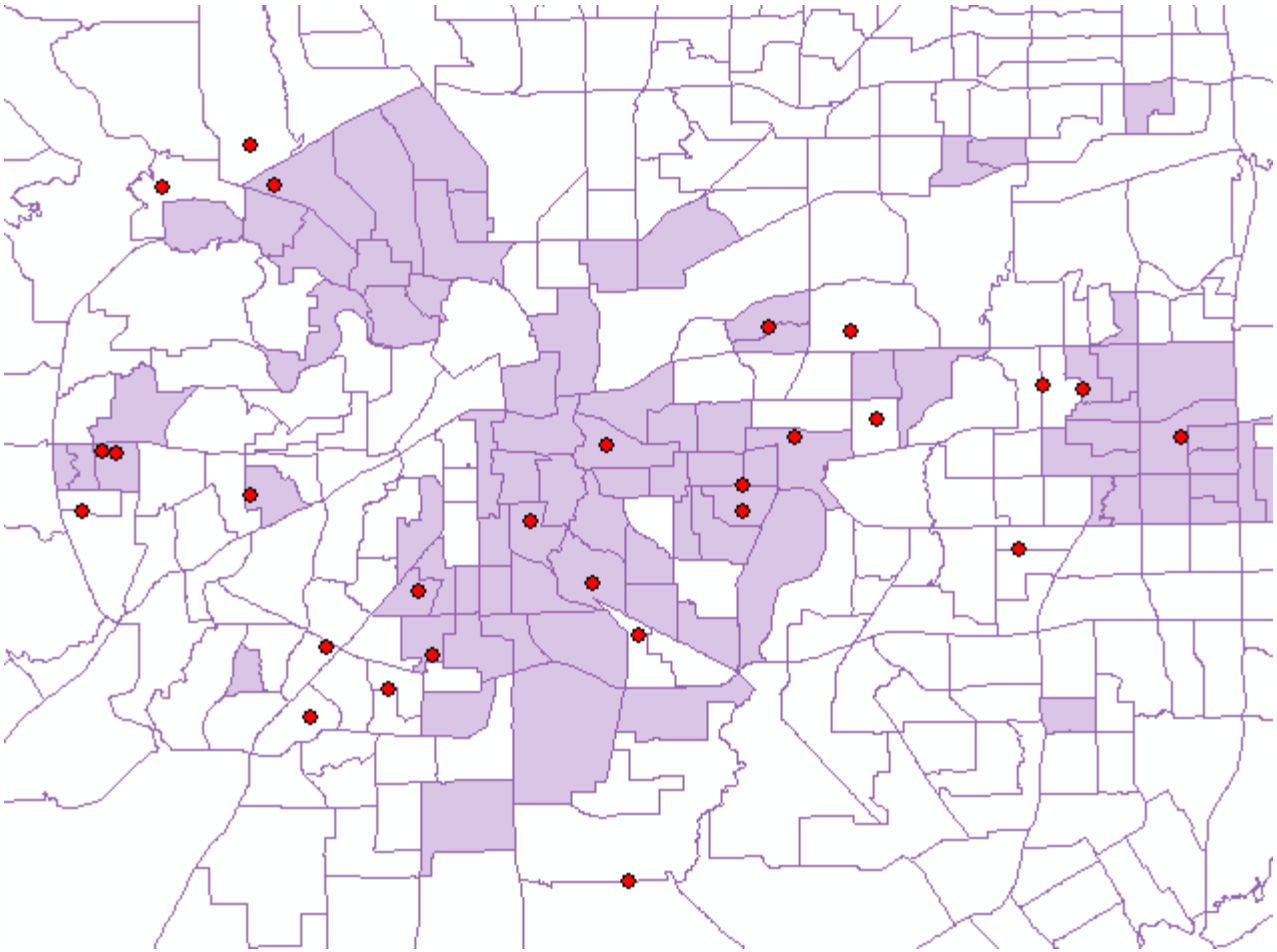
Houston: 32/49 (65%) F schools are in QCTs.



Dallas County: 11/17 (65%) F schools are in QCTs.



Tarrant County: 15/27 (56%) F schools are in QCTs.



(35) Foundation Communities

FOUNDATION COMMUNITIES
creating housing where families succeed

3036 South First Street
Austin, TX 78704

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

www.foundcom.org

visit us on facebook
follow us on twitter

October 11, 2019

Patrick Russell
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Comments to Board Approved Draft of the 2020 Qualified Allocation Plan

Dear Patrick,

We would like to thank the staff and board of TDHCA for your commitment to the public input process and new ideas. We are excited to see how the new Proximity to Jobs concept plays out in the 2020 cycle. We have several specific comments, but would like place emphasis on the following:

- Mitigate against geographic concentration of tax credit awards;
- Strengthen green building requirements; and
- Preservation and long-term affordability.

These are important policy goals that will have a positive impact on tenants for decades

Sincerely,

Walter Moreau

Walter Moreau
Executive Director
Foundation Communities

Green Amenities - Thank you for adding back the 2 point requirement for green amenities! We are concerned that the proposed amenities are too basic, too easy, and not impactful enough. Our industry can and must start building smarter and greener and more sustainably. Below are some comments on why some of the green amenities should be mandatory and some redline edits to the mandatory and green amenity sections.

- **Energy-Star or equivalently rated refrigerator with icemaker (0.5 point)**; - Energy star rated fridges are already mandatory. Adding an icemaker does not make this a green amenity.
- **Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point)**; - Energy star rated lighting in all units is already mandatory. Requiring LED lighting, rather than energy star lighting, in common areas is not significantly more impactful. LED lighting continues to become more affordable and more widely used and, from our perspective, is the obvious choice from a long-term maintenance perspective. Including this as an option in the mandatory lighting feature makes more sense.
- **Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);** - At least one energy star rated ceiling fan per unit is already mandatory. Adding ceiling fans to bedrooms is too easy to be worth an additional 0.5 points. Ceiling fans in all bedrooms is a very basic and industry standard amenity and should be mandatory.
- **EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point)**; - Please make this mandatory, this is easy, cost effective, and extremely impactful!
- **EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);** Please make this mandatory!

11.101(b)(4) Mandatory Development Amenities

- ~~At least one~~ An Energy-Star or equivalently rated ceiling fan ~~per Unit~~ in all bedrooms and living room;
- Energy-Star, LED, or equivalently rated lighting in all Units;
- EPA WaterSense or equivalent qualified toilets in all bathrooms
- EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms

11.101(b)(6)(B)(iii) Energy and Water Efficiency Features

- Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (~~2~~ 1.5 points);
- 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. 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 point);
- 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and
- A rainwater harvesting/collection system and/or locally approved greywater collection system (~~0.5~~ 1 points);
- Photovoltaic/Solar Hot Water Ready, consistent with local code requirements or Enterprise Green Communities scoring criteria (0.5 points)
- Provide either R-3.8 minimum continuous insulation at the exterior walls in addition to R-13 min. in the wall cavity; or provide R-20 min. insulation in the wall cavity (0.5 points)
- Provide either R-25 min. continuous insulation entirely above the roof desk or R-38 insulation in the attic (0.5 points)
- FloorScore certified vinyl flooring, Green Label certified carpet, or resilient flooring in 100% of units (0.5 point)
- All interior paints, primers, adhesives, and sealants (including caulks) must have volatile organic compound (VOC) levels, in grams per liter, less than or equal to the thresholds established by South Coast Air Quality Management District (SCAQMD) Rule 1113 and 1168. Projects must follow the most recent revision available at time of product specification. For the latest rules: www.aqmd.gov/home/regulations/rules. (0.5)

11.3(g) Proximity of Development Sites – We ask the state to increase the minimum distance between sites. There are several carefully crafted sections of the Rules that support dispersion of tax credit awards. Unfortunately, loopholes still exist and increasing the distance required between sites is an easy solution. See below for suggested edits.

> In a county with a population that is less than one million, if two or more HTC Applications, regardless of the Applicant(s), are proposing Developments serving the same Target Population on sites separated by ~~1~~5,000 feet or less, the lower scoring Application(s), including consideration of tie-breakers, will be considered ineligible and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

11.9(e)(5) Extended Affordability - We fully support the additional scoring criteria for 40 and 45-year affordability. A project scoring the maximum points for this competitive financing should be committed to providing the longest benefit to the community and the state. This is a precious and substantial public resource. With good stewardship, a 45-year affordability period is very reasonable for developers who are committed to a high quality product.

11.204(16) Right of First Refusal - Right of First Refusals are critical to the long-term preservation of the state's investment in affordable housing. We were very supportive of the staff draft which made Right of First refusal a threshold item for 9% and were disappointed that this was removed in the final draft. We urge the state to require all 9% and 4% tax credit applicants to provide a ROFR. See below for suggested edits.

> (16) Right of First Refusal (§2306.6725(b)(1); §42(m)(1)(C)(viii)) An Application 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).

Supportive Housing – We are supportive of the changes to the QAP that allow projects that meet certain criteria to take on traditional debt. For the majority of Supportive Housing projects that will still be unable to take on traditional debt, we urge the Department to make the following changes.

1. The first is essential to ensure that Supportive Housing projects can still access maximum points for financial feasibility, even without a 3rd party permanent lender.

   11.9 (e)(1) Financial Feasibility. … If the letter is from a Third Party permanent or construction lender and evidences review of the Development and the Principals, it will receive twenty-six (26) points.

2. The second revision is important to allow Supportive Housing projects to access federal funds like National Housing Trust Fund and Capital Magnet Fund dollars and structure them as secured/foreclosable, repayable cash flow loans without having to go through a waiver process.

   11.1 (d)122(E)(i) …Permanent foreclosable, must-pay debt is permissible if sourced by federal funds, but the Development will not be exempted form Subchapter D of this chapter (relating to Underwriting and Loan Policy) unless a TDHCA MFDL Supportive Housing/Soft Repayment loan. 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. …

3. Third, we suggest that the Department consider putting back in the requirement that supportive services be provided "primarily on site" 11.1 (d)122(A). We are not aware of the reasoning behind this change, but we believe that Supportive Housing residents, who are commonly transit dependent and often have limited mobility, be able to access services where they live.

11.9(e)(2) Cost of Development per Square Foot – Our SRO projects often include extensive outdoor common area such as common porches, patios, and interior courtyards. These spaces support social gathering and foster a sense of place and shared community. The square footage is important to the success of SROS and is also an important component of eligible basis and financial feasibility. We urge the state to allow for use of unconditioned common area in the calculation of NRA. See below for suggested edits.

> If the proposed Development is a Supportive Housing Development, the NRA will include ~~conditioned~~ Common Area up to 75 square feet per Unit, of which at least 50 square feet will be conditioned.

11.1(k) Request for Staff Determinations - Staff determinations prior to application submission should be subject to the same appeals process as staff determinations after submittal. We suggest that the state strike this added language.

> ~~Any part of an Application that received a Staff Determination prior to Application submission may not be appealed after submission.~~

High Tax Credits per Unit - Our biggest concern over the last several years has been tax credits per unit. The average HTC per unit has increased 30% over the past 5 years and we continue to see examples of projects that are getting a very high HTC per unit. In 2019, the median award was $15k HTC per unit, and there were several outliers awarded over $20K HTC per unit. All of these outliers are smaller projects with 30 to 75 units. We are very concerned that inflated softs costs are allowing some developers to get a higher HTC/unit while outscoring other deals that offer more units with similar costs. We strongly recommend that staff find a way to address this. A cap on HTC per unit, adjusted for project type and location, would result in more units overall.

(36) Brinshore Development, LLC

Patrick Russell

From: Patrick Russell
Sent: Friday, October 11, 2019 4:13 PM
To: HTC Public Comment
Subject: FW: 2020 QAP Comment

From: Ruben Esqueda <rubene@brinshore.com>
Sent: Wednesday, October 09, 2019 2:21 PM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>; Patrick Russell <patrick.russell@tdhca.state.tx.us>
Cc: Scott Puffer <scottp@brinshore.com>
Subject: 2020 QAP Comment

Marni/Patrick,

Please accept this email as a comment on the 2020 QAP as it is currently drafted.

It is concerning that that the QAP requires that developments in districts with schools with an F rating be ineligible as it appears that this will disproportionately impact bond transactions and further limit areas where developers can bring viable projects. Furthermore, as many 4% deals are in partnerships with Housing Authorities with pre-determined target zones, the rule will make too many projects infeasible and doesn't take into consideration revitalization or make special consideration for existing projects looking to perform substantial rehabs. We ask that TDHCA please reconsider this rule and at very least, not apply it to those projects involving Housing Authorities, CDBG-DR Funds, located in municipal or Housing Authority target zones, or existing properties seeking to perform substantial rehab.

Ruben Esqueda | Vice President

Brinshore Development, LLC | www.brinshore.com
1701 W. Northwest Hwy, Suite 100 | Grapevine, TX 76051

Direct: 817-329-8051 | Cell: 940-600-7262
Fax: 847-562-9401 | Email: rubene@brinshore.com

BRINSHORE

(37) SGI Ventures, Inc.

SGI Ventures, Inc.

206 E. Live Oak Street, #D
Austin, Texas 78704
Cell: (713-882-3233
Email: Sally@SGIVentures.net

October 10, 2019

Ms. Marni Holloway
Multifamily Finance Director
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78701

Via email: marni.holloway@tdhca.state.tx.us

RE: 2020 QAP Draft –

Dear Ms. Holloway:

SGI supports all comments to the 2020 draft QAP submitted by TAAHP and TXCAD. However, in addition, I would like to emphasize support for the comments of both organizations relating to extended affordability and add my comment for developer certification. As a developer and owner of affordable housing properties, I am not opposed to having extended affordability periods, however, there are multiple issues and concerns surrounding extended affordability that need to be addressed in conjunction with extending affordability. Please note the comments on this issue of extended affordability from both organizations:

TAAHP COMMENTS:

§11.9(e)5 Extended Affordability – TAAHP reiterates its previous suggestion to revert to 2019 language offering maximum points for a 35-year affordability period. Compliance periods beyond 35-years (i) run counter to the national average; (ii) are burdensome for owners considering the barriers to recapitalization/rehabilitation; (iii) will increase construction costs for longer-term, more sustainable product and (iv) will require updating underwriting standards to ensure longer-term, financial longevity of the developments. We understand that this revision was made in response to a larger discussion surrounding preservation of affordable units. However, extending affordability periods for units constructed now will not address the primary issue, the loss of existing units. As stated in previous comment, TAAHP believes that preservation is an important issue facing the housing tax credit industry and supports TDHCA in evaluating its comprehensive preservation policy. TAAHP membership is supportive of a preservation policy that provides increased ability to recapitalize existing affordable housing developments, including financial incentives for recapitalization, and the removal of barriers to do so.

TXCAD COMMENTS:

The Texas Coalition of Affordable Developers (TX-CAD) is pleased to submit our comments for the 2019 QAP. TX-CAD is a coalition of developers and consultants who have come together for the purpose of focusing on the improvement of affordable housing policy in Texas. The members of this group represent 200 years of affordable housing development/policy experience and approximately 35,000 units of affordable housing in Texas.

We appreciate the multiple forums used to gather public comment and staff/Board's willingness to incorporate suggestions from our various members. While we believe that there is consensus about most items in the 2020 QAP, there are some issues that we would like to be reevaluated by staff and ultimately amended in the final version to be adopted by the Board. Please see our comments below:

Section 11.9(e)(5) Extended Affordability

Several times through the initial discussions of the 2020 QAP it was stated that the "vast majority" of states now require 50 years of affordability for their tax credit developments, and that this is the "industry standard". At the time we wondered whether this really was the case. With that in mind, we engaged

Novogradac to do a study of what each state requires/incentivizes with regard to extended affordability (see Attached study results). Per the study:

Of the 49 states other than Texas:

- **Twenty-six (26) have some form of extended use requirement;**
- **Twenty-three (23) states have no extended use requirements at all;**
- **An "all states average" is 10 additional years; and**
- **The most frequent periods are 15 and 20 years.**

We believe that these figures show that a 45 year extended use period is **not** industry standard and certainly not done by the vast majority of the states. In fact, it shows that the language from the 2019 QAP that has a maximum of 35 years is actually much closer to "industry standards".

Continued Sustainability of Developments

Our biggest concern with regard to affordability periods being extended via points to 45 years is that there is no correlating consideration being given to 1) increasing construction costs for more sustainable product 2) updating underwriting standards to ensure longer term financial longevity of the developments and 3) providing solutions for rehabilitation and refinancing needs on the back end of the development (especially after year 30) to ensure continued sustainability of the developments.

Ten states out of 26 incentivize an additional 15 or 20 year affordability periods (5 each). In looking at several of the largest of these states, it was evident that while they have incentives or requirements for longer affordability periods, they also provide the ability to refinance and/or re-syndicate or provide other incentives to allow for substantial renovation of properties during the extended affordability periods. Whether through robust design standards or sustainable development overlays to incorporate longer life cycle construction products, it is understood that paying for quality upfront will have long-term benefits for the developments. Likewise many of these states provide Preservation set-asides funds for existing Tax Credit deals, availability/ease of refinancing using bond funds, modifications or relief to the rent and income restrictions after year 30, the ability to apply for a new allocation of 9% tax credits and/or property tax exemptions for older Tax Credit properties. These are examples of various tools that help keep properties sustainable long-term.

Preservation

While extending the affordability period seems like a simple way to help address preservation if we are preserving buildings that are functionally obsolete and/or in need of repair, maintenance, rehabilitation, then we must also provide solutions. The physical plant of frame constructed buildings and the useful life of finishes, appliances, plumbing, electrical simply is not viable for these longer affordability periods without significant maintenance and /or replacement.

The primary concern with extended affordability periods is the ability to generate funds after year 15 in order to pay for needed improvements/capital-type maintenance. Given that 15 year old properties continue to be rent and income restricted, their ability to refinance and generate proceeds for improvement is limited by the property's net operating income, which in turn is limited due to rent restrictions. This becomes even more of an issue after year 30.

Providing 15+ year old properties with an opportunity "re-syndicate" with bonds and 4% non-competitive credits is not always a viable solution. The limiting factor is that (due to existing rent restrictions in the original LURA, and the relatively small amount of equity proceeds generated in 4% noncompetitive transactions), it is very difficult to generate a meaningful amount of excess refinancing proceeds to be used for improvement of the property.

Nine percent (9%) tax credits and other soft funds need to also be available to address the future needs of those developments that currently have extended use requirements and may be coming close to the end of their affordability period.

One example of a limiting factor within the current QAP is that the At Risk set aside requires TDHCA's existing portfolio to go through a full Right of First Refusal (ROFR) process before being eligible to apply for new credits, thereby discouraging recapitalization, rehabilitation and preservation. Other limiting factors include ineligible site features when considering an existing tax credit development as compared to new construction sites.

Conclusion

The issues of Extended Affordability and Preservation are prioritized by statute, but have not necessarily evolved to address the most pressing needs of the newly constructed or existing portfolio. We believe that forethought and planning on both the front and back end of the lifecycle of developments need to be addressed before longer term affordability is incorporated into the 2020 QAP.

Specific 2019 QAP Comments

1. Revert the 2020 QAP back to the 2019 affordability periods, ie 35 years, and undertake a full evaluation of all the issues surrounding extended affordability and potential solutions for the 2021 QAP.
2. For 2021 QAP preservation of the existing TDHCA portfolio needs to be moved up in priority to help with expiring affordability state wide.
3. Extended affordability should not be considered in a vacuum but realistically considered in light of the life cycle of the physical product, needs for rehabilitation and likelihood of re-financing

Additional SGI Comment on 11.9(e)(5). Extended Affordability:

Any changes to extended affordability must to be delayed until the issue can fully evaluated from a wholistic perspective. The housing tax credit program has been extraordinarily successful because of the quantity and quality of affordable housing it has produced. Extended affordability is definitely an important tool to keep affordable developments affordable and growing the pool of affordable stock. However, if extended affordability requirements are imposed without taking into consideration the reality of the needs for recapitalization, rehabilitation and preservation, the long-term future impact will not be positive…no one wants the unintended consequences reminiscent of the decline of public housing.

Additional SGI Comment on 11.204(6) Experience Requirement:

I oppose the changes to the Experience Requirements. I do not think that there is a need for the addition of the "in the ten years preceding submission." There are a lot of strong tax credit developers who may have decided to stop production over 10 years ago, who have portfolios that are still participating in the program, that will now find themselves not considered to be "experienced" by TDHCA; SGI Ventures, Inc. is one of those developers. And, while we have not done any new developments during the preceding 10 years, our development "experience" has not gone away. During that time, we have been active as a general partner and fully knowledgeable of the program. This requirement does not make sense.

SGI appreciates the Department's thoughtful consideration of our comments to the draft 2020 QAP.

Regards,

Sally Gaskin
President
713-882-3233

(38) Tony Padua

Patrick Russell

From: Tony Padua <tpadua@paduarealty.com>
Sent: Thursday, October 10, 2019 1:52 PM
To: HTC Public Comment
Subject: Public comment on proposed rule changes

Dear Mr. Patrick Russel,
As a resident and a builder in the second ward neighborhood of Houston, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

We hope you take this serious matter into consideration.

Tony Padua

(39) Brooks Hawkins

Patrick Russell

From: Brooks Hawkins <brooks_hawkins@sbcglobal.net>
Sent: Thursday, October 10, 2019 2:04 PM
To: HTC Public Comment
Subject: Proposed Multifamily Housing Revenue Bond Rule

Dear Mr. Patrick Russel,

As a resident of the east end neighborhood in Houston, I am aware that the schools are already distressed. Specifically, Wheatley High School has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students and decreasing the amount of taxes you are collecting which would go towards improving these schools will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. By modifying the rules, you are increasing the likelihood of these students to be stuck in a cycle that they cannot get out of. Low income students deserve the same rights to go to schools where they will obtain an education that will set them up for success. Adding additional low income housing in areas that are zoned to failing and struggling schools further disenfranchises them and their families. In addition, this will disincentive tax paying residents and developers from living and developing in these neighborhoods, increasing the likelihood that the schools will never get out of their failing statuses. I ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Best regards,

Brooks Hawkins
2714 Freund St.
Houston, TX 77003

(40) Leon and Angela Truly

Patrick Russell

From: Angela and Leon Truley <a.l.truley@gmail.com>
Sent: Thursday, October 10, 2019 2:23 PM
To: HTC Public Comment
Subject: High School Ratings & Expansion of City Housing - Clayton Homes Relocation Project

Dear Mr. Patrick Russel,

As a resident of Houston, Texas, located in the East End District our family is aware that the schools are already distressed, I would never considering sending my kids to any school with a sub-par academic rating.

Specifically, Wheatley High School (HISD) has received F ratings for 7 consecutive years and holds that very unattractive distinction. The brand new Bruce elementary (also HISD) is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more students will further burden the schools that are already struggling. More importantly, these schools will not provide the families the best chance for success given their long history of failing ratings.

As a voting resident, my wife and I are asking that you do not modify rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

This is not a popular method of procedure and we believe that the first course of any actions should be to have a sustained improvement of the elementary, middle and high schools in the East End prior to any consideration of modifying rules concerning school ratings. To do this will create an overwhelming task for the teachers and administrators; no pathway to success of the children force to attend these school due to geographic and economic limitations; and create an incubator for unsuccessful kids finding that they did not meet minimum standards due to overcrowded, failing schools where people never cared enough to fix a problem, prior to over taxing under-performing schools...

That's not the environment that any child deserves...

Cordially and respectfully,

Leon and Angela Truley

Ease End District residence

(41) Tiffani Neu

Patrick Russell

From: Tiffani Neu <tiffanicorin@hotmail.com>
Sent: Thursday, October 10, 2019 2:23 PM
To: HTC Public Comment
Subject: Do Not Modify Rules for School Ratings

Dear Mr. Russel,
I own a home in the Greater East End District. As a resident of that neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Tiffani Neu

(42) Robert Meaney

Patrick Russell

From: robert meaney <rpmeaney@gmail.com>
Sent: Thursday, October 10, 2019 2:24 PM
To: HTC Public Comment
Subject: 10 Texas Administrative Code (TAC) Chapter 11 comment

Dear Mr. Patrick Russel,

As a resident of this neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Robert Meaney

832-368-8456

(43) Kent Morrison

Patrick Russell

From: Kent Morrison <kwm77573@yahoo.com>
Sent: Thursday, October 10, 2019 2:33 PM
To: HTC Public Comment
Subject: Change in rules about public housing and failing schools

Dear Mr. Patrick Russel,
As a resident of this neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website."

Thank You,

Kent Morrison

Sent from Mail for Windows 10

(44) Victor Martinez

Patrick Russell

From: victor martinez <victorrodmtz92@gmail.com>
Sent: Thursday, October 10, 2019 3:10 PM
To: HTC Public Comment
Subject: Expansion of City Housing-Clayton Homes Relocation Project

To whom it may concern,

I am a resident in the vicinity of the proposed housing developments in relation to the above referenced project. I would like to state my objection to this development project as it would cause distress in this already overburdened scholastic and residential district. I, along with other residents in the area, ask that you do not modify the rules Proposed Qualified Allocation Plan, and Proposed Multifamily Housing Revenue Bond Rule as they appear on the TDHCA website. Thank you for your time, and I hope actions are taken quickly to resolve this matter.

(45) Alejandro L. Padua

Patrick Russell

From: Alejandro Padua <ap@padualaw.com>
Sent: Thursday, October 10, 2019 3:30 PM
To: HTC Public Comment
Subject: Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12

Texas Department of Housing and Community Affairs
Attn: Patrick Russell
P.O. Box 13941 Austin, Texas 78711-3941

Dear Mr. Russell-

It is with great concern, as a property owner in the East End neighborhood of Houston, that I write this email, in opposition to the rule changes related to the above-mentioned matter.

There is absolutely no positive reason why this rule change should be done or allowed. Texas is a very large and spread out state, and any funds, incentives, or subsidies related to these programs should be not only focused, but mandatory, to be in areas with passing school ratings, not making areas that have failing grades even worse. I urge you and all other decision makers to keep in mind the true, genuine , and historical reason why that rule is in place (ie. prohibiting these government funds and incentives to go to areas with failing grades of its schools) and not be persuaded by the recent noise of the current stakeholders asking and lobbying for this very sensical rule to be relaxed and effectively abolished.

As Mark Twain says- "**History doesn't repeat itself but it often rhymes**." History is rhyming here, with purely economic and short-sited political interests attempting to beat out true, genuine, proper values for enhancing Texas communities and its schools. I pray that you have the strength and endurance to not fall into this short cited political and economic temptation, as it will not be of absolutely no good.

Sincerely,

Alex Padua

Alejandro L. Padua
Attorney at Law
Padua Law Firm, PLLC
5599 San Felipe #911
Houston, TX 77056

Office: 713-840-1411
www.padualaw.com

(46) Sara E. Padua

Patrick Russell

From: Sara Padua <sp@padualaw.com>
Sent: Thursday, October 10, 2019 4:16 PM
To: HTC Public Comment
Subject: Comment in Opposition of Proposed QAP and Housing Revenue Bond - TDHCA
Attachments: 2019-Rankings_High-School_Statewide-1.pdf; 2019-Rankings_Elementary_Statewide (1).pdf; 2019-School-Rankings-Methodology-vf.pdf; The Effects of Exposure to Better Neighborhoods on Children Harvard University Research.pdf

Mr. Russel,

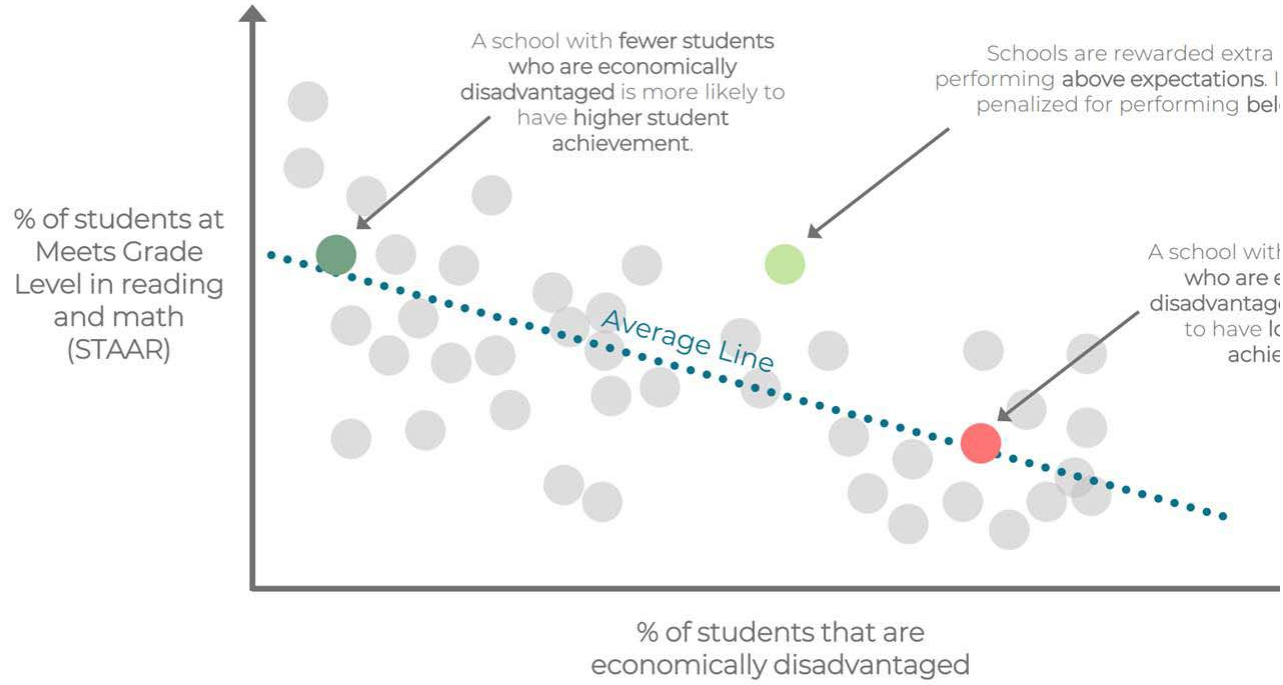
The changes contained in Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 **must NOT be implemented, as they will facilitate further deterioration and cause complete failure of schools in my community and of the vulnerable minors that need better EDUCATION, not CASTIGATION.**

In my neighborhood, known as the East End, the schools are of the worst in the state, according to the ratings by the **Texas Education Agency**. Specifically, Wheatley has **received F ratings for 7 consecutive years** and the brand new **Bruce elementary** is struggling to receive D and F ratings. A respected nonprofit non-partisan research and advocacy organization focused on improving the life of children, Children at Risk has also confirmed these tragic outcomes with their rankings (see attached for 2019) with Bruce and Wheatly at the very bottom with Fs.

As their longstanding research and the chart below show, students at schools facing poverty do EVEN WORSE the higher the number of economically disadvantaged students present there.

II- Campus Performance:
Compares schools with similar levels of poverty

Students in poverty are more likely to face challenges in completing their education compared to
Schools that successfully serve students in poverty and address these challenges deserve spe



children at Risk

Note: Campus Performance Index accounts for substitute exams for districts who are able to supply needed information. Please see full methodology for more information.

The proposed changes will further burden the schools that are already failing and most importantly, are unjust for the children already struggling.

There is NO solid reason based upon data or research to support the proposed changes. The citizens of Texas, especially the children born into disadvantaged situations, deserve better.

The changes **will likely only lead to fraud and abuse** by the developers/contractors seeking to take advantage of the program without the benefit of the rating requirement, as the country has witnessed in other areas. It would be unconstitutional, unjust, and unethical to implement changes that data shows will HURT the communities and individuals, especially kids, that are supposed to be at the heart of the program.

The LIHTC housing projects are supposed to be built in areas without a lot of crime and with **access to high-performing schools** which helps children rise out of poverty so that when they're adults, they may not need any government housing help. I have attached a study by **Harvard University** squarely on point in their analysis of many housing projects, entitled "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project." Families with children moving to vouchered housing projects in lower-poverty neighborhoods reduces the intergenerational persistence of poverty and ultimately generate positive returns for taxpayers.

Therefore, we implore that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Sara E. Padua
Attorney at Law
Padua Law Firm, PLLC
5599 San Felipe #911
Houston, TX 77056

Office: 713-840-1411
sp@padualaw.com

(47) Amanda Powell

Patrick Russell

From: tessyclare@aol.com
Sent: Thursday, October 10, 2019 4:39 PM
To: HTC Public Comment
Subject: ATTN: Patrick Russell

Dear Mr. Russell,
As a resident with a school aged child in a neighborhood impacted by this rule change/relaxation, I strongly oppose. Adding more low-income students to already overburdened failing schools is absolutely the worst thing to do. This will ensure the continuation of the cycle of poverty. I request you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code Chapter 11 and Proposed Multifamily Housing Revenue Bod currently shown on the TDHCA website.

Thank you,
-Amanda Powell

(48) Albert Martinez

Patrick Russell

From: Albert Martinez <amtz427@yahoo.com>
Sent: Thursday, October 10, 2019 4:46 PM
To: HTC Public Comment
Subject: Clayton Homes Proposed Sites.
Attachments: COH PROPOSED AFFORDABLE HOUSING MAP.jpeg

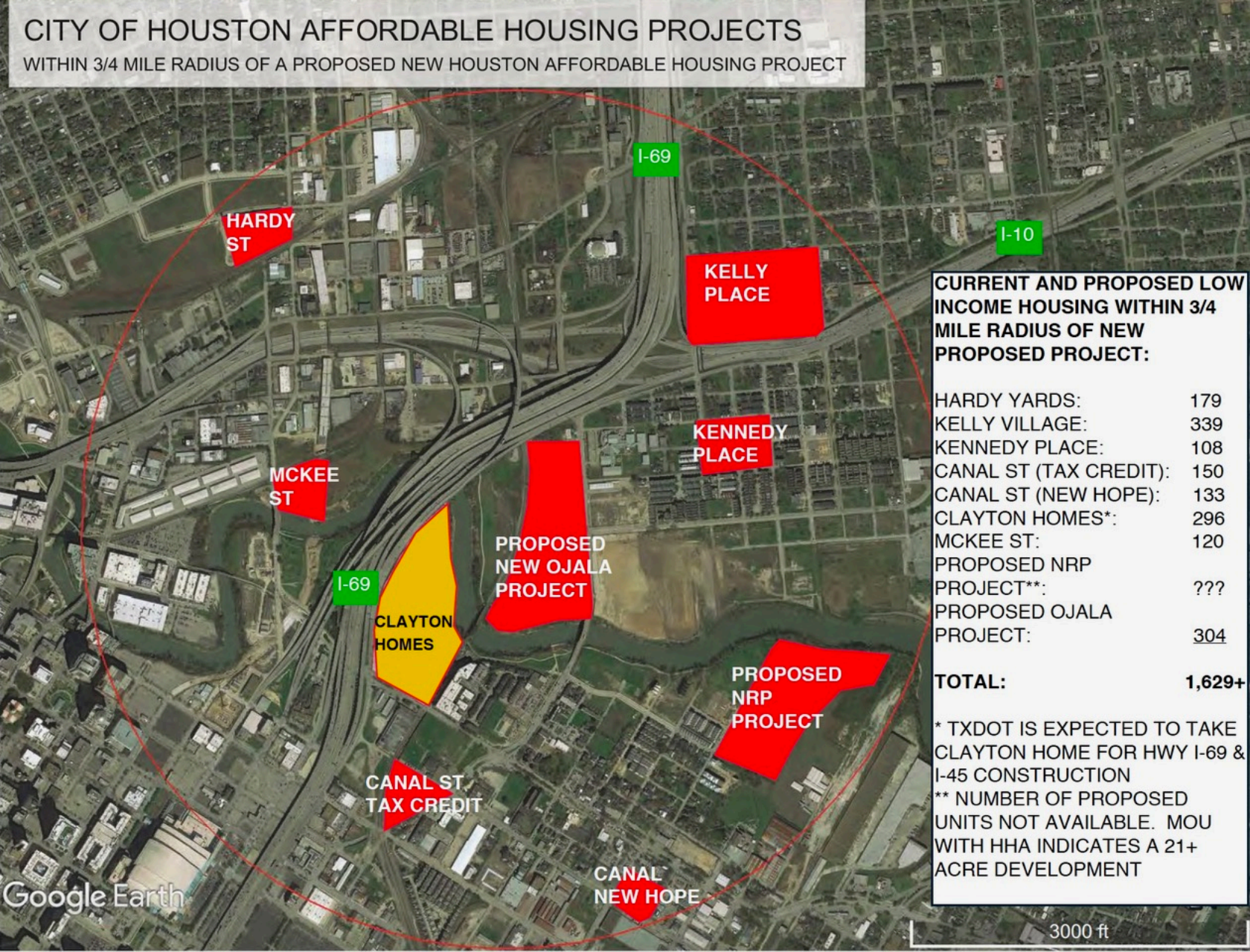
I am a 60 residents of Second Ward and strongly urge the HHA and the TDHCA to carefully studied the proposed sites. These selected site have inadequate schools, groceries stores, sidewalks and a poor infrastructure that is outdated with 50 year plus cast iron casing. In addition, future traffic conditions should be studied. If these neighborhood streets are congested it will hamper EMS, HPD, HFD response time, thus public safety is at risk.

Best Regards

Mr. Albert Martinez

CITY OF HOUSTON AFFORDABLE HOUSING PROJECTS

WITHIN 3/4 MILE RADIUS OF A PROPOSED NEW HOUSTON AFFORDABLE HOUSING PROJECT



CURRENT AND PROPOSED LOW INCOME HOUSING WITHIN 3/4 MILE RADIUS OF NEW PROPOSED PROJECT:

HARDY YARDS:	179
KELLY VILLAGE:	339
KENNEDY PLACE:	108
CANAL ST (TAX CREDIT):	150
CANAL ST (NEW HOPE):	133
CLAYTON HOMES*:	296
MCKEE ST:	120
PROPOSED NRP PROJECT**:	???
PROPOSED OJALA PROJECT:	304
TOTAL:	**1,629+**

* TXDOT IS EXPECTED TO TAKE CLAYTON HOME FOR HWY I-69 & I-45 CONSTRUCTION

** NUMBER OF PROPOSED UNITS NOT AVAILABLE. MOU WITH HHA INDICATES A 21+ ACRE DEVELOPMENT

(49) David Cordua

Patrick Russell

From: David Cordua <davidcordua@gmail.com>
Sent: Thursday, October 10, 2019 5:00 PM
To: HTC Public Comment
Subject: Opposition to Proposed QAP and Housing Revenue Bond - TDHCA

Mr. Russel,

I strongly oppose the changes contained in Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 as they will have a detrimental effect on schools, children, and families in the Second Ward, Houston.

I am a volunteer Board member of Children at Risk and know that the proposed changes will further burden the schools that are already failing by all standards.

We strongly believe the proposed rules **will lead to fraud and abuse** by the developers/contractors seeking to take advantage of the program without the benefit of the rating requirement, as the country has witnessed in other areas.

Therefore, we request that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Thanks,
David

(50) Noah E. Niday

Patrick Russell

From: Noah E. Niday <neniday@aol.com>
Sent: Thursday, October 10, 2019 7:01 PM
To: HTC Public Comment
Subject: Low income housing zoned in grade F schools

Dear Mr. Patrick Russel,
As a resident of this neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Noah E. Niday

(51) Josh Hughes

Patrick Russell

From: Josh Hughes <wjh8402@gmail.com>
Sent: Thursday, October 10, 2019 8:42 PM
To: HTC Public Comment
Subject: Houston's East End

Dear Mr. Patrick Russel,

As a resident of this neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website."

Thanks,

Josh Hughes

(52) Andrea Pedroza

Patrick Russell

From: Andrea Morales <drea_mor@hotmail.com>
Sent: Friday, October 11, 2019 10:50 AM
To: HTC Public Comment
Subject: Comment from a concerned citizen and resident

Dear Mr. Patrick Russel,

As a resident of this neighborhood, our family is aware that the schools are already distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. The schools are already burdened and distressed. Adding more low income students will further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Thank you,
Andrea Pedroza

Sent from my iPhone

(53) Brandon and Kristi Solt

Patrick Russell

From: Brandon Solt <bsolt13@yahoo.com>
Sent: Friday, October 11, 2019 12:44 PM
To: HTC Public Comment
Subject: East End Affordable Housing

Dear Mr. Russel,

As a resident of the East End neighborhood, my family is very aware that the schools in this area are already distressed. Specifically, Wheatley High School which has received F ratings for 7 consecutive years and Bruce elementary is struggling to receive D and F ratings. While the HISD school board is on the verge of being government run, adding to the already dire situation would only set the schools in my area back further. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. We ask that you not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.“ To do so would be a complete cop-out and only exacerbate the problem of failing schools in the East End. If the Department is truly concerned about equitable housing, it would follow the rules in place, and work to secure affordable housing sites in areas which meet the criteria. The East End is already home to numerous affordable housing projects. Adding the proposed units would not only drown the school system, it would put undue burden on the residents of the East End given the tax breaks proposed to the developer.

Brandon and Kristi Solt
458 N Live Oak
Houston, TX 77003

(54) Brett and Jaclyn Siepka

Patrick Russell

From: Brett Siepka <bsiepka42@gmail.com>
Sent: Friday, October 11, 2019 1:13 PM
To: HTC Public Comment
Cc: Jaclyn Lee
Subject: Relaxing Requirements Schools Who Have Low Ratings (East Downtown East End Houston, TX)

To Mr. Patrick Russel,

My wife and I are residents of the East End neighborhood in Houston, Tx. The schools in this area are already highly distressed. Specifically, Wheatley has received F ratings for 7 consecutive years and the brand new Bruce elementary is struggling to receive D and F ratings. Adding more low income students with the newly proposed low income housing will only further burden the schools that are already struggling. More importantly, these schools will not provide the low income families the best chance for success given their long history of failing ratings. Why would anyone think that this is a good idea?

We ask that you do not modify the rules concerning school ratings as per the Proposed Qualified Allocation Plan at 10 Texas Administrative Code (TAC) Chapter 11 and Proposed Multifamily Housing Revenue Bond Rule at 10 Texas Administrative Code (TAC) Chapter 12 currently shown on the TDHCA website.

Please contact me should you have any questions or concerns.

Thank you,

Brett and Jaclyn Siepka

5c

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 07, 2019

Presentation, discussion, and possible action on an award of a Predevelopment Grant from the Multifamily 2019-2 Special Purpose Notice of Funding Availability: Predevelopment.

RECOMMENDED ACTION

WHEREAS, the Department has received multiple Predevelopment Applications for grants under the 2019-2 Special Purpose Notice of Funding Availability: Predevelopment (NOFA);

WHEREAS, Application 19554 Community of Possibilities, is requesting a Predevelopment Grant of $50,000 in Tax Credit Assistance Repayment Funds (TCAP RF) for the predevelopment expenses related to Community of Possibilities, which has received complete reviews for compliance with program requirements;

WHEREAS, the requested Predevelopment Grant received a positive recommendation from the Executive Award and Review Advisory Committee (EARAC) on October 30, 2019; and

WHEREAS, staff recommends the approval of a Predevelopment Grant under the 2019-2 Special Purpose NOFA to Application 19554 – Community of Possibilities (the Development);

NOW, therefore, it is hereby

RESOLVED, that an award of a $50,000 Predevelopment Grant from the 2019-2 Special Purpose NOFA to Making Dreams Real, Incorporated, for the predevelopment of Community of Possibilities, is hereby approved as presented at this meeting.

BACKGROUND

The Board approved the 2019-2 Special Purpose NOFA on February 21, 2019, (as amended on March 21, 2019), with $200,000 in TCAP RF, for the purpose of providing grants to nonprofit organizations to fund third-party costs associated with submitting an Application for an award from the Department under 10 TAC Chapter 11 and/or Chapter 13, as applicable.

Making Dreams Real, Inc., a nonprofit corporation, requests a Predevelopment Grant of TCAP Repayment Funds. The Predevelopment Grant is requested for the purpose of preparing a Uniform Multifamily Application to submit during the 2019 or 2020 Program Year.

The proposed development, Community of Possibilities, is anticipated to have 96 units. The Applicant anticipates applying to the Department's Multifamily Finance Division, in addition to USDA and the local County of Grayson, for the new construction and ongoing operational expenses related to the 96-unit Development. Lastly, and in accordance with Making Dreams Real, Inc.'s mission, the Development proposes serving a Supportive Housing population that will include but not be limited to: Veterans and other persons with disabilities, persons at-risk of or experiencing homelessness, and persons with very- to extremely-low income levels.

If the Applicant (or any Affiliate or assignee) receives an award of credits, bonds, grants, or loan funds for the Site identified in the Contract before the end of the performance period, Applicant will agree to put one TCAP-RF Unit on the Development. That TCAP-RF Unit must meet the requirements for HOME-Match, as identified in 24 CFR Part 92 and the Department's rules.

Recommendations

1. Organizational Structure and Previous Participation Deemed Acceptable. The Applicant/Borrower is Making Dreams Real, Inc., and includes the entities and principals as illustrated in Exhibit A. The Applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

2. Award of Funds Recommended. Staff recommends approval of the award of a Predevelopment Grant in the amount of $50,000 TCAP Repayment Funds under the 2019-2 Special Purpose NOFA to Application 19554 – Community of Possibilities.

MULTIFAMILY PREDEVELOPMENT APPLICATION 19554
BOARD ACTION REQUEST
EXHIBIT A

Owner and Developer Organization Charts

Applicants should note that subsequent changes to the Development Ownership structure presented in this section will require the written consent of the Department.

Pursuant to §11.204(13)(A) of the QAP, submit three separate charts. One showing the complete organizational structure of each of the following entities: Development Owner, Developer, and Guarantor.

The organization charts must include:

- [X] The names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer, and/or Guarantor.
- [X] Nonprofit entities, public housing authorities, publicly traded corporations, individual board members and executive directors must be included in Organization charts.
- [ ] Any and all trusts must list all beneficiaries that have the legal ability to control or direct activities of the trust and are not just financial beneficiaries.

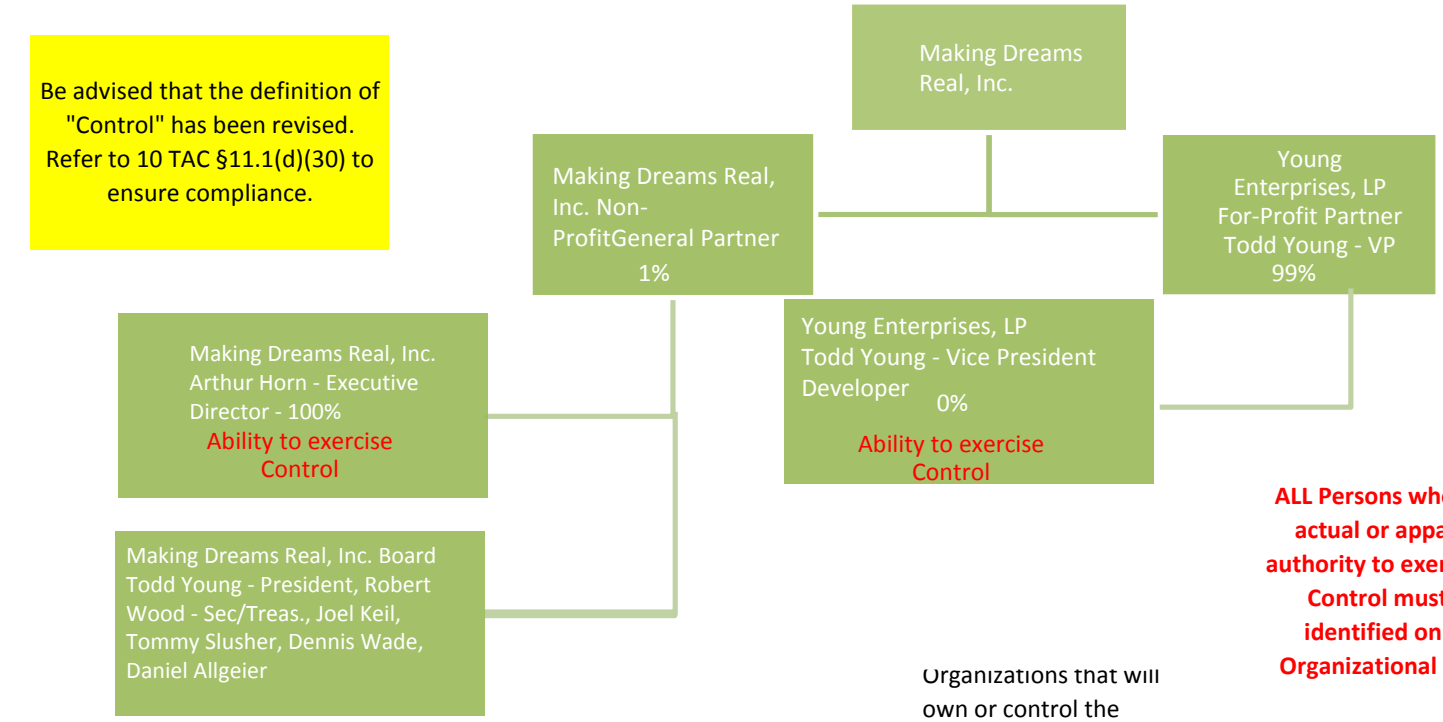
In the case of:

(A) Partnerships - Principals include all general Partners and Special LPs (any LP that is not the Syndicator is a "Special LP");

(B) Corporations - Principals include the executive director and all members of the board (shown with "0%" ownership as applicable). For to-be formed instrumentalities of PHAs, where the executive director and board remain to be determined, include the PHA, itself, and its members;

(C) Limited liability companies - Principals include all the managing members and all other members.

Org. Chart Example:



Note that the percentage refers to the entity to which the Person is directly connected, not to the whole Development Owner.

Organizations that will own or control the Applicant or other related organizations will be provided in the List of Organizations with an Ownership Special Interest in the Applicant form.

5d

BOARD ACTION REQUEST

MULTIFAMILY FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, the Department anticipates having Program Years 2018 and/or 2019 National Housing Trust Fund (NHTF) available after the 2019-1 Multifamily Direct Loan Notice of Funding Availability (2019-1 NOFA) application submission deadline occurs on November 26, 2019;

WHEREAS, the Department's Program Year 2018 NHTF is subject to a U.S. Department of Housing and Urban Development (HUD) commitment deadline of October 3, 2020;

WHEREAS, several potential applicants seeking to layer NHTF with 4% Housing Tax Credits (HTC) participated in the Texas Bond Review Board's 2020 Lottery for Private Activity Bonds on October 31, 2019, and have received Advance Notices of Certificates of Reservation; and

WHEREAS, the Board has the authority to set priorities for special purpose NOFAs in accordance with 10 TAC §13.4(d) and staff recommends giving these 2020 4% HTC-layered Applications the ability to request NHTF in order to help the Department meet its 2018 and/or 2019 NHTF commitment deadlines to HUD;

NOW, therefore, it is hereby

RESOLVED, that up to $11,383,833 in NHTF be made available for Applicants through this 2020-2 NOFA, and the final amount will consist solely of unrequested funds under the Supportive Housing/ Soft Repayment set-aside of the 2019-1 Multifamily Direct Loan NOFA as of November 26, 2019, at 5:00 p.m. Austin local time; and

FURTHER RESOLVED, the Executive Director and staff as designated by the Executive Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

The 2020-2 NOFA announces the availability of NHTF for Applications received between December 3, 2019, and January 6, 2020. The actual amount of NHTF available under this NOFA will not be published until after the Application submission deadline of November 26, 2019, in the 2019-1 NOFA. The amount available will be determined by the total amount of NHTF available in the 2019-1 NOFA ($19,498,832.50) less awarded NHTF Applications (currently $3,115,000) and pending NHTF Applications (currently $5,000,000). An announcement via listserv stating the amount of NHTF available under this NOFA will be made no later than December 3, 2019, and the updated amount will be published on the Department's website.

All NHTF under this NOFA will be available as Construction Only Loans or as Construction to Permanent Loans structured as Surplus Cash to finance new construction or reconstruction Developments providing 30% units that would not have been available otherwise. The maximum per Application request under this NOFA will be $3,000,000. All Applicants must use the 2020 Multifamily Uniform Application. All Applications received under this NOFA will have an Application Acceptance date of January 6, 2019, and be subject to the 2020 rules under 10 TAC Chapter 11, 12, and 13. Funds are available as construction-only or construction-to-permanent loans. To the extent the funds available in this NOFA become oversubscribed, scoring criteria in 10 TAC §13.6 will be utilized.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY DIRECT LOAN
2020-2 NOTICE OF FUNDING AVAILABILITY (NOFA)
SPECIAL PURPOSE NOFA

1) **Summary.** The Texas Department of Housing and Community Affairs (the Department) announces the availability of a certain amount of National Housing Trust Fund (NHTF), **not to exceed $11,383,833,** and the final amount will consist solely of unrequested funds under the Supportive Housing/ Soft Repayment set-aside of the 2019-1 Multifamily Direct Loan NOFA as of November 26, 2019, at 5 p.m. Austin Local Time. These funds are available under the 4% HTC and Bond Layered Set-Aside for the new construction or reconstruction of affordable multifamily rental housing for extremely low-income Texans. All NHTF available under this NOFA is currently available statewide. **Applications under the 2020-2 NOFA will be accepted from December 3, 2019, to January 6, 2020, with all Applications having an Application Acceptance Date of January 6, 2020.** Applications will be subject to the 2020 Qualified Allocation Plan (10 TAC Chapter 11), Multifamily Housing Revenue Bond Rules (10 TAC Chapter 12), and Multifamily Direct Loan Rule (10 TAC Chapter 13). **Capitalized Terms in this NOFA are defined in 24 CFR Part 93, 10 TAC Chapters 1, 11, 12, or 13, or in Tex. Gov't Code Chapter 2306, as applicable.**

2) **Eligible Applications.** Eligible Applications under this NOFA are limited to those that meet all of the following requirements:
    - **a.** Must concurrently be requesting 4% Housing Tax Credits.
    - **b.** Must have advance notice of Certificate of Reservation from the Texas Bond Review Board under the 2020 Lottery.
    - **c.** Must be proposing NHTF Units that:
        i. Must be available for households earning the greater of the federal poverty limit or 30% AMI or less, and have rents no higher than the rent limits for Extremely low-income Tenants in 24 CFR §93.302(b);
        ii. May not receive any project-based subsidy;
        iii. May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

iv. May not be restricted to 30% AMI or less by Housing Tax Credits, or any other fund source.

d. Must be proposing new construction or reconstruction (as defined in 24 CFR §93.2) in areas that meet the requirements of 24 CFR §93.301(f) as further described in CPD Notice 16-14, and the Site and Neighborhood Standards in 24 CFR §93.150.

e. If the Applicant proposes to make the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code, the Application may not have more than 15% of the Units in the Development designated as Market Rate Units.

3) Maximum Per Application Request and Loan Structure

a. The maximum per Application request under this NOFA is $3,000,000.

b. The only loan structure available for Construction-to-Permanent loans under this NOFA is Surplus Cash, with interest rates as low as 0%, but determined in accordance with 10 TAC Chapter 11, Subchapter D.

c. The loan structure may be Construction Only with a 0% interest rate and repayment due at Construction Completion.

d. Permanent Refinance Loans are not eligible under this NOFA.

4) Maximum Per Unit Subsidy Limits. The maximum per unit subsidy limits that an Applicant can use to determine the amount of Direct Loan funds they may request are listed in the table below:

Bedrooms	Non-elevator property	Elevator-served property
0 bedroom	$142,411	$149,868
1 bedroom	$164,203	$171,802
2 bedroom	$198,034	$208,913
3 bedroom	$253,490	$270,266
4 bedroom or more	$282,398	$296,666

Smaller per unit subsidies are allowable and incentivized as point scoring items in 10 TAC §13.6. To determine the minimum number of NHTF Units required either by scoring, maximum per unit subsidy limits, or the cost allocation analysis - ensuring that, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible NHTF Development costs, please use the 2020 Multifamily Direct Loan Unit Calculator Tool found here: https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm

5) Application Submission Requirements.

a. **Applications under this NOFA will be accepted starting at 8:00 a.m. Austin local time on December 3, 2019, through January 6, 2020, at 5:00 p.m. Austin local time.**

b. 2020 Application materials, including manuals, NOFAs, program guidelines, and rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the requirements in effect at the time of the Application

Acceptance Date including any requirements of federal rules that may apply and subsequent guidance provided by HUD.

c. An Applicant may have only one active Application per Development at a time.

d. A 2020 Application must be on forms provided by the Department, and cannot be altered or modified, and must be in final form before submitting it to the Department. An Applicant must submit the Application materials as detailed in the Multifamily Programs Procedures Manual (MPPM) in effect at the time of the Application Acceptance Date. All scanned copies must be scanned in accordance with the guidance provided in the MPPM in effect at the time the Application Acceptance Date.

e. If an Applicant has an active Application (i.e. the Board has not made a Direct Loan Award), but wishes to apply for additional funds, it must withdraw that Application and submit a new Application.

f. The request for funds may not be less than $300,000. However, if the underwriting report indicates that the Development will be feasible with an award of less than $300,000, staff may recommend a lower award.

g. In addition to the NHTF Units, Applicants must provide a Matching Contribution to HOME Eligible Units as described in 10 TAC §13.(2)(9) in the amount of at least 5 percent of the Direct Loan funds requested. Except for Match in the form of the net present value of a below market interest rate loan or a property tax exemption under Sections 11.111, 11.18, 11.181, 11.182, 11.1825, or 11.1827 of Texas Property Tax Code, Match must be documented with a letter from the anticipated provider of Match indicating the provider's willingness and ability to make a financial commitment should the Development receive an award of NHTF funds.

h. An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C).

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

a. Awarded Applicants may, at the Department's discretion, be charged fees for underwriting, legal fees, asset management, and ongoing monitoring.

b. An Applicant will be required to record a Land Use Restriction Agreement (LURA) limiting residents' income and rent for the greater amount of Units required by the Direct Loan Unit Calculation Tool, or as represented in the Application for the term of the LURA.

c. An Applicant must have a current Data Universal Numbering System (DUNS) number and be registered in the federal System for Award Management prior (SAM) prior to execution of a Direct Loan contract. Applicants may apply for a DUNS number at dnb.com). Once you have the DUNS number, you can register with the SAM.

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

e. Notwithstanding any other deadlines in 10 TAC Chapter 11, 12, or 13, if the Department and the Applicant are unable to execute a Contract by October 2, 2020, and the Department loses access to all or a portion of its 2018 NHTF funding, the Application may be subject to a partial or total reduction of the NHTF award.

7) Miscellaneous.

a. This NOFA does not include text of the various applicable regulatory provisions pertinent to NHTF. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations.

b. All Applicants must comply with public notification requirements in 10 TAC §11.203.

c. For questions regarding this NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at andrew.sinnott@tdhca.state.tx.us.

Attachment A

Rules and Resource Links

State of Texas

Texas Administrative Code

10 TAC Chapter 1 (Administration)
10 TAC Chapter 2 (Enforcement)
10 TAC Chapter 10 (Uniform Multifamily Rules)
10 TAC Chapter 11 (Qualified Allocation Plan)
10 TAC Chapter 12 (Multifamily Housing Revenue Bonds)
10 TAC Chapter 13 (Multifamily Direct Loan Rule)
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1

Texas Government Code

Tex. Gov't. Code Chapter 2306
http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm

Department of Housing and Urban Development ("HUD'')

HUD Program Regulations (NHTF)

24 CFR Part 93 ("NHTF Interim Rule")
http://www.ecfr.gov/cgi-bin/text-idx?SID=222584118d192eb177d111b97b45cda8&mc=true&tpl=/ecfrbrowse/Title24/24cfr93_main_02.tpl

Federal Cross-Cutting Requirements

Visit https://www.tdhca.state.tx.us/program-services/training.htm for TDHCA training regarding the following requirements:

- Fair Housing
  https://www.tdhca.state.tx.us/fair-housing/index.htm
- Environmental Review and Clearance
  https://www.tdhca.state.tx.us/program-services/environmental/index.htm
- Minimizing Resident Displacement
  https://www.tdhca.state.tx.us/program-services/ura/index.htm
- Employment Opportunities for Low-Income People: HUD Section 3
  https://www.tdhca.state.tx.us/program-services/hud-section-3/index.htm

6a

BOARD ACTION REQUEST

EXECUTIVE DIVISION

NOVEMBER 7, 2019

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 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 10 TAC §1.10 provides the Department's procedures for hearing public comments at Governing Board meetings open to the public and staff is recommending that revisions be made to clarify when the registration form method of comment can be used; to clarify that deference may be provided to reading written communications from elected officials; to clarify that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and to make other minor administrative and technical revisions; and

WHEREAS, this rule was published in the Texas Register for public comment from September 20, 2019, to October 21, 2019 and no comment was received;

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 repeal of 10 TAC §1.10, Public Comment Procedures; and the new 10 TAC §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.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. 10 TAC §1.10, Public Comment Procedures, provides the Department's procedures for hearing public comments at Governing Board meetings that are open to the public. Staff recommended that the rule be repealed, and adopted as new with revisions to its current form to clarify when the registration form method of comment will be accepted.

Other revisions originally proposed included: clarifying that deference may be provided to reading written communications from elected officials; clarifying that no new materials may be

provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

The proposed rule was published in the Texas Register for public comment. Comment was accepted from September 20, 2019, to October 21, 2019 and no comment was received.

Attachment 1: Preamble, including required analysis, for adoption of 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 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the public comment procedures at the Department's Board meetings.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would 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 repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively 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 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 would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit

anticipated as a result of the repealed sections would be elimination of an outdated rule while proposing 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT. The public comment period was held September 20, 2019, to October 21, 2019, to receive input on the proposed repeal. No comment was received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't 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.

§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, without changes, new 10 TAC §1.10, Public Comment Procedures. The purpose of the rule is to clarify when the registration form method of comment can be used. These forms had been intended to allow those present at a public meeting, but not wishing to actually speak, to have their comment noted. A person who is not present at a Board meeting but wishes to present comment on an agenda item has always been able to submit a written comment in accordance with the rule. However, because of lack of clarity in the rule on the purpose of the registration form, in several instances the forms are being submitted by a third party, on the day of the board meeting and often in large numbers, purporting to be the opinions of persons who are not present at the meeting. The rule was proposed to make clear when registration form method of comment will be accepted. Other changes reflected in the new rule include clarifying that deference may be provided to reading written communications from elected officials; clarifying that no new materials may be provided to the Board when the item for consideration is part of a competitive award process; and making other minor administrative and technical revisions.

Tex. Gov't Code §2001.0045(b) does apply to the new rule, as no exceptions are applicable, however, there are no costs 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the 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 rule governing the public comment process at meetings of the Department's Board of Directors.

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 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 procedures within a rule.

7. The new rule does technically increase the number of individuals to whom this rule applies, as there are those who may have attempted to utilize the registration form of public comment while not being present at a meeting of the Board and will no longer be able to do so; this rule change

will not permit the registration forms to be presented to the Board by persons not in attendance at the meeting.

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.

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 Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
3. The Department has determined that because this rule relates only to the public comment process used at meetings of the Department's Board, there will be no economic effect on small or micro-business 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 public comment process used at meetings of the Department's Board.

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 only relates to the public comment process used 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). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for how public comment will be accepted at meetings of the Department's Board. There will be no expected economic cost to any individuals required to comply with the proposed new rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

PUBLIC COMMENT. The public comment period was held September 20, 2019, to October 21, 2019, to receive input on the proposed new rule. No comment was received.

§1.10. Public Comment Procedures.

(a) Purpose. The purpose of this section is to establish procedures for hearing public comment 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 Tex. Gov't 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) General public comment 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 subsection; 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 posted on the Department's website, or additional printed materials only as provided for in paragraph (6) of this subsection.

(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 as described in paragraph (1)(B) of this subsection.

(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, or this may be directed by the Board Chair. 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 present at the meeting, who wish to register their position for or against a posted agenda item, but do not wish to speak, may do so by submitting a comment registration form with the secretary of the meeting, or another person designated by the Board Chair. The comment registration form, must state the commenter’s name, whom they represent, the action item to which their comment relates, their position, and must be signed by the commenter. At the end of the public comment on the item the Board Chair will have registered positions for and against read into the record. It is the Board Chair’s discretion to determine if similar comments submitted are aggregated and reported as a total number providing their position, as opposed to reading all names 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. Deference to elected officials may include, but is not limited to reading letters from elected officials to the Board into the record.

(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 business days prior to the meeting at which they are to be. 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.

(D) 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.

(E) If materials submitted relate to a competitive Application under any Department program, including Chapters 11 and 13 of this Title, such materials provided under either subparagraph (6)(A) or (6)(C) of this paragraph may be prohibited from presentation to the Board under applicable rules or statute.

(c) To the extent that subsection (b) of this section, or the Board Chair, place limitations on the amount of time that a member of the public may address the Board, a member of the public who addresses the Board through a translator will be given at least twice the amount of time as a member of the public who does not require the assistance of a translator in order to ensure that non-English speakers receive the same opportunity to address the Board.

6b

BOARD ACTION REQUEST

FAIR HOUSING, DATA MANAGEMENT AND REPORTING

NOVEMBER 7, 2019

Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, 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, oversight of the affirmative marketing requirements and the written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the two sections of the Compliance rule that govern those processes (10 TAC §10.610 and 10 TAC §10.617) are proposed to be repealed under separate action;

WHEREAS, those sections are being simultaneously proposed within a new subchapter within 10 TAC Chapter 10 and reflecting some revisions; and

WHEREAS, upon Board approval, the proposed rule actions will be published in the *Texas Register* for public comment from November 22, 2019, through December 23, 2019, and subsequently presented to the Board for final adoption;

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 proposed action 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 preamble.

BACKGROUND

Recently oversight of the affirmative marketing requirements on the Department's multifamily portfolio and the written policies and procedures (often called tenant selection criteria) on that portfolio, and the associated review process, have been reassigned organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result these two issues, currently addressed in the Compliance rule, are proposed to be repealed and moved into a new section of the rules at Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures. With that change in rule location, minimal edits are also being made. In particular, the

Department is modifying its Occupancy Standards in response to concerns from Development Owners, as a result of tenant complaints, and to be more in line with how HUD is currently enforcing a December 1998 HUD Notice of Statement of Policy regarding Occupancy Standards as a Fair Housing enforcement consideration (also called the Keating memorandum, as it was authored by HUD's General Counsel at the time, Frank Keating). The Department is also highlighting particular requirements for Multifamily Direct Loan-funded Developments.

Once approved in draft form, this proposed new rule will be published in the *Texas Register* for public comment and will be returned to the Board for final adoption.

To facilitate public review, the proposed rules reflect changes as blackline revisions to the current rule located at 10 TAC §10.610 and 10 TAC §10.617. However, the rule action will be submitted to the *Texas Register* as a proposed new rule located at 10 TAC Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, §§10.800-10.803. Staff will, upon action by the Board, publish the proposed rule in the *Texas Register* for public comment from November 22, 2019, through December 23, 2019. Staff will return to the Board for final adoption of the rules.

Attachment A: Preamble for proposed new 10 TAC Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures

The Texas Department of Housing and Community Affairs (the Department) proposes new Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.053 and to update the rules to move requirements on the Department's multifamily portfolio relating to Affirmative Marketing and Written Policies and Procedures out of Subchapter F, detailing Compliance Monitoring requirements, and into a new subchapter to consolidate Fair Housing related requirements on the Department's multifamily portfolio into one separate location within the Uniform Multifamily Rules.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no changes to the rule generate costs to the properties in the Department's multifamily portfolio, 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.
Bobby Wilkinson, 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. This rule provides for an assurance that Fair Housing requirements relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities are clearly relayed to participating properties in the Department's portfolio.

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 moving a rule from one existing Subchapter to a new Subchapter and making minor revisions. The existing Subchapter is being amended to delete sections relating to Affirmative Marketing and Written Policies and Procedures for Multifamily Activities and those sections are being proposed as a new rulemaking 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, §2306.053.

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. To the extent that multifamily properties in the Department's portfolio are considered small or micro-businesses, the economic impact of the rule on them is projected to be $0 as the revisions being proposed are minor and add no costs to the property's operations. There are no rural communities subject to the proposed rule as these properties are not owned directly by municipalities; therefore the economic impact of the rule on rural communities is projected to be $0.

3. The Department has determined that [because the rules apply to existing multifamily developments, 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 rule will be in effect the proposed rule has no economic effect on local employment because the rules relate only to a process which has already been in effect for existing multifamily properties in the Department's portfolio; 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 this new rule only administratively consolidates an existing set of rules relating to Fair Housing requirements into one separate Subchapter of the Uniform Multifamily Rules, while making minimal revisions, 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. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a consolidation of Fair Housing related requirements into one separate Subchapter of the Uniform Multifamily Rules. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at Subchapter F of this Chapter relating to Uniform Multifamily Rules.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held from November 22, 2019, through December 23, 2019, to receive input on the new proposed sections. 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 8711-3941, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 23, 2019.

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.

Chapter 10 Uniform Multifamily Rules

Subchapter G Affirmative Marketing Requirements and Written Policies and Procedures

§10.800 Definitions

The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 11 relating to the Qualified Action Plan, Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, or Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, and other federal or Department rules, as applicable.

§10.~~617~~ 801 Affirmative Marketing Requirements

(a) Applicability. ~~Effective April 1, 2015~~ ~~c~~Compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.

(b) General. ~~Owners of Developments~~A Development Owner with five or more total ~~units~~ Units must affirmatively market ~~their units~~the Units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." ~~In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non Hispanic), Hispanics or Latinos, and families with children.~~ To determine the "least likely to apply" populations, a Development Owner is encouraged to use Worksheet 1 of HUD Form 935.2A, but at a minimum the Owner must document that they have compared the demographic composition of the Development to the market area to determine the populations least likely to apply. All Affirmative Marketing Plans must provide for affirmative marketing to ~~persons with disabilities~~Persons with Disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.

(c) Plan format. A Development Owner must prepare, have in its onsite records, and submit to the Department upon request, a written Affirmative Marketing Plan. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. ~~Owners~~ An Owner participating in a HUD funded ~~programs~~ program administered by the Department must

use the version ~~required~~ utilized by the program.

(d) Marketing and Outreach.

(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live. The outreach efforts identified in the Affirmative Marketing Plan must be performed by the Development at least once per calendar year.

(2) To the extent that advertisements ~~Advertisements~~ and/or marketing materials are utilized for the Development, those materials must contain:

(A) The Fair Housing logo; ~~and~~

(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. ~~The information about reasonable accommodations must be in both English and Spanish.~~; and

(C) Property contact information must be provided in both English and Spanish, and may be required to be provided in other languages in accordance with Limited English Proficiency Requirements.

(e) Timeframes.

(1) An Owner must begin its affirmative marketing efforts for each of the identified populations least likely to apply at least ~~six months~~90 calendar days prior to the anticipated date the first building is to be available for occupancy. ~~As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six months prior to the anticipated date the first building is to be placed in service; and~~

(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.

(f) Record ~~-~~keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.

(g) Exception to Affirmative Marketing. If the Development has closed its wait~~ing~~ list, Affirmative Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open wait~~ing~~ list, or is marketing prior to placement in service as required under subsection (e)(1) of this section.

§10.~~610~~ 802 Written Policies and Procedures

(a) The purpose of this section is to outline the policies and/or procedures of the Department (also called tenant section criteria) that are required to have written documentation. If an ~~owner~~ Owner fails to have such written policies and procedures, or fails to follow their written policies and procedures it will be handled as an Event of Noncompliance as further provided for in subsection (k) of this subchapter ~~be cited as noncompliance with this section.~~

(1) Owners must inform applicants/tenants in writing, at the time of application, or at the time of other ~~action~~ actions described in this section, that such policies/procedures as described in this section are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section and the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation" available in the leasing office and anywhere else where applications are taken; ~~.~~ ~~Developments~~ Developments that accept electronic applications must maintain on ~~post to~~ their website these written policies and procedures ~~tenant selection criteria~~ and the same noted forms. ~~the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."~~

(3) All policies must have an effective date. Any changes made to the policies require a new effective date, and a notice regarding the availability of new policies must be communicated to tenants in writing.

(4) In general, policies addressing credit, criminal history, and occupancy standards cannot be applied retroactively. Tenants who already reside in the ~~development~~ Development or applicants on the wait-list at the time new or revised tenant selection criteria are applied, and who are otherwise in good standing under the lease or wait-list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait-list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal, or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. A Development Owner ~~Owners~~ must maintain current and prior versions of the written Tenant Selection Criteria, for the longer of the records retention period that applies to the program, or for as long as tenants who were screened under the historical criteria are occupying the Development. ~~The criteria under which an applicant was screened must be included in the household's file.~~

(1) The criteria identified by a Development must be reasonably related to ~~the~~ an applicant's ability to perform under the lease (for a Development with MFDL funding this means to pay the rent, not to damage the housing, and not to interfere with the rights and quiet enjoyment of other tenants) ~~-~~and include at a minimum:

(A) Requirements that determine an applicant's basic eligibility for the ~~property~~Development, including any preferences, restrictions, and any other tenancy requirements. Any restrictions on student occupancy and any exceptions to those restrictions, as documented in the tenant file as provided for in 10 TAC §10.612(b)(2) must be stated in the policies; ~~The tenant selection criteria must specifically list:~~

~~(i) The income and rent limits;~~

~~(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and~~

~~(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.~~

(B) Applicant screening criteria, including what applicant attributes are~~is~~ screened and what scores or findings would result in ineligibility~~.~~;

~~(C) Occupancy Standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.~~

(~~D~~C) The following statement: Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and ~~the Department's~~ TDHCA's rules~~.~~;

(~~E~~D) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.

(2) The criteria must not:

(A) Include preferences for admission, ~~. A property may not have a preference~~ unless it is ~~either~~ in a recorded LURA which has been approved by the Department (preferences are required to be in a LURA when a Development has MFDL funding, except for the preference allowed by paragraph (3) of this subsection), ~~or~~ is required by a program in which the Owner is participating

which requires the preference, or is allowed by paragraph (3) of this subsection. Owners that include preferences in their leasing criteria due to other federal financing must provide to the Department either written approval from HUD, USDA, or VA for such preference, or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.

(4) Occupancy Standard Policy.

(A) If the Development restricts the number of occupants in a Unit in a more restrictive manner than found in Chapter 92.010 of the Texas Property Code, the Occupancy Standard Policy must allow at least two persons per Bedroom plus one additional person per Unit. Except in Supportive Housing Developments where all Units in the Development are SROs or Efficiencies, and the Supportive Housing Development has no Section 811 PRA or MFDL funding, the Occupancy Standard Policy must allow at least two persons per Unit in an SRO or in an Efficiency that is less than 600 square feet. In accordance with HUD Program Requirements, in the case of Supportive Housing where all Units in the Development are SROs or Efficiencies and where the Unit does have Section 811 PRA or MFDL funding, the Development must have the Department's written approval to have an Occupancy Standard Policy of fewer than two persons per Unit. An Efficiency that is greater than 600 square feet, must have an Occupancy Standard Policy of at least three persons per Unit.

(B) A Development may adopt a more restrictive standard than described in subparagraph (A) of this paragraph, if the Development is required to utilize a more restrictive standard by a local governmental entity, or a federal funding source. However, the Development must have this information available onsite for Department review.

(C) Except for an Elderly Development that meets the requirements of the Housing for Older Persons Act exception under the Fair Housing Act, the Occupancy Standard Policy must state that children that join the household after the start of a lease term will not cause a household to be

in violation of the lease.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; ~~and~~

(B) How transfers related to a reasonable accommodation will be addressed; and

(~~B~~C) A timeframe in which the Owner will respond to a request that is compliant with 10 TAC §1.204(b)(3) and (d) (relating to Reasonable Accommodations).

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Waitlist ~~List~~ Policy. Owners must maintain a written wait~~-~~list policy, regardless of current U~~u~~nit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait~~-~~list, including but not limited to the requirements in 10 TAC §10.615(b);

(B) Determining how lawful preferences are applied; and

(C) Procedures for prioritizing applicants needing accessible U~~u~~nits in accordance with 24 CFR §8.27, and Chapter 1, Subchapter B of this title.

~~(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.~~

~~(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.~~

(e) Changes in Household Designation Policy. This is applicable if a Development has adopted a policy in accordance with 10 TAC §10.611(c).

(f) Denied Application Policies. Owners must maintain a written policy regarding the procedures they will follow when~~for~~ denying an application~~s~~ and when notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and U~~u~~nits at Developments that lease U~~u~~nits under the Department's Section 811 ~~-~~PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial, and comply with other requirements of the HUD Handbook 4350.3 4-9; and

(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) The Development must keep and may periodically be requested to submit to the Department a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process; and

(B) The specific reason for which an applicant was denied~~, the date the decision was made; and~~

~~(C) The date the denial notice was mailed or hand-delivered to the applicant.~~

~~(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:~~

~~(A) A copy of the written notice of denial; and~~

~~(B) The Tenant Selection Criteria policy under which an applicant was screened.~~

(5) If an 811 applicant is being denied, within three calendar days of the denial the Department's 811 PRA Program point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.

(g) Non-renewal and/or Termination Notices. ~~Owners~~ A Development Owner must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules and the lease. For HOME, TCAP RF, NHTF, NSP, HTC, TCAP and Exchange Developments, see 10 TAC §10.613(a)-(b) of this chapter (relating to Lease Requirements). For Section 811 PRA, see 24 CFR §247.4(a)-(f);

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the ~~property~~Development (this is required under some LURAs, for HOME Developments that are owned by Community Housing Development Organizations, and for 811 PRA units).

~~(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:~~

~~(1) How security deposits will be handled for both the current unit and the new unit;~~

~~(2) How transfers related to a reasonable accommodation will be addressed; and~~

~~(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.~~

(~~i~~h) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

~~(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental assistance at the level indicated by the contract rent for the unit.~~

~~(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.~~

(~~i~~i) Policies and procedures will be reviewed periodically by the Department's Fair Housing staff, ~~during monitoring visits, through~~ as a result of ~~resident~~ complaints, or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to ~~wpp~~fair.housing@tdhca.state.tx.us. After review by the Department, an Owner~~s~~ may make non-substantive changes to the~~ir~~ policies. ~~Significant changes to reviewed policies without~~

~~Department approval may result in findings of noncompliance.~~

(~~m~~j) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.

§10.803 Compliance and Events of Noncompliance

(a) The Department will provide written notice to the Owner if the Department discovers through monitoring, review, resident complaint, or any other manner that the Development is not in compliance with the provisions of this subchapter. A 90 day C~~c~~orrective Action Period will be provided. Documentation of correction must be received during the Corrective Action Period for an Event of Noncompliance to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: fair.housing@tdhca.state.tx.us.

(b) If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each issue, but does not fully address all issues, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action.

(c) If communications to the Owner under this subchapter have a pattern of being returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) for notifications under this ~~S~~subchapter. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Events of Noncompliance identified in the evaluation of the requirements of this subchapter will be those specified in 10 TAC §10.625 of this chapter (relating to Events of Noncompliance).

6c

BOARD ACTION REQUEST

COMPLIANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on amendments to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, in particular 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published 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 amending the current Compliance rule to clarify, add and remove requirements for Developments monitored by the Department;

WHEREAS, oversight of the affirmative marketing requirements and the written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit, and as a result the text of those two sections of the Compliance rule that govern those processes (10 TAC §10.610 and §10.617) are proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action being proposed as new sections within chapter 10;

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 §92.504 and 24 CFR §93.404; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment from November 22, 2019, through December 23, 2019, and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed actions to the Compliance Rule together with the preambles presented at 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 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

On January 17, 2019, the Board adopted the current Compliance Rules. The current rules added requirements regarding the average income minimum set aside available under IRC §42(g) and incorporated requirements for new Department programs, including National Housing Trust Fund and the Section 811 Project Rental Assistance Program. Staff has been monitoring under these current rules and has recognized the need for changes.

These proposed amendment to the rules were on the Board meeting agenda for October 10, 2019, but were tabled to allow staff to meet with stakeholders and explain the proposed changes. A roundtable was held on October 21, 2019. In response to the roundtable, two changes have been made and are explained below. In addition, stakeholders expressed a desire to meet with Compliance staff quarterly to discuss ongoing and emerging issues. The first quarterly Compliance Roundtable will be held in Austin on Friday, December 13, 2019.

Non-substantive changes related to requirements for the Section 811 PRA program are proposed for 10 TAC §10.612 Tenant File Requirements, 10 TAC §10.613 Lease Requirements, 10 TAC §10.616 Household Unit Transfer Requirements for all Programs, and 10 TAC §10.624 Compliance Requirements for Developments with 811 PRA Units.

Only the sections noted in the recitals and proposed for action will be published in the *Texas Register* for public comment. Proposed substantive changes are explained below.

§10.605(b)- Elections Under IRC §42(g) Staff is proposing to delete from 10 TAC §10.605(b) an unnecessary requirement related to meeting the minimum set aside for developments that elect the average income minimum set aside. Specifically the following language is proposed to be deleted:

"Developments in the first year of the credit period that elect the average income test should lease Units in a manner to ensure that at all times, the average income and rent of the occupied units at the project does not exceed 60%. Example 605(1): A 100 Unit project places in service in April. If by October of that year, 50 of the Units are occupied and the other 50 have never been occupied, the designations of the 50 occupied Units must be equal to or less than 60% AMI and the percentage represented at application."

§10.607(i)- Reporting Requirements Staff is proposing to delete requirements related to Housing Tax Credit Exchange properties filing 8609s with the Department. All Exchange properties have met the requirement. The process for amending their elections is addressed in the Department's Asset Management rule. Specifically the following language is proposed to be deleted:

"(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed 30 days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as a non-material amendment, subject to the fee described in §11.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions)."

§10.610- Written Policies and Procedures Written policies and procedures (sometimes called tenant selection criteria), and the associated review process, are being moved organizationally within the Department from the Compliance Division to the Fair Housing, Data Management and Reporting unit. As a result parts of the text of the sections that govern those processes (10 TAC §10.610 and §10.617) are proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action they are being proposed as new sections within a separate subchapter within chapter 10. Other parts of the text are incorporated into these rules.

§10.611(c)- Determination, Documentation and Certification of Annual Income Staff is proposing new language to address an Owner's ability to change a household's income designation from the time of move in. The rules adopted in January require owners to have a written policy regarding changes in tenant income. Most Owners did not adopt such a policy and had difficulty in incorporating the requirement into their written policies. The proposed repeal of 10 TAC §10.610 and some of the proposed amendments to 10 TAC §10.615 remove the requirement to have a written policy. Instead the proposed language in 10 TAC §10.611 identifies the times an Owner can change the income designation given to a household at the time of move in. The proposed language is shown below:

(c) A household's income designation at the time of move in cannot be changed unless:

(1) The household goes over income and they are replaced with another low income household;

(2) The Development has a written policy and procedure for changing household designations as household income changes;

(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;

(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; or

(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed.

§10.614 Utility Allowances Staff is proposing a new requirement for Owners that elect to use the HUD Utility Schedule Model to calculate their utility allowance. The proposed rule would require the use of a rate plan that has a term of at least 12 months. Although the "Power to Choose" website may show plans that have a lower price per kilowatt for electricity, if that price is not available for a 12-month period, staff believes that it should not be used to calculate a utility allowance which is valid for a 12-month period. This may result in higher utility allowances, which could decrease the amount of rent an Owner can charge. Staff analyzed some areas to determine the difference and impact. In a sample zip code in Houston, for plans available for less than 12 months, the most affordable plan offered an energy rate of 3.9 cents per kWh. For plans with a term of longer than 12 months, the most affordable plan offered an energy rate of 4.7 cents per kWh. Calculating the HUD Model with a rate plan that has a term of at least 12 months may result in an allowance that is approximately $5.00 to $10.00 more.

At the roundtable on October 21, 2019, stakeholders pointed out the HUD Utility Schedule Model is not the only method that allows owners to select the rate plan used to calculate the allowance and all methodologies should be required to use a term of 12 months. That change is included in this version of proposed amendments.

§10.617- Affirmative Marketing Requirements As noted above the text of this section is proposed to be deleted and replaced with a reference to the new section of the TAC, while under separate action it is being proposed as a new section within a separate subchapter within chapter 10.

§10.618- Onsite Monitoring Clarifying language is proposed to be added to notify Owners of HOME, TCAP RF and NHTF Developments that if their Land Use Restriction Agreement requires a specific Unit mix that staff will confirm compliance with the exact requirements. Failure to provide the exact Unit mix will result in a finding of noncompliance.

§10.622- Special Rules Regarding Rents and Rent Limit Violations The following language is being proposed:

(j) Unless the household receives rental assistance, and due to changes in their income, their portion of required rent changes, Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.

Some Owners require households to sign a lease addendum that permits increases in rent during the lease term if rent limits increase, utility allowances decrease, or to end rent specials. If adopted, this language would prevent Owners from changing rent during the term of a lease that is one year or less. Increases in rents that do not exceed the program limit will be permitted at lease renewal.

At the roundtable on October 21, 2019, stakeholders pointed out that residents who receive rental assistance may undergo an interim certification or recertification during a lease term which could result in an adjustment to their portion of rent.

Attachment [1]: Preamble, including required analysis, for proposed amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the 10.617 Affirmative Marketing Requirements; Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures; §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements; §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625. The amendments clarify the requirements of the Section 811 PRA program, delete unnecessary requirements, delete requirements related to written policies and procedures and refer readers to the new section of the TAC where that information is being relocated, define the circumstances under which an Owner may change the designation given a household at the time of move in, in deregulated areas require a rate that is available for 12 months when calculating a utility allowance, delete requirements related to affirmative marketing and refer readers to the new section of the TAC where that information is being relocated notify Owners of HOME, TCAP RF and NHTF that if their Land Use Restriction Agreement requires a specific Unit mix that staff will confirm compliance with the exact requirements, and prohibits rent increases during a lease term.

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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed amendments would be in effect, the proposed amendments do not create or eliminate a government program, but relates to changes to an existing activity, compliance monitoring.

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

3. The proposed amendments do not require additional future legislative appropriations.

4. The proposed amendments do not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed amendments are not creating a new regulation.

6. The proposed amendments will not repeal an existing regulation.

7. The proposed amendments will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The proposed amendments 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 the proposed amendments and determined that the proposed amendments 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 amendments do 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 amendments as to their possible effects on local economies and has determined that for the first five years the proposed amendments would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amended sections would be an updated and more germane 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. Wilkinson also has determined that for each year of the first five years the proposed amendments are in effect, enforcing or administering the amendments 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 November 22, 2019, to December 23, 2019, to receive input on the proposed amended sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email

patricia.murphy@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, DECEMBER 23, 2019.

STATUTORY AUTHORITY. The proposed amendments are made pursuant to Tex. Gov't 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.

Blacklined Sections of Rule Proposed for Amendment

§10.602 Notice to Owners and Corrective Action Periods

(a) The Department will provide written notice to the Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) timely or if the Department discovers through monitoring, audit, inspection, review, or any other manner that the Development is not in compliance with the provisions of the LURA, deed restrictions, application for funding, conditions imposed by the Department, this subchapter, or other program rules and regulations, including but not limited to §42 of the Internal Revenue Code.

(b) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the notice will specify a 30 day Corrective Action Period for noncompliance related ~~failure~~ to ~~file~~ the AOCR, and a 90 day Corrective Action Period for other violations. During the Corrective Action Period, the Owner has the opportunity to show that either the Development was never in noncompliance or that the Event of Noncompliance has been corrected. Documentation of correction must be received during the Corrective Action Period for an event to be considered corrected during the Corrective Action Period. The Department may extend the Corrective Action Period for up to six months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the Owner ~~owner~~ requests an extension during the original 90 day Corrective Action Period, and the request would not cause the Department or the Owner to miss a federal deadline. Requests for an extension may be submitted to: compliance.extensionrequest@tdhca.state.tx.us. If an Owner submits evidence of corrective action during the Corrective Action Period that addresses each finding, but does not fully address all findings, the Department will give the Owner written notice and an additional 10 calendar day period to submit evidence of full corrective action. References in this subchapter to the Corrective Action Period include this additional 10 calendar day period.

(c) If any communication to the Owner under this section is returned to the Department as refused, unclaimed, or undeliverable, the Development may be considered not in compliance without further notice to the Owner. The Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic) and phone number(s). The Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department), and ensure that such information is at all times current and correct.

(d) Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely solely on the information supplied by the Owner in the Department's web-based Compliance Monitoring and Tracking System (CMTS) to meet this requirement. It is the Owner's sole responsibility to ensure at all times that such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CMTS will be deemed delivered to the Owner. Correspondence from the Department may be directly uploaded to the property's CMTS account using the secure electronic document attachment system. Once uploaded, notification of the attachment will be sent

electronically to the email address listed in CMTS. The Department is not required to send a paper copy, and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Unless otherwise required by law or regulation, Events of Noncompliance will not be reported to the IRS, referred for enforcement action, considered as cause for possible debarment, or reported in an applicant's compliance history or Previous Participation Review ~~previous participation review~~, until after the end of the Corrective Action Period described in this section.

(f) Upon receipt of facially valid complaints the Department may contact the Owner and request submission of documents or written explanations to address the issues raised by the complainant. The deadline to respond to the issue will be specific to the matter. Whenever possible and not otherwise prohibited or limited by law, regulation, or court order, the complaint received by the Department will be provided along with the request for documents or Owner response.

§10.605 Elections under IRC §42(g)

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 (20% of the Units restricted at the 50% income and rent limits), 40/60 (40% of the Units restricted at the 60% income and rent limits), or the average income test.

(b) HTC projects must meet the required election under IRC §42(g) no later than the end of the first year of the Credit Period. ~~Developments in the first year of the credit period that elect the average income test should lease Units in a manner to ensure that at all times, the average income and rent of the occupied units at the project does not exceed 60%. Example 605(1): A 100 Unit project places in service in April. If by October of that year, 50 of the Units are occupied and the other 50 have never been occupied, the designations of the 50 occupied Units must be equal to or less than 60% AMI and the percentage represented at application.~~

(c) An Owner~~s~~ that elects the average income test under IRC §42(g) must disperse 20%, 30%, 40%, 50%, 60%, 70%, and 80% Unit designations across all Unit Types to the greatest extent feasible, and in a manner that does not violate fair housing laws.

(d) Until and unless the Internal Revenue Service or the Treasury Department issues conflicting or additional guidance, the Department will examine the actual gross rent and income of all households to determine if Projects ~~projects~~ that elected the average income test are at or below the federal minimum of 60% AMI.

§10.607 Reporting Requirements

(a) The Department requires reports to be submitted electronically through CMTS ~~the Department's web-based Compliance Monitoring and Tracking System (CMTS)~~ and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be ~~filed~~ emailed to cmts.requests@tdhca.state.tx.us for:

(1) 9% Housing Tax Credit Developments - no later than the date prescribed in §10.402(g) of this chapter (relating to the 10% Test);

(2) 4% Housing Tax Credit Developments - no later than the date prescribed in §10.402(e) of this chapter (relating to Post Bond Closing Documentation Requirements); or

(3) For all other ~~multifamily~~ rental Developments~~developments~~, no later than September 1st of the year following the award.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (e) of this section. Example 607(1): A Development was allocated Housing Tax Credits in July 2015. The first report is due April 30, 2017, even if the Development has not yet commenced leasing activities.

(c) The AOCR is comprised of four parts:

(1) Part A "Owner's Certification of Program Compliance." All Owners must annually certify compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by the U. S. Department of the Treasury to be addressed, including those required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules;

(2) Part B "Unit Status Report." All Developments must annually report and certify the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations. In addition, Owners are required to report on the race and ethnicity, family composition, age, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and receiving assistance or if the household elects not to disclose the information, such election;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The certified answers to the questions on Part C satisfy this requirement; and

(4) Part D "Form 8703." Tax exempt bond properties must file Form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed Form 8703 for the preceding calendar year.

(d) The Owner ~~owner~~ is required to report certain financial information to the Department electronically through CMTS. If supplemental information is required, it must be uploaded to the Development's CMTS account.

(1) "Annual Owner's Financial Certification" (formerly Part D of the AOCR). Developments funded

by the Department must annually provide and certify to the data requested in the Annual Owner's Financial Certification (AOFC).

(2) Developments funded with Exchange or TCAP must also submit a "Quarterly Owner's Financial Certification" and these must be submitted in January, April, July, and October on the 15th business day of the month.

(e) Parts A, B, C, and D of the AOCR and the Annual Owner's Financial Certification must be provided to the Department no later than April 30th of each year, reporting data current as of December 31st of the previous year (the reporting year).

(f) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status Report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th of the preceding month. The first quarterly report is due on the first quarterly reporting date after leasing activity commences. Failure to report occupancy timely will result in a finding of noncompliance.

(g) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(h) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

~~(i) Exchange developments must submit IRS Form(s) 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) completed 30 days after the Department issues the executed form(s). If an Owner elects to group buildings together into one or more multiple building projects, the owner must attach a statement identifying the buildings in the project. An owner may request to change the election made on line 8(b) only once during the Compliance Period. The request will be treated as a non-material amendment, subject to the fee described in §11.901 of this chapter (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).~~

§10.609 Notices to the Department

If any of the events described in paragraphs (1) – (7)~~(6)~~ of this section occur, written notice must be provided to the Department within the respective timeframes. Failure to do so will result in an ~~finding of noncompliance~~Event of Noncompliance, and may be taken into consideration during Previous Participation Reviews ~~previous participation reviews~~ in accordance with Chapter 1 Subchapter C of this title, or in Enforcement ~~enforcement~~ actions in accordance with Chapter 2 of this title.

(1) Written notice must be provided at least 30 days prior to any proposed sale, transfer, or exchange of the Development or any portion of the Development, and the Department must give its prior written approval to any such sale, transfer, or exchange, which will include a previous participation review on the proposed new ownership, requiring that they complete and provide a Previous Participation Review Form;

(2) Notification must be provided within 30 days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster);

(3) Owners of Bond Developments shall notify the Department of the date on which 10% of the Units are occupied and the date on which 50% of the Units are occupied, and notice must occur within 90 days of each such date;

(4) Within 30 days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure; ~~and~~

(5) Within 10 days of a change in the contact information (including contact persons, physical addresses, mailing addresses, email addresses, phone numbers, and/or the name of the property as know by the public) for the Ownership entity, management company, and/or Development the Department's CMTS must be updated; ~~and~~

(6) Within 30 days of completion of the American Institute of Architects form G704- Certificate of Substantial Completion, or Form HUD-92485 for instances in which a federally insured HUD loan is utilized, an Owner must request a Final Construction Inspection~~.~~; and

(7~~6~~) Owners of Developments that participate in the Section 811 PRA program are required to notify the Department about the availability of U~~u~~nits as described in §10.624 of this subchapter.

§10.610 Written Policies and Procedures

See §10.802 of this chapter.

~~(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation. If an owner fails to follow their written policies and procedures it will be cited as noncompliance with this section.~~

~~(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.~~

~~(2) The Owner must have all policies and related documentation required by this section available in the leasing office and anywhere else where applications are taken. Developments that accept electronic applications must post to their website the tenant selection criteria and the TDHCA form~~

based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must be reasonably related to the applicant's ability to perform under the lease and include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and

(iii) Fees and/or deposits required as part of the application process. Developments with HOME, NHTF, NSP, Section 811 and/or TCAP RF units cannot collect an application deposit for units designated under these programs. Owners of HTC, TCAP and Exchange Developments are discouraged from collecting an application deposit. If an application deposit is collected it must soon after be converted into a refundable security deposit. No fees or deposits may be collected to place a household or applicant on a waiting list.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(C) Occupancy Standards. If fewer than two persons (over the age of six) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statement: Screening criteria will be applied in a manner consistent with all

~~applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.~~

~~(E) Specific age requirements if the Development is operating as an Elderly Property either under the Housing for Older Persons Act of 1995 as amended (HOPA), or the age related eligibly criteria required by its use of federal funds.~~

~~(2) The criteria must not:~~

~~(A) Include preferences for admission. A property may not have a preference unless it is either in a recorded LURA which has been approved by the Department or is required by a program in which the Owner is participating which requires the preference. Owners that include preferences in their leasing criteria due to other federal financing must provide either written approval from HUD, USDA, or VA for such preference or identify the statute, written agreement, or federal guidance documentation that permits the adoption of this preference;~~

~~(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or~~

~~(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.~~

~~(3) If the Development is funded with HOME, TCAP RF, NHTF, or NSP funds, in accordance with 24 CFR §93.356 and 24 CFR §92.359, the criteria may have a preference for persons who have experienced domestic violence, dating violence, sexual assault, or stalking.~~

~~(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.~~

~~(1) The policy must provide:~~

~~(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and~~

~~(B) A timeframe in which the Owner will respond to a request that is compliant with 10 TAC §1.204(b)(3) and (d) (relating to Reasonable Accommodations).~~

~~(2) The policy must not:~~

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household whose need is readily apparent to provide third-party documentation of a disability;

(C) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation;

(D) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or

(E) Require a household to rent a unit that has already been made accessible.

(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) Determining how lawful preferences are applied; and

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR §8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. The Development's wait list policy must inform applicants and current residents of the availability of lower rent units and the process for renting a lower rent unit. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed and must include policies regarding changes in income that address the options available in §10.615 of this subchapter. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Developments that elect the income averaging test and all Developments with additional rent and occupancy restrictions must have written policies regarding changes in income that address the options available in §10.615 of this subchapter.

(f) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications and notifying denied applicants of their rights.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

~~(2) Within seven days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:~~

~~(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based;~~

~~(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the Development. An appeals procedure is required for HOME Developments that are owned by Community Housing Development Organizations, and units at Developments that lease units under the Department's Section 811 PRA program. The appeals process must provide a 14 day period for the applicant to contest the reason for the denial and comply with other requirements of the HUD Handbook 4350.3 4 9; and~~

~~(C) The TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation."~~

~~(3) The Development must keep a log of all denied applicants that completed the application process to include:~~

~~(A) Basic household demographic and rental assistance information, if requested during any part of the application process;~~

~~(B) The specific reason for which an applicant was denied, the date the decision was made; and~~

~~(C) The date the denial notice was mailed or hand delivered to the applicant.~~

~~(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:~~

~~(A) A copy of the written notice of denial; and~~

~~(B) The Tenant Selection Criteria policy under which an applicant was screened.~~

~~(5) If an 811 applicant is being denied, within three calendar days the Department point of contact must be notified and provided with a copy of the written notice that was provided to the applicant.~~

~~(g) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.~~

~~(1) The owner must provide in any non-renewal or termination notice, a specific and lawful reason for the termination or non-renewal.~~

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA-administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and

(D) Include information on the appeals process if one is used by the property.

(h) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

(i) At the time of application Owners must provide each adult in the household the TDHCA form based on HUD form 5380 "Notice of Occupancy Rights under the Violence Against Women Act" and the HUD form 5382 "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation." To avoid providing applicants and residents with duplicate information, TDHCA-administered Developments layered with other federal funds are permitted to amend the TDHCA VAWA forms to incorporate requirements of other funders. However, none of the information included in the TDHCA created form may be omitted.

(j) HTC Developments that have elected average income test must describe in their leasing criteria how units will be leased and inform applicants of the set-asides that the Development offers. Owners must disperse 20%, 30%, 40%, 50%, 60%, 70% and 80% units designations across all unit types in a manner that does not violate fair housing laws. HTC Developments that have elected the income averaging test must maintain separate waiting lists for each of the set-asides offered by the Development. The waiting lists must be available to both existing households and prospective tenants. The Development cannot provide a preference for applicants over existing households. The Development is not required to place existing households that receive rental assistance on a waiting list for a lower rent unit. Owners are encouraged to designate households that receive rental

~~assistance at the level indicated by the contract rent for the unit.~~

~~(k) Developments that participate in the Section 811 program must have a written EIV policy that includes security practices and complies with the HUD Handbook 4350.3, Chapter 9. Owners are discouraged from adopting policies that exceed the minimum requirements established by HUD.~~

~~(l) Policies and procedures will be reviewed during monitoring visits, through resident complaints or through an owner initiated written policies and procedures review. Owners may request a review of the written policies and procedures for a portfolio of Developments by submitting a request to wpp@tdhca.state.tx.us. After review by the Department, Owners may make non-substantive changes to their policies. Significant changes to reviewed policies without Department approval may result in findings of noncompliance.~~

~~(m) Development Owners must allow applicants to submit applications via mail and at the Development site or leasing office; if the Development is electronically equipped, the Development may also allow applications to be submitted via email, website form, or fax. The Development's tenant selection criteria must state available alternate means of submission and include address, email, or other necessary contact information on the form or its attached leasing criteria.~~

§10.611 Determination, Documentation and Certification of Annual Income

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program administered by HUD, using the definitions of annual income described in 24 CFR §5.609 as further described in the HUD Handbook 4350.3, as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing IRS Form 8823, the IRS guidance will be controlling. At the time of program designation as a low-income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. Certification and documentation of household income is an Owner's responsibility, even if the Owner is using a manager's services to handle tenant intake and leasing. Accordingly, Owners should ensure that they hire competent and properly trained managers and that they exercise appropriate oversight of any manager's activities.

(b) For the initial certification of a household residing in a HOME, NHTF, NSP, or TCAP RF assisted unit ~~at a Development committed HOME funds after August 23, 2013~~, Owners ~~owners~~ must examine at least two months of source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation).

(c) A household's income designation at the time of move in cannot be changed unless:

(1) The household goes over income and they are replaced with another low income household;

(2) The Development has a written policy and procedure for changing household designations as household income changes;

(3) The household receives rental assistance, and due to changes in their income, their portion of required rent exceeds the rent limit of their move in designation;

(4) The household is designated as Market Rate and a certification is performed that completely and clearly documents that the household is qualified as low income; or

(5) The household has been designated as low income and they become, or it is determined that they have been, an ineligible full time student household. If the Development has Units that do not have student restrictions, the household can continue occupancy, and their designation may be removed.

§10.612 Tenant File Requirements

(a) At the time of program designation as a ~~low-income~~low income household, typically at initial occupancy, Owners must create and maintain a file that at a minimum contains:

(1) A Department approved Income Certification form signed by all adults. At the time of program designation as a ~~low-income~~low income household, Owners must certify and document household income. In general, all low-income households must be certified prior to move in. The Department requires the use of the TDHCA Income Certification form, unless the ~~property~~ Development also participates in the Rural Development or a Project Based HUD Program, in which case, the other program's Income Certification form will be accepted;

(2) Documentation to support the Income Certification form including, but not limited to, applications, first hand or third party verification of income and assets, and documentation of student status (if applicable). The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form. Owners should scrutinize these documents to identify and address any obvious attempts at forgery, alteration, or generation of falsified documents; and

(3) A lease with all necessary addendums to ensure that compliance with applicable federal regulations and §10.613 of this subchapter (relating to Lease Requirements).

(b) Annually thereafter on the anniversary date of the household's move in or initial designation:

(1) Throughout the Affordability Period, all Owners of Housing Tax Credit, TCAP, and Exchange Developments must collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form.

(2) During the Compliance Period for all Housing Tax Credit, TCAP, and Exchange Developments and

throughout the Affordability Period ~~affordability period~~ for all Bond developments and HOME, ~~NSP,~~ and TCAP RF Developments~~committed funds after August 23, 2013~~, Owners must collect and maintain current student status data for each low-income household. This information must be collected within 120 days before the anniversary of the effective date of the original student verification and can be collected on the Department's Annual Eligibility Certification or the Department's Certification of Student Eligibility form or the Department's Income Certification form. Throughout the Compliance Period for HTC, TCAP, and Exchange developments, low-income households comprised entirely of full-time students must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. For Bond Developments~~developments~~, if the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). For HOME, ~~NSP,~~ and TCAP RF Developments ~~committed funds after August 23, 2013~~, an individual does not qualify as a low income low-income or ~~very low-income family~~very low income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.

(3) The types of ~~properties~~ Developments described in subparagraphs (A) - (D) of this paragraph are required to recertify annually the income of each low-income household using a Department approved Income Certification form and documentation to support the Income Certification (see subsection (a)(1) - (2) of this section):

(A) Mixed income Housing Tax Credit, TCAP and Exchange projects (as defined by line 8(b) of IRS Form(s) 8609 and accompanying statements, if any) that have not completed the 15 year Compliance Period.

(B) All Bond D~~d~~evelopments with less than 100% of the units set aside for households with an income less than 50% or 60% of area median income.

(C) HTF Developments with Market Rate units. However, HTF Developments with other Department administered programs will comply with the requirements of the other program.

(D) HOME, TCAP RF, and NHTF Developments. Refer to subsection (c) of this section.

(c) Ongoing tenant file requirements for HOME, ~~and~~ TCAP RF, and NHTF Developments:

(1) HOME, TCAP RF, and NHTF Developments must complete a recertification with verifications of each ~~HOME~~ assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME, TCAP RF and ~~Development~~NHTF Development affordability period is the effective date ~~on the first page of~~ in the HOME, TCAP RF, and NHTF LURA. For example, a HOME Development with a LURA effective date of May 2011, will have the years of the affordability determined in Example 612(1):

(A) Year 1: May 15, 2011 - May 14, 2012;

(B) Year 2: May 15, 2012 - May 14, 2013;

(C) Year 3: May 15, 2013 - May 14, 2014;

(D) Year 4: May 15, 2014 - May 14, 2015;

(E) Year 5: May 15, 2015 - May 14, 2016;

(F) Year 6: May 15, 2016 - May 14, 2017;

(G) Year 7: May 15, 2017 - May 14, 2018;

(H) Year 8: May 15, 2018 - May 14, 2019;

(I) Year 9: May 15, 2019 - May 14, 2020;

(J) Year 10: May 15, 2020 - May 14, 2021;

(K) Year 11: May 15, 2021 - May 14, 2022; and

(L) Year 12: May 15, 2022 - May 14, 2023.

(2) In the scenario described in paragraph (1) of this subsection, all households in HOME, TCAP RF, and NHTF Units must be recertified with source documentation during the sixth and twelfth years or between May 15, 2016, to May 14, 2017, and between May 15, 2022, and May 14, 2023.

(3) In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME, TCAP RF, and NHTF funds. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's Income Certification form will be accepted. If the household reports on their self certification that their annual income exceeds the current 80% applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then an annual income recertification with verifications is required.

(d) Tenant File requirements for Section 811 PRA Units~~units~~. Files for households assisted under the Section 811 program must document the household's eligibility for the program, the deductions for which the household qualifies and the following HUD forms:

(1) Section 811 Project Rental Assistance Application;

(2) Verification of disability, HUD 90102;

(3) House Rules;

(4) Move in move out inspection form HUD 90106, or TDHCA Section 811 Waiver of Move-in;

~~(5) TDHCA Section 811 Waiver of Move-in inspection;~~

~~(6) Damages (Security deposit Deductions);~~

(~~7~~5) Tenant acknowledgement of the Fact Sheet "How your rent is determined";

(~~8~~6) Tenant acknowledgment of Resident Rights and Responsibilities;

(~~9~~7) Tenant acknowledgement of EIV and You Brochure;

(~~10~~8) Verification of Age;

(~~11~~9) Verification of Social Security number;

(~~12~~10) Screening for drug abuse and other criminal activity;

(~~13~~11) 811 Tenant Selection Plan;

(~~14~~12) Supplement to Application for Federally Assisted Housing: Form 92006;

(~~15~~13) Annual Recertification Initial Notice;

(~~16~~14) Annual Recertification First Reminder Notice;

(~~17~~15) Annual Recertification Second Reminder Notice;

(~~18~~16) Annual Recertification Third Reminder Notice;

(~~19~~17) Race and Ethnic Data Reporting form: HUD 27061-H;

(~~20~~18) HUD 9887 and HUD 9887-A;

(~~21~~19) Annual U~~u~~nit inspection;

(~~22~~20) Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures: HUD form 50059; and

(~~23~~21) HUD Model lease 92336-PRA.

§10.613 Lease Requirements

(a) Eviction and/or termination of a lease. HTC, TCAP, and Exchange Developments must specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy

for other than good cause are prohibited. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action.

(b) HOME, TCAP RF, NHTF, and NSP Developments are prohibited from evicting low income ~~low-income~~ residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for Transitional Housing transitional housing (if applicable), or for other good cause. It must be specifically stated in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253 and 24 CFR §93.303). Owners must also comply with all other lease requirements and prohibitions stated in 24 CFR §92.253 or 24 CFR §93.303, as applicable. To terminate or refuse to renew tenancy in HOME, TCAP RF, and NSP Developments, the Owner must serve written notice to the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(c) In accordance with the Violence Against Women Act, an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking against the documented victim of such actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as a serious or repeated violation of a lease or good cause for termination of tenancy. The Department does not determine if an Owner has good cause or if a resident has violated the lease terms for other reasons. Challenges for evictions or terminations of tenancy must be made by a court of competent jurisdiction or an agreement of the parties (including an agreement made in arbitration), and the Department will rely on that determination.

(d) A Development~~s~~ must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) For HOME, TCAP, TCAP RF, NHTF, 811 PRA, and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that all households at HOME, TCAP, TCAP RF, NHTF, and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. (24 CFR §92.355, 24 CFR §93.361 and §570.487(c)). The addendum and disclosure are not required if all lead has been certified to have been cleared from the Development in accordance with 24 CFR §35.130, and the Owner has the required certification in its on-site records.

(g) ~~All~~ An Owner~~s~~ may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating

violence, sexual assault, or stalking against another lawful occupant living in the Uunit or other affiliated individual as defined in the VAWA 2013.

(h) All NHTF, TCAP RF, NSP, 811 PRA, and HOME Developments for which the contract is executed on or after December 16, 2016, must use the Department created VAWA lease addendum which provides the ability for the tenant to terminate the lease without penalty if the Department determines that the tenant qualifies for an emergency transfer under 24 CFR §5.2005(e). 811 PRA Units are prohibited from using the expired 2005 VAWA lease addendum. After OMB approval of a VAWA lease addendum, all 811 PRA households must have a valid and executed VAWA lease addendum. For the 811 PRA program certain addenda for the HUD model lease may be required such as Lead Based Paint Disclosure form, house rules, and pet rules. No other attachments to the lease are permissible without approval from the Department's 811 PRA staff.

(i) Leasing of HOME, NSP or TCAP RF, or NHTF Units units to an organization that, in turn, rents those Uunits to individuals is not permissible for Developments with contracts dated on or after August 23, 2013. Leases must be between the Development and an eligible household. NSP Developments may only utilize Master Leases if specifically allowed in the Development's LURA.

(j) Housing Tax Credit Units units leased to an organization through a supportive housing program where the Oowner receives a rental payment for the unit regardless of physical occupancy will be found out of compliance if the Uunit remains vacant for over 60 days. The Unit unit will be found out of compliance under the finding Event of Noncompliance "Violation of the Unit Vacancy Rule."

(k) It is a Development Owner's responsibility at all times to know what it has agreed to provide by way of common amenities, Unit unit amenities, and services.

(l) A Development Owner shall post in a common area of the leasing office a laminated copy and provide each household, during the application process and upon a subsequent change to the items described in paragraph (2) of this subsection, the brochure made available by the Department, A Tenant Rights and Resources Guide, which includes:

(1) Information about Fair Housing and tenant choice;

(2) Information regarding common amenities, Unit unit amenities, and services; and

(3) A certification that a representative of the household must sign prior to, but no more than 120 days prior to, the initial lease execution acknowledging receipt of this brochure.

(4) In the event this brochure is not provided timely or the household does not certify to receipt of the brochure, correction will be achieved by providing the household with the brochure and receiving a signed certification that it was received.

(m) For Section 811 PRA Unitsunits, Owners must use the HUD Model lease, HUD form 92236-PRA.

§10.614 Utility Allowances

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section as well as any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meanings assigned in Chapters 1, 2, 10, 11, and 12 of this title.

(1) Building Type. The HUD Office of Public and Indian Housing (PIH) characterizes building and U~~u~~nit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator (URL)) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition: http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g., cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g., Customer Charge); and

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan (MFDL). Funds provided through the HOME Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), Repayments from the Tax Credit Assistance Program (TCAP RF), or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds, and Project Based

Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System (RUBS); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, Bonds~~,~~ and SHTF ~~HTF~~ include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For a Development with an MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g., electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with MFDL funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service (IRS), the Department considers Developments awarded an MFDL (e.g., HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority (PHA). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ Units~~units~~), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, 10 of which are Apartments (5+ Units ~~units~~) and the other 10 buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient U~~u~~nits, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program;

(II) The Department's Housing Choice Voucher Program; or

(III) Another PHA which publishes a separate utility allowance schedule specific to the Development's location.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, ~~-~~and specifically include all Component Charges for providing the utility service. In deregulated areas, the rate plan used to calculate the estimate must have a term of at least 12 months.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g., MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the Units ~~units~~ and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review.

(I) In the event the allowance is being calculated for an application of Department funding (e.g., 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes.

(II) At lease up, the Owner ~~owner~~ may use the utility allowance taking into consideration the green discount if they obtain written documentation from a qualified professional (e.g., a qualified energy efficiency consultant) indicating that the Units ~~units~~ and buildings will meet the qualifications for the Green Discount within six months of the placed in service date or for MFDL within six months of the construction completion date.

(iv) Do not take into consideration any costs (e.g., penalty) or credits that a consumer would incur

because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than~~t~~ 2000 kWh. Example 614(4): A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(v) In deregulated areas, the rate plan used to calculate the allowance must have a term of at least 12 months.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. In deregulated areas, the rate plan used to calculate the allowance must have a term of at least 12 months. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in subsection (f)(3) of this section related to Effective Dates; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20% of each Unit Type, whichever is greater. If there are less than five Units of any Unit Type, data for 100% of the Unit Type must be provided; and

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in subsection (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g., actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within 45 days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §§92.252 and 93.302, for an MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2015-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or

(C) The Owner ~~owner~~ may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans of at least 12 months; and

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The Owner ~~owner~~ will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the Owner ~~owner~~ also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program Units ~~units~~ thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are Units ~~units~~ under an MFDL program are considered HUD-Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in subsection (c)(3)~~(A),~~ (B), (C), ~~or~~ (D), or (E) of this section related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g., base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. If the allowance is for a building in a deregulated area, the utility rate selected for use in calculation must have a term of at least 12 months, unless the allowance is calculated using the method described in subsection (c)(3)(E), in which case the unit's actual effective utility rate will be used regardless of the rate's term. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year eight, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) of this section related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the Owner ~~owner~~ until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(3)(A) of this section related to Methods, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in subsection (c)(3)(B), (C), (D) and (E) of this section related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

201900178-1.pdf

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance (PRA) Program, the Department will establish the Utility Allowance for all 811 PRA Units~~units~~. On an annual basis, the Department will calculate a Utility Allowance and provide the Owner with a property-specific rent schedule containing the approved Utility Allowance. The allowance listed on the rent schedule only applies to 811 PRA Units~~units~~, not the entire building, and is the only allowance approved for use on 811 PRA Units~~units~~.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g., electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings (e.g., buildings with HOME/ TCAP RF funds) are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation,

including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than an MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes MFDL funds from the Department, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(B), (C), (D), or (E) of this section related to Methods. Applicants must submit their utility allowance to the Compliance Division prior to full application submission. In the event that the application has an MFDL from the Department, and receives federal funds from a unit of local government, the Department will require the use of the allowance approved by the Department.

(4) If the application includes federal funds from a unit of local government but no MFDL from the Department, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with subsection (c)(3)(A), (B), (C), (D), or (E) of this section related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8): An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9): An Applicant intends to submit an application for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to ua_application@tdhca.state.tx.us. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(l) If Owners want to change to a utility allowance other than what was used for underwriting the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. The Owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the Credit Period (if applicable), whichever is earlier.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

§10.615 Elections under IRC §42(g) and Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments

(a) Under the Code, HTC Development Owners may elect 20% of the Units restricted at the 50% income and rent limits (20/50), 40% of the Units restricted at the 60% income and rent limits (40/60) or the average income ~~averaging~~ minimum set aside. Many Developments have additional income and rent requirements (e.g., 30%, 40% and 50%) that are lower than or in addition to the election requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's LURA.

(b) A Development with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted Units. The Development's wait-list policy must inform applicants and current residents of the availability of lower rent Units and the process for renting a lower rent Unit. Unless otherwise approved at Application, underwriting, and cost certification, all Unit sizes must be available at the lower rent limits. The wait-list policy for Developments with lower rent restricted Units must address how the waiting list for their lower rent restricted Units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(c~~b~~) The Department will examine the actual gross rent and income levels of all households to

determine if the additional income and rent requirements of the LURA are met. Until and unless the Internal Revenue Service or Treasury Department issue conflicting guidance, the Department will examine the actual gross rent and income of all households to determine if Developments that elected the average income ~~averaging~~ minimum set aside have met the federal requirements and any lower additional occupancy restriction reflected in the Development's LURA.

~~(c) One hundred percent HTC Developments (developments with no Market Rate units) with additional rent and occupancy restrictions are neither required nor prohibited from completing annual income recertifications. The Development's written policies and procedures must specify the Development's choice.~~

~~(1) If a 100% low income development that elects the 20/50 or 40/60 test under IRC §42(g) chooses to perform annual income recertifications, all households designated as meeting the additional rent and occupancy set aside must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.~~

~~(2) If a 100% low income development elects the average income test and chooses to do annual income recertifications, all households must be recertified on an annual basis; failure to do so will be cited as noncompliance with written policies and procedures but not reported to the IRS on form 8823.~~

~~(3) If the income level of the household changes, the Owner may adjust the Unit's designation and rent (up or down) in accordance with all applicable lease terms. Owners that elect the average income test under IRC §42(g) must ensure that the project still has an average income equal to or less than 60% and the percentage represented at the time of Application.~~

~~(4) Owners that do not perform annual income recertifications may not increase the rent level of a household designated towards the Development's additional rent and occupancy restrictions. Example 615(1): A household was designated as a 50% household at the time of move in. The Development is not required to and does not perform annual income recertifications. New rent limits are released and they are higher. The Development may increase the household's rent in accordance with the lease, but not above the new 50% rent limit.~~

~~(d) Developments that elect the 20/50 or 40/60 test under IRC §42(g) and have Market Units will be monitored as described in this subsection:~~

~~(1) The HTC program requires Mixed Income projects to complete annual income recertifications and comply with the Available Unit Rule. When a household's income at recertification exceeds 140% of the applicable current income limit elected by the minimum set-aside, the Owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance.~~

~~(2) HTC Developments that elect the 20/50 or 40/60 test under IRC §42(g) with market rate units and additional rent and occupancy restrictions must have written policies and procedures that address changes in income at recertification. Owners may comply in the following ways:~~

~~(A) Households initially certified at the 30, 40, or 50% income and rent limits may maintain the designation they had at initial move in unless the household's income exceeds 140% of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation from the initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;~~

~~(B) Owners may change the designation of a household at recertification and increase the rent accordingly provided that another household's rent is decreased to maintain the set aside requirement. Example 615(2): A 100 Unit development elected the 40/60 minimum set aside, and has an additional rent and occupancy restriction of 10 Units at 30% and 10 Units at 50%. A 30% household recertifies and their income exceeds the 30%. In accordance with the provisions of the lease, the owner may offer this household rent at a higher designation, and simultaneously lower the rent for another household that has been on the Development's waiting list for a 30% Unit; or~~

~~(C) If the household's income exceeds 140% of the highest income tier established by the minimum set aside, the household must be redesignated as over income and the Next Available Unit Rule must be followed.~~

~~(e) HTC Developments that elect income averaging test and have market rate units must have written policies and procedures that address changes in income at recertification.~~

~~(1) If the income tier of a household changes, Owners are permitted but not required to adjust the household's rent to their new designation (higher or lower) as long as the project still has an average rent of equal to or less than the federally required 60% average, or the additional occupancy restriction reflected in the LURA. If the household income increases, and re-designating the rent to the new AMI tier would cause the project average to exceed the required AMI average, the Owner will remain in compliance if the rent is restricted to the limit that maintains the required AMI average.~~

(~~2~~d) Until and unless the Internal Revenue Service or the Treasury Department issue conflicting or additional guidance, the Department will monitor the Available Unit Rule in the following manner for ~~income averaging developments~~ Developments that elected the average income minimum set aside:

(1~~A~~) If the income of the household who, at the last certification, had an income and rent less than the 60% limits exceeds 140% of the 60% limit, the household must be redesignated as over income.

(2~~B~~) If the income of a household with an income or rent above the 60% level and less than or equal to the 70% limits exceeds 140% of the 70% limit, the household must be designated as over income.

(3C) If the income of a household with an income or rent above the 70% level and less than or equal to the 80% limits exceeds 140% of the 80% limit, the household must be designated as over income.

(4D) Owners are not required to terminate the tenancy of over income households. When the Unit occupied by an over income household is vacated, it must be reoccupied by a household with an income and rent level equal to or less than the rent level of the household that went over income. In addition, the Unit must be reoccupied by a household that restores the low income average of the project to 60% or less.

(ef) Units at 80% area median income and rent on HTC Developmentsdevelopments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10% of the Development's development's Market Rate Units units to households at 80% income and rents. This section provides guidance for implementation. If the LURA requires 10% of the Market Rate Units units be leased to households at 80% income and rent limits, the Owner owner must certify the 80% households at the time of move in only. Recertifications will not be required. Student rules do not apply to Units units occupied by 80% households. Noncompliance with the requirement to lease to 80% households is not reportable to the IRS on IRS Form 8823 but will be cited as noncompliance under the event "Development failed to meet additional state required rent and occupancy restrictions."

(fg) The Department does not require Developments to lease more Units under the additional occupancy restrictions than established in their LURA. However, if a Development inadvertently designates more households than required under the additional rent and occupancy restrictions, they may only decrease to the minimum number through attrition and new move ins, not by removing designations.

§10.616 Household Unit Transfer Requirements for All Programs

(a) The requirements and restrictions regarding household transfers for HTC, Exchange, and TCAP Developments are based on whether the tax credit project is 100% low-income or mixed income and if the Owner owner elected to treat buildings in the project as part of a multiple building project. To determine if a Development is a multiple building project, refer to the election on IRS Form(s) 8609 line 8(b) and accompanying statements (if any). If IRS Form(s) 8609 have not yet been issued by the Department and filed by the Ownerowner, each building is its own project. The Department may allow Owners to indicate their intended 8(b) elections and will monitor accordingly. Failure to file the same elections with the IRS may result in noncompliance, additional monitoring, an additional monitoring fee and findings of noncompliance.

(1) 100% low-income multiple building projects: Households may transfer to any Unit unit in a 100% low-income multiple building project and retain their program designation. The household does not need to be and should not be certified at the time of transfer. The move in date remains the date the household was first designated under the program.

(2) Each building is its own project (100% low-income and mixed income projects). Developments

that made the 20/50 or 40/60 election: at the time of transfer, the household must be certified and have a current annual income less than the income limit established by the minimum set aside the Owner ~~owner~~ selected. Developments that elected the average income test under IRC §42(g): the household must be certified and their current designation averaged together with the designations of the other households in the project must be equal to or less than the percentage represented at the time of A~~a~~pplication.

(3) Mixed income multiple building projects: Low-income households retain their program designation when they transfer to any Unit ~~unit~~ in a multiple building project if at the last annual certification their income was less than 140% of area median income level set by the minimum set aside.

(b) Household transfers for Bond, HTF, NHTF, HOME, TCAP RF, and NSP with floating Units~~units~~. Households may transfer to any Unit within the Development. A certification is not required at the time of transfer. If the household transfers to a different Unit Type, the Development must maintain the Unit Type dispersion as reflected in its LURA, by re-leasing the vacated Unit ~~unit~~ to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(c) Household transfers for NHTF, HOME, TCAP RF, and NSP with fixed Units~~units~~. Households may transfer to any Unit and do not need to be certified at the time of the transfer. If the household transfers to a Unit that is not fixed, the Development must re-lease the vacated Unit to a program eligible household. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved into the Development. If the Development is layered with Housing Tax Credits, use the transfer guidelines described in subsection (a) of this section (relating to Household Unit Transfer Requirements).

(d) Household Transfers in the Same Building for the HTC Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The Unit ~~unit~~ designations will swap status.

~~(e) Household transfers for the Section 811 PRA must be approved by the Department in writing.~~

§10.617 Affirmative Marketing Requirements

See §10.801 of this chapter.

~~(a) Applicability. Effective April 1, 2015, compliance with this section is required for all Developments with five or more total units to further the objectives of Title VIII of the Civil Rights Act of 1968 and Executive Order 13166.~~

~~(b) General. Owners of Developments with five or more total units must affirmatively market their~~

~~units to promote equal housing choice for prospective tenants, regardless of race, color, religion, sex, national origin, familial status, or disability and must develop and carry out an Affirmative Fair Housing Marketing Plan (or Affirmative Marketing Plan) to provide for marketing strategies and documentation of outreach efforts to prospective applicants identified as "least likely to apply." In general, those populations that are least likely to apply may include: African Americans, Native Americans, Alaskan Natives, Asians, Native Hawaiians, Other Pacific Islanders, Caucasians (non-Hispanic), Hispanics or Latinos, and families with children. All Affirmative Marketing Plans must provide for affirmative marketing to persons with disabilities. Some Developments may be required by their LURAs to market units specifically to veterans or other populations.~~

~~(c) Plan format. Owners are encouraged to use any version of HUD Form 935.2A to meet Affirmative Marketing requirements. Owners participating in HUD funded programs administered by the Department must use the version required by the program.~~

~~(d) Marketing and Outreach.~~

~~(1) The plan must include special outreach efforts to the "least likely to apply" populations through specific media, organizations, or community contacts that work with least likely to apply populations or work in areas where least likely to apply populations live.~~

~~(2) Advertisements and/or marketing materials must contain:~~

~~(A) The Fair Housing logo and~~

~~(B) The contact information for the individual who can assist if reasonable accommodations are needed in order to complete the application process. The information about reasonable accommodations must be in both English and Spanish.~~

~~(e) Timeframes.~~

~~(1) An Owner must begin its affirmative marketing efforts for each of the identified populations at least six months prior to the anticipated date the first building is to be available for occupancy. As a condition of an award to a new Development, the Board may require affirmative marketing efforts to begin more than six months prior to the anticipated date the first building is to be placed in service; and~~

~~(2) An Owner must update its Affirmative Marketing Plan and populations that are least likely to apply every five years from the effective date of the current plan or, for HUD funded or USDA properties, as otherwise required by HUD or USDA.~~

~~(f) Record keeping. Owners must maintain records of each Affirmative Marketing Plan and specific outreach efforts completed for the greater of three years or the recordkeeping requirement identified in the LURA.~~

~~(g) Exception to Affirmative Marketing. If the Development has closed its waiting list, Affirmative~~

~~Marketing is not required. Affirmative Marketing is required as long as the Owner is accepting applications, has an open waiting list, or is marketing prior to placement in service as required under subsection (e)(1) of this section.~~

§10.618 Onsite Monitoring

(a) The Department may perform an onsite monitoring review, a mail in desk review and physical inspection of any Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low-income Development. The Department will conduct:

(1) The first review of HTC Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) The first review of all Developments, other than those described in paragraph (1) of this subsection, as leasing commences;

(3) During the Federal Compliance Period subsequent reviews will be conducted at least once every three years;

(4) After the Federal Compliance Period, Developments ~~developments~~ will be monitored in accordance with §10.623 of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period);

(5) A physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units;

(6) Limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least 48 hours notice will be provided); and

(7) Reviews, meetings, and other appropriate activity in response to complaints or investigations.

(c) The Department will perform onsite file reviews or a mail in desk review and monitor:

(1) Low-income resident files in each Development, and review the Income Certifications;

(2) The documentation the Development Owner has received to support the certifications;

(3) The rent records; and

(4) Any additional aspects of the Development or its operation that the Department deems necessary or appropriate.

(d) The LURA for most HOME, NSP, TCAP RF, and NHTF Developments specifies a required Unit Mix. During onsite monitoring visits it will be determined if the minimum number of affordable units and exact square footage has been provided. Failure to provide the exact square footage listed in the LURA will be cited as "Failure to provide correct square footage". Failure to provide the required number of Units required by the LURA will be cited as "Household income above income limit upon initial occupancy"

Example 612(2). A TCAP RF LURA requires eight low-income units with the following Unit mix:

(A) Three one bedroom, one bath units with a Net Rentable Area (NRA) of 770 sq ft;

(B) One two bedroom one bath units with a Net Rentable Area (NRA) of 900 sq ft; and

(C) Four three bedroom two bath units with a Net Rentable Area (NRA) of 1000 sq ft.

If during the onsite review the Development has eight units designated as TCAP RF, but is not exactly the Units and square footage mix shown above (even if the actual square footage provided is greater) the noncompliance "Failure to provide correct square footage" will be cited.

(ed) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low-Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the Income Certification, the documentation the Development Owner has received to support that certification, and the rent record for any low-income tenant.

(fe) The Department will select the Low-Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice, as defined in Treasury Regulation 1.42-5, to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious alleged or suspected noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

(gf) In order to prepare for monitoring reviews and physical inspections and to reduce the amount of time spent onsite, Department staff must review certain requested documentation described in the onsite notification announcement. Owners are required to submit documentation by the required deadline indicated in the onsite notification announcement. Failure to submit required documentation will result in a finding of noncompliance.

§10.622 Special Rules Regarding Rents and Rent Limit Violations

(a) Rent or Utility Allowance Violations of the maximum allowable limit for the HTC program. Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that an HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the Owner ~~owner~~ must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions under the HTC program. ~~(for Developments that elected the 20/50 and 40/60 test under IRC §42(g) only).~~ If Owners agreed to additional rent and occupancy restrictions, the Department will monitor to confirm compliance. If noncompliance is discovered, the Department will require the Owner to restore compliance by refunding (not a credit to amounts owed the Development) any excess rents to a sufficient number of households to meet the set aside.

(c) Rent Violations of the maximum allowable limit due to application fees or application deposits not promptly converted into a security deposit under the HTC program. Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses.

(1) The amount of time Development staff spends checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add up to $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. Example 622(2): A Development's out of pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult.

(2) Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Development pays a flat monthly fee to a third party for credit or criminal background checks, Owners must calculate the appropriate fee to be charged applicants by using the total number of applications processed, not just approved applications. Developments that pay a flat monthly fee must determine the appropriate application fee at least annually based on the prior year's activity. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee or collected impermissible deposits, the noncompliance will be reported to the IRS on Form 8823 under the category "gross rent(s) exceeds tax credit limits." The noncompliance will be corrected on January 1st of the next year.

(3) Owners are not required to refund the overcharged fee amount. To correct the issue, Owners ~~owners~~ must reduce the application fee for prospective applicants. Once the fee is reduced for prospective applicants, the Department will report the affected Units ~~units~~ back in compliance on January 1st of the year after they were overcharged the application fee or an impermissible deposit.

(4) Throughout the Affordability Period, Owners may not charge a deposit or any type of fee (other than an application fee) for a household to be placed on a waiting list.

(d) Rent or Utility Allowance Violations on Non-HTC Developments, HTC Developments ~~developments~~ after the Compliance Period, and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund (not a credit to amounts owed the Development) to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess monies must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be disbursed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME~~,~~ and TCAP RF Developments:

(1) 100% HOME/TCAP-RF assisted Developments. If a household's income exceeds 80% at recertification, the Owner ~~owner~~ must charge rent equal to 30% of the household's adjusted income;

(2) HOME/TCAP-RF Developments with any Market Rate units. If a household's income exceeds 80% at recertification, the Owner ~~owner~~ must charge rent equal to the lesser of 30% of the household's adjusted income or the comparable Market rent; and

(3) HOME/TCAP-RF Developments layered with other Department affordable housing programs. If a household's income exceeds 80% at recertification, the owner must charge rent equal to the lesser of 30% of the household's adjusted income or the rent allowable under the other Program ~~program~~.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC and SHTF ~~HTF~~ Developments). IRS Revenue Rulings 92-61, 2004-82 and Chief Counsel Advice Memorandum POSTN-111812-14 provide guidance on employee occupied units. In general, employee occupied units are considered facilities reasonably required for the project(s) and not residential rental units. Since the building's applicable fraction is calculated using the residential rental units/space in a building, employee occupied units are taken out of both

the numerator and the denominator.

(i) Owners of HOME, NSP, TCAP-RF, and NHTF must comply with §10.403 of this chapter which requires annual rent review and approval by the Department's Asset Management Division. Failure to do so will result in an ~~finding of noncompliance~~Event of Noncompliance.

(j) Unless the household receives rental assistance, and due to changes in their income, the~~ir~~ household's portion of required rent changes, Owners are not permitted to increase the tenant portion of rent during a period which is the lesser of 12 months or the lease term, even if there are increases in rent limits or decreases in utility allowances.

§10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period

(a) HTC properties allocated credit in 1990 and after are required under §42(h)(6) of the Code to record a LURA restricting the Development for at least 30 years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the criteria detailed in paragraphs (1) - (14) of this subsection:

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department requests;

(2) At least once every three years the property will be physically inspected including the exterior of the Development, all building systems and 10% of Low-Income Units. No less than five but no more than 35 of the Development's HTC Low-Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards;

(3) Each Development shall submit an annual report in the format prescribed by the Department;

(4) Reports to the Department must be submitted electronically as required in §10.607 of this subchapter (relating to Reporting Requirements);

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA;

(6) All HTC households must be income qualified upon initial occupancy of any Low-Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project-

based HUD program, in which case the other program's certification form will be accepted;

(7) Rents will remain restricted for all HTC Low-Income Units. After the Compliance Period, utilities paid to the Owner are accounted for in the utility allowance. TCAP, Exchange, Bond, and SHTF Developments layered with Housing Tax Credits no longer within the Compliance Period also include utilities paid to the Owner as part of the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit. Any excess rent collected must be refunded;

(8) All additional income and rent restrictions defined in the LURA remain in effect;

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc.), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period or if the Compliance Period was specifically extended beyond 15 years;

(10) The Owner shall not terminate the lease or evict low-income residents for other than good cause;

(11) The total number of required HTC Low-Income Units can be maintained Development wide;

(12) Owners may not charge fees for amenities that were included in the Development's Eligible Basis;

(13) Once a calendar year, Owners must continue to collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification form or the Income Certification form or HUD Income Certification form or USDA Income Certification form; and

(14) Employee occupied units will be treated in the manner prescribed in §10.622(h) of this chapter (relating to Special Rules Regarding Rents and Rent Limit Violations).

(c) After the first 15 years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (4) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low-Income Unit. If a Development markets to students or leases more than 15% of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §10.405 of this chapter (relating to Amendments);

(2) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development;

(3) The Department will not monitor the Development's application fee after the Compliance Period is over; and

(4) Mixed income Developments are not required to conduct annual income recertifications. However, Owners must continue to collect and report data in accordance with subsection (b)(13) of this section.

(d) While the requirements of the LURA may provide additional requirements, right and remedies to the Department or the tenants, the Department will monitor post year 15 in accordance with this section as amended.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year 15 Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.624 Compliance Requirements for Developments with 811 PRA Units

(a) One hundred and eighty days prior to the date an Owner expects to begin leasing, Developments that have agreed to rent Units to households assisted by Section 811 PRA must contact Department staff and begin accepting referrals. Failure to reserve the agreed upon number of Units for 811 households will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(b) Throughout the term of an 811 PRA Use Agreement, Owners must maintain the required number of 811 PRA households, and provide notice to the Department when an 811 PRA household is expected to vacate. Notice must be provided when the Development is notified that ~~30 days prior to the date~~ the household will vacate or in the event that the resident vacates without notice, upon discovery that the unit is vacant, whichever is earlier. Failure to notify the Department will be cited as noncompliance, be referred for administrative penalties, and be considered possible grounds for debarment.

(c) Compliance with 811 PRA requirements will be monitored at least once every three years, either through an onsite review or a desk review. During the review, Department staff will monitor for compliance with program eligibility which includes the following:

(1) The household must include at least one person with a disability and who is 18 years of age or older and less than 62 years of age at the time of admission into the Development; and the person with a disability must be part of one or more of the target populations for the 811 program.

(2) The household's income is less than the extremely low income limit at move in.

(3) The Owner must check the following criminal history related to drug use of the household.

~~Participants~~ Households in the 811 PRA program must not include:

(A) Any member(s) who was evicted in the last three years from federally assisted housing for drug-related criminal activity;

(B) Any member that is currently engaged in illegal use of drugs or for which the Owner has reasonable cause to believe that a member's illegal use or pattern of illegal use of a drug may interfere with the health, safety, and right to peaceful enjoyment of the property by other residents; and

(C) Any ~~household~~ member who is subject to a State sex offender lifetime registration requirement.

(4) Student Status. If the household includes a student, the student must meet all of the criteria described in HUD handbook 4350.3 par. 3-13B, as modified by the September 21, 2016, Federal Register Notice 5969-N-01.

(d) Noncompliance will be cited if the Development:

(1) Unit leased ~~Leases~~ to a household that is not ~~eligible~~ qualified for the 811 PRA program in accordance with the requirements of subsection (c)(1) - (4) of this section;

(2) Fails to Use the Enterprise Income Verification system for documenting the household's income;

(3) Fails to properly document and calculate deductions in order to determine adjusted income (dependent, child care, disability assistance, elderly/disabled family, unreimbursed medical expenses);

(4) Fails to use the required HUD forms listed in ~~§~~10.612(d) of this subchapter or the following forms when applicable:

(A) EIV summary report;

(B) EIV income report;

(C) EIV income discrepancy report;

(D) EIV No income reported;

(E) EIV no income report by health and human services or social security administration;

(F) EIV new hires report;

(G) Existing tenant search;

(H) Multiple Subsidy report;

(I) Failed EIV pre-screening report;

(J) Failed verification report;

(K) Deceased tenants report;

(L) Owner approval letter authorizing access to EIV for the EIV ~~EV~~ coordinators;

(M) EIV Coordinator Access Authorization form (CAAF);

(N) The rules of behavior for staff that use EIV reports/data to perform their job functions; and

(O) Cyber awareness challenge certificates of completion for anyone that uses EIV or has access to EIV data (annually);

(5) Accepts funding that limits the ability for the Department to place the agreed upon number of 811 Units at the Development;

(6) Violates §1.15 of this title (relating to Integrated Housing);

(7) Fails to properly calculate the tenant portion of rent;

(8) Fails to properly calculate the tenant security deposit;

(9) ~~(8)~~ Fails to use the HUD model lease;

(10) ~~(9)~~ Egregiously fails to disperse 811 PRA Units throughout the Development;

(11) ~~(10)~~ Fails to conduct required interim certifications; ~~or~~

(12) ~~(11)~~ Fails to conduct annual income recertification; or

(13) Fails to prominently display, as required by 24 CFR Part 110, Fair Housing Poster HUD-928.1 (English), HUD 928.1A (Spanish), and other language as required by Limited English Proficiency Requirements.

§10.625 Events of Noncompliance

Figure: 10 TAC §10.625 lists events for which a multifamily rental Development ~~development~~ may be found to be in noncompliance for compliance monitoring purposes. This list is not an exclusive list of events and issues for which an Owner may be subject to an administrative penalty, debarment, or other enforcement action. The first column of the chart identifies the noncompliance event. The second column indicates to which program(s) the noncompliance event applies. The last column indicates if the issue is reportable on IRS Form 8823 for HTC Developments.

201900178-2.pdf

Figure: 10 TAC §10.614(f)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

Figure: 10 TAC §10.625

Noncompliance Event	**Program(s)**	**If HTC, on Form 8823?**
Violations of the Uniform Physical Condition Standards	All Programs	Yes
Noncompliance related to Affirmative Marketing requirements ~~described in §10.617 of this~~	All Programs	No
Development is not available to the general public because of leasing issues	HTC	Yes
TDHCA has received notice of possible Fair Housing Act Violation from HUD or DOJ and reported general public use violation in accordance with IRS 8823 Audit Guide Chapter 13	HTC	Yes
TDHCA has referred unresolved Fair Housing Design and Construction issue or other Fair Housing noncompliance to the Texas Workforce Commission	All programs	No
~~Property~~ Development has gone through a foreclosure	All programs	Yes
~~Property~~ Development is never expected to comply due to failure to report or allow monitoring	All programs	yes
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	All programs	Yes
LURA not in effect	All programs	Yes

Project failed to meet minimum set aside	HTC and Bonds	Yes
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	HTC	Yes, if non-profit issue, No, if HUB
Development failed to meet additional state required rent and occupancy restrictions	All programs	No
Noncompliance with social service requirements	HTC and Bond	No
Development failed to provide housing to the elderly as promised at application	All programs	No
Failure to provide special needs housing as required by LURA	All programs	No
Changes in Eligible Basis or Applicable percentage	HTC	Yes

Failure to submit all or parts of the Annual Owner's Compliance Report	All programs	Yes for part A, No for other parts
Failure to submit quarterly reports as required by §10.607	All programs	No
Noncompliance with utility allowance requirements described in §10.614 of this subchapter and/or Treasury Regulation §1.42-10	All programs	Yes if rent exceeds limit, no if related to noncompliance with other requirements, such as posting,
Noncompliance with lease requirements described in §10.613 of this subchapter	All programs	No
Asset Management Division has reported that Development has failed to establish and maintain a reserve account in accordance with §10.404 of this chapter	All programs	No
Failure to provide a notary public as promised at application	HTC	No
Violation of the Unit Vacancy Rule	HTC	Yes

Casualty Loss	All programs	Yes
Failure to provide pre-onsite documentation	All programs	No
Failure to provide amenity as required by LURA	HTC	No
Failure to pay asset management, compliance monitoring or other required fee	HTC, TCAP, Bond, NHTF, TCAP-RF, Exchange and HOME/NSP Developments committed funds	No
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	All programs	No

Noncompliance with written policy and procedure requirements ~~described in §10.610 of this subchapter~~	All programs	No, unless finding is because Owner refused to lease to
Program Unit not leased to Low-Income household/ Household income above income limit upon initial occupancy	All programs	Yes
Program unit occupied by nonqualified full-time students	HTC during the Compliance Period, Bond and HOME/ NSP developments committed funds after August 23, 2013, NHTF, 811	Yes
Low-Income Units ~~units~~ used on a transient basis	HTC and Bond	Yes
Violation of the Available Unit Rule	All programs, but only during the Compliance Period for HTC, TCAP, and	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	All programs	Yes
Failure to provide Tenant Income Certification and documentation	All programs	Yes
Unit not available for rent	All programs	Yes
Failure to collect data required by §10.612(b)(1) and/or §10.612(b)(2)	HTC, TCAP, Exchange , and Bond	No
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	HTC, HOME, TCAP-RF, NHTF, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	HOME	NA
Violation of the Integrated Housing Rule	All programs	No

Failure to resolve final construction deficiencies	All programs	No
within corrective action period		
Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards as modified in the Department rules, or other accessibility related requirements of a Department rule	HOME, NSP, TCAP-RF, NHTF, SHTF, and for HTC properties that were awarded after	No
Noncompliance with the notice to the Department requirements described in §10.609 of this	All programs	No
Failure to reserve Units ~~units~~ for Section 811 PRA participants	811 developments	NA
Failure to notify the Department of the availability of units	811 developments	NA
Owner failed required criminal history~~to check criminal history and drug use of household~~	811 Developments	NA
Failure to use Enterprise Income Verification System	811 developments	NA
Failure to properly document and calculate adjusted income	811 developments	NA
Failure to use required HUD forms	811 developments	NA
Accepted funding that limits 811 participation	811 developments	NA
Failure to properly calculate tenant portion of rent	811 developments	NA
Failure to use HUD model lease	811 developments	NA
Failure to disperse 811 units	811 developments	NA
Failure to conduct interim certifications	811 developments	NA
Failure to conduct annual income recertification	811 developments	NA

Asset Management Division has reported that Development has failed to review rents on an annual basis in accordance with §10.403 of this chapter	HOME, NSP, TCAP RF, and NHTF	NA
Unit Leased to a household that is not qualified for the 811 PRA program	811 Developments	NA
Failure to submit documentation for a mail in review	All programs	Yes
Noncompliance with CHDO Requirements	HOME	NA

6d

BOARD ACTION REQUEST

BOND FINANCE DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (Department) is authorized to issue multifamily housing revenue bonds for the State of Texas;

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds;

WHEREAS, the proposed repeal and new 10 TAC Chapter 12 were published in the September 20, 2019, issue of the *Texas Register* for public comment; and

WHEREAS, the public comment period ended October 11, 2019, and no comment was received relating to this rule;

NOW, therefore, it is hereby

RESOLVED, that the final order adopting the repeal and new 10 TAC Chapter 12 regarding the Multifamily Housing Revenue Bond Rules, together with the preamble presented to this meeting, are approved for publication in the *Texas Register;* 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 amendments to the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Board approved the proposed changes to Chapter 12 regarding the 2020 Multifamily Housing Revenue Bond Rules (Bond Rules) at the Board meeting of September 5, 2019, to be published in the *Texas Register* for public comment. The Department received comments relating to §12.4(b) regarding Neighborhood Risk Factors that were also addressing the same provision in the 2020 Qualified

Allocation Plan (QAP). This section of the bond rule references the provision that is more explicitly explained in the 2020 QAP and, therefore, any staff response to those comments is addressed in the reasoned response for the 2020 QAP which is also included on this Board agenda. Staff is recommending the Bond Rules be adopted with changes only to 10 TAC §12.5(8) to be consistent with the changes that were made to the QAP; however, should there be changes made to the 2020 QAP by the Board that would affect the Bond Rules, staff will make those changes required for consistency.

Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). 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 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).

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

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

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

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

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the issuance of PABs.

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

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5).
Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 20, 2019, and October 11, 2019. No comment was received.

The Board adopted the final order adopting the repeal on November 7, 2019.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules ("Bond Rules"). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify the new submission requirements for the pre-application, clarify that development owners can select from supportive services identified in subsequent Qualified Allocation Plans adopted by the Department, and allow for the potential for certain fees to be modified through a Notice of Funding Availability, provided that the Department's bond applications are layered with Direct Loans.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The 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 rulemaking and the analysis is described below for each category of analysis performed.

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

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

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").

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 does not require additional future legislative appropriations.

4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.

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

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The rule does 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 §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full 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.

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 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 $3,600 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 120 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 new 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 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 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 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). Mr. Wilkinson has determined that, for each year of the first five years the rule 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 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. Wilkinson 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.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 20, 2019 and October 11, 2019. No comment was received.

The Board adopted the final order adopting the new on November 7, 2019.

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.

10 TAC Chapter 12, Multifamily Housing Revenue Bond Rule

§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) 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) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence.

(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 §11.207 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 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan).

(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 must also be qualified as Institutional Buyers and must 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 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 have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. 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) Neighborhood Risk Factors. If the Development Site has any of the characteristics described in §11.101(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 Neighborhood Risk Factors become available while the Tax-Exempt Bond Development 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 §11.101(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 considered 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 of this title (relating to 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 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, 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 required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(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 §11.204(10) of this title at the time of Application;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) 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;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9)). Notifications must not be older than three 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% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official ~~person~~ holding any position or role described 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 ~~person~~entity 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% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or
(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85%t of Units rent capped at 60% AMGI; or
(iii) set aside 100% of Units rent capped at 60%t 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% of the Units capped at 60% 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 voluntarily included in Eligible Basis, 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 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 35 years.

(5) Unit and Development Construction Features. A minimum of (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 §11.101(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 §11.101(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 Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title,

appropriate for the 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. Should the QAP in subsequent years provide different services that those listed in §11.101(b)(7)(A) – (E), the Development Owner may be allowed to select services listed therein as provided in §10.405(a)(2) of this title (related to Amendments) and will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. 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 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 meets the criteria described in §11.9(c)(5)(A) - (H) 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 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office 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. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") 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 years or for which there has been a rent restriction requirement in the past 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 §11.201 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 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). 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 11 of this title 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 pertaining to the Development and the issuance of the Bonds. A representative of 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 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 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. 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 applicable requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). 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 §11.101 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 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% 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%t of the area median income; or

(B) At least 40% 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% of the area median income.

(2) The Development Owner must, 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. 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% 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, unless otherwise modified by a specific program NOFA. 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 a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

(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, unless otherwise modified by a specific program NOFA. 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 an Application 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 at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

(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.

6e

BOARD ACTION REQUEST

OCI, HTF & NSP DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, an order adopting new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

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, pursuant to Tex. Gov't Code, §2306.582, the Department is required to establish, operate, monitor, and fund Colonia Self-Help Centers (CSHCs) in El Paso, Hidalgo, Starr, and Webb counties, and in Cameron County to serve Cameron and Willacy counties;

WHEREAS, in 2001 the Department opened two additional CSHCs in Maverick and Val Verde counties, as authorized by Tex. Gov't Code §2306.582, to address the needs of colonias in those counties;

WHEREAS, the repeal of 10 TAC Chapter 25 and the new 10 TAC Chapter 25, CSHC Program Rule, are being made to: detail processes for addressing Administrator failure to meet Expenditure Thresholds, allow the Department to issue one-time contract extensions, remove the requirement that the Department impose liens upon certain participating households, increase the maximum assistance amounts for certain program activities, outline inspection requirements for all activity types, and improve readability and consistency throughout with the re-ordering of phrases and updating of terms; and

WHEREAS, the proposed actions on this rule were published in the *Texas Register* and made available for public comment from September 20, 2019, through October 21, 2019, public comment was received, and the Department is providing a reasoned response for the rule now being presented for adoption;

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 repeal of 10 TAC Chapter 25 and adoption of new 10

TAC Chapter 25, regarding the CSHC Program Rule, in the form presented to this meeting, to be published in the *Texas Register* for adoption 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.

BACKGROUND

The purpose of repealing and replacing the CSHC Program Rule is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and lastly, improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

The proposed rule was published in the *Texas Register* on September 20, 2019, for public comment through October 21, 2019, and four comments were received. Staff recommends changes to the proposed rule as published in the *Texas Register* in order to address some of the public comments. The rule is attached in black line form to indicate the changes since the time of publication in response to public comment.

The significant updates initially proposed in the draft to 10 TAC Chapter 25 were:

- §25.3 Eligible and Ineligible Activities, clarifies applicable requirements regarding Fair Housing, Affirmative Marketing, Homebuyer Counseling, and Reasonable Accommodation.

- §25.5 Allocation, Deobligation and Termination, and Reobligation, provides more detail on the processes that address Administrator violations of program requirements, such as failure to meet Expenditure Thresholds. The subsection covers mitigation plans, compliance with Tx. Gov't Code Chapter 2105, and the process for publishing a Request for Administrators to utilize deobligated funds.

- §25.8 Colonia Self-Help Center Contract Operation and Implementation, clarifies that the Department may issue a one-time 6-month extension to contracts (currently, contracts may not be extended); removes the requirement that liens be issued to program beneficiaries earning more than 50% of the Area Median Income who receive New Construction, Reconstruction or Rehabilitation assistance, and provides that these types of assistance will now be offered as a grant or deferred forgivable loan without a lien to any eligible participating household; Increases the maximum assistance amount for Rehabilitation activities from $45,000 to $60,000 per unit; Increases the maximum assistance amount for New Construction and Reconstruction activities from $45,000 to $75,000 per unit; and includes further clarification on inspection requirements for all construction activity types.

Attachment A: Preamble, including required analysis, for the adoption of the repeal of 10 TAC, Chapter 25, Colonia Self-Help Center Program

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC, Chapter 25, §§25.1 – 25.9, Colonia Self-Help Center Program 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. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect:
1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the Colonia Self-Help Center Program.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce workload 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 Texas Housing Trust Fund Rule.
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. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from September 20, 2019, through October 21, 2019, to receive input on the proposed repealed rule. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made pursuant to TEX. GOV'T CODE §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the repealed rule affects no other code, article, or statute.

10 TAC Chapter 25, Colonia Self-Help Center Program
§25.1. Purpose and Services.
§25.2. Definitions.
§25.3. Eligible and Ineligible Activities.
§25.4. Colonia Self-Help Centers Establishment.
§25.5. Allocation and the Colonia Self-Help Center Application Requirements.
§25.6. Colonia Residents Advisory Committee Duties and Award of Contracts.
§25.7. Colonia Self-Help Center Contract Operation and Implementation.
§25.8. Administrative Thresholds.
§25.9. Expenditure Thresholds and Closeout Requirements.

Attachment B: Preamble, including required analysis, for adopting new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC, Chapter 25, §§25.1 – 25.9, Colonia Self-Help Center Program Rule. The purpose of the new rule is to detail processes for addressing Administrator failure to meet Expenditure Thresholds; allow the Department to issue one-time contract extensions; remove the requirement that the Department impose liens upon certain participating households; increase the maximum assistance amounts for certain program activities; outline inspection requirements for all activity types; and improve readability and consistency throughout with the re-ordering of phrases and updating of terms.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the 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 making changes to the Colonia Self-Help Center Program Rule.
2. The new rule does not require a change in work that will require the creation of new employee positions, nor will the new rule reduce workload 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 rule being repealed simultaneously to provide for revisions.
6. The new rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
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.
The Department has evaluated this new rule and determined that it 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 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 new rule as to its possible effects on local economies and has determined that for the first five years the new rule 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. Wilkinson has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule would be to further clarify the purpose and use of the Texas Housing Trust Fund. There will be no economic costs to individuals required to comply with the new rule.

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

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from September 20, 2019, through October 21, 2019, to receive input on the new rule. Four commenters provided public comment: (1) Webb County Colonia Self-Help Center, (2) Colonia Resident Advisory Committee Member Elvira Torres, representing Webb County, (3) Colonia Resident Advisory Committee Member Bella Garcia, representing Webb County, and (4) El Paso County Colonia Self-Help Center. The comment summaries and reasoned responses are below. Several revisions to the rule are recommended in response to the comments.

1. §25.2, Definitions (Commenter 4)

   Comment Summary, part 1: Commenter pointed out that no Implementation Manual, as defined in the definitions subsection, currently exists.

   Staff Response: The Department provides the TxCDBG Implementation Manual to all participating Counties, which includes a subchapter on the Colonia Self-Help Center Program. For specific guidance and instruction, administrators utilize required Program forms on the CSHC webpage. TDHCA's Border Field Officers provide continuous technical assistance plus annual or biennial training opportunities to all CSHC Program Center administrators. No revisions to the rule are recommended.

   Comment Summary, part 2: Commenter asked for confirmation that a Qualified Inspector, as defined in the definitions subsection, may be an eligible third-party inspector or an eligible staff inspector. Commenter asked about acceptability of International Code Council certification, and whether TDHCA provided inspection forms.

Staff Response: The Rule definition allows a variety of inspection professionals to be considered qualified to inspect CSHC Program activities, as long as the Administrator can certify that the inspector fully meets the definition. TDHCA requires the use of its initial inspection form, but inspectors may use their own format for final inspections. No revisions to the rule are recommended.

2. §25.3, Eligible and Ineligible Activities (Commenter 1, 4)

Comment Summary, part 1: Commenter 4 asked for clarification on the principal residency requirements that must be met by households seeking surveying and platting assistance.

Staff Response: The Rule already allows for the surveying or platting of a residential property that an individual purchased (without a legal survey or plat) for principal residence in a participating colonia. No revisions to the rule are recommended.

Comment Summary, part 2: Commenter 1 stated that HUD-required credit and debt counseling for home purchase and finance will incur additional local costs and that their CSHC already provides counseling and training to households. Commenter 4 asked for clarification on the applicability of credit and debt counseling requirements to rehabilitation activities and to purchases of Manufactured Housing Units.

Staff Response: The requirements added to the CSHC rule on this issue are based on HUD's recent regulatory changes that require such counseling for any applicable federally-funded purchase or finance activities on August 1, 2020 and onwards. It does pertain to rehabilitation activities and to the purchase of Manufactured Housing Units, as well as to new construction and reconstruction. If the CSHC is already providing this counseling and as long as it meets HUD counseling requirements, it should incur no extra costs to adhere to this rule.

As a result of this comment, the following revision is submitted to further clarify the rule.

§25.3. Eligible and Ineligible Activities.
(7) Providing Housing Counseling related to all applicable single family activities that take place on or after August 1, 2020, and that satisfies HUD Counseling Requirements in 24 CFR Part 214 ~~credit and debt counseling related to home purchase or finance~~;

3. §25.5, Allocation, Deobligation and Termination, and Reobligation (Commenter 4)

Comment Summary: Commenter stated that more transparency on TDHCA's procedures for reviewing requests for environmental clearances would help Administrators to comply with Expenditure Thresholds and improve performance.

Staff Response: TDHCA has met internally to address concerns relating to Administrators obtaining environmental clearance within six months of the contract start date. If

Administrators utilize the correct forms and instructions, TDHCA generally should be able to issue clearance within two months of receipt of the assessment. TDHCA has appropriate staffing for processing environmental clearances and provides online resources and training opportunities to Administrators year round. No revisions to the rule are recommended.

4. §25.8, Colonia Self-Help Center Contract Operation and Implementation (Commenter 1, 2, 3)

Comment Summary, part 1: Commenter stated that Administrators should be notified in writing when TDHCA reduces an Administrator's request for payment due to insufficient documentation or unsatisfactory performance.

Staff Response: TDHCA is in communication with the CSHC Administrator during review of requests for payment, and provides the Administrators opportunities to address deficiencies in documentation before making any reductions. No revisions to the rule are recommended.

Comment Summary, part 2: Commenter stated that requiring a Contract amendment for any changes in contract deliverables or beneficiaries creates unnecessary delays. Commenter suggested that amendments be required only for contracts that seek to increase the award amount by more than 10% of total funds or to decrease deliverables or beneficiaries by more than 10%.

Staff Response: The Colonia Resident Advisory Committee and the TDHCA Board formally approve the contract deliverables and beneficiaries for each CSHC contract. The process to amend any CSHC deliverables adhere to the similar procedures in place for TDHCA's other contracts, namely requiring the approval of a TDHCA Director and Legal Division. Adjustments to beneficiaries in contract language typically occur towards the end of the contract term, so amendments should not negatively impact program implementation. No revisions to the rule are recommended.

Comment Summary, part 3: Commenter stated that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, has eliminated forgivable loans from the CSHC Program, and this will negatively impact colonia residents.

Staff Response: This is an incorrect interpretation of the Single Family Programs Umbrella Rule because it has not eliminated forgivable loans from the CSHC Program. In fact, the CSHC Rule states that "assistance may be provided in the form of a grant or a forgivable loan" in §25.8 (g). No revisions to the rule are recommended.

Comment Summary, part 4: Commenter asked that Rehabilitation funding limits be increased from $60,000 to $65,000, and that New Construction and Reconstruction funding limits be increased from $75,000 to $80,000. These increases are more realistic

and would provide more flexibility to Administrators.

Staff Response: The proposed $60,000 Rehabilitation funding limit is already an increase from the current limit of $45,000. The proposed $75,000 New Construction and Reconstruction funding limits is already an increase from the current limit of $45,000. Following the implementation of these newly increased limits, if the need for further increases appear to be substantiated, a subsequent increase can be considered by subsequent rulemaking. If an Administrator needs additional funds, they may leverage funding from other sources. No revisions to the rule are recommended.

Comment Summary, part 5: Commenters 1, 2, and 3 stated that requiring availability of Public Service Activities at least two Saturdays monthly is unnecessary because residents have traditionally not shown an interest in services on the weekends. This rule creates a hardship on CSHC staff.

Staff Response: Staff agrees and suggests the revision below to delete the Saturday requirement for access to Public Service Activities, and replace it with one weekday with extended hours.

§25.8. Colonia Self-Help Center Contract Operation and Implementation.
(m) ~~(j)~~ Residents shall have access to all Public Service Activities identified in the Contract on at least one weekday each week, for a period long enough to provide access to activities after the typical workday. ~~Access to all Public Service Activities identified in the Contract shall be provided at least two (2) Saturdays a month during hours preferable to Colonia residents. In addition, access shall be provided at least one day during the workweek after hours for a period long enough to allow Colonia residents to utilize the services.~~

5. §25.10, Expenditure Thresholds and Closeout Requirements (Commenter 1)

Comment Summary, part 1: The commenter stated that requiring the approval of an Administrator's Environmental Assessment within six months after their Contract start date could have negative consequences for Administrators because of the lack of control they have in TDHCA's Environmental Assessment approval process. Commenter suggested doing away with the proposed wording change and maintaining the existing requirement of submission of an Administrator's Environmental Assessment within six months after the Contract start date.

Staff Response: Staff agrees and will maintain the existing requirement of submission of an Administrator's Environmental Assessment within six months after the Contract start date.

§25.10. Expenditure Thresholds and Closeout Requirements.
(a)(1) Six-Month Threshold. An Environmental Assessment that meets the ~~requirements outlined in the~~ environmental clearance requirements of the Contract

must be submitted to the Department within six ~~(6)~~ months from the start date of the Contract;

Comment Summary, part 2: The commenter stated that the proposed adding of the phrase "in this section" for in §25.10 (b), which clarifies the term "expended and submitted" as it relates to Draw requests, will have a negative consequence for Administrators.

Staff Response: Adding the phrase "in this section" does not alter the applicability or intent of this rule. It is being added only for clarification. No revisions to the rule are recommended.

STATUTORY AUTHORITY. The new rule is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described, herein the adopted new rule affects no other code, article, or statute. The agency certifies that legal counsel has reviewed the new rule and found it to be within the state agency's legal authority to adopt.

CHAPTER 25 COLONIA SELF-HELP CENTER PROGRAM RULE

§25.1 Purpose and Services

The purpose of this Chapter is to establish the requirements governing the Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements), and including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (the Department) by the legislature of the annual Texas Community Development Block Grant (CDBG) allocation from the U.S. Department of Housing and Urban Development (HUD). Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the designated Colonia service areas or in another area the Department has determined is suitable.

§25.2 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. Other definitions may be found in Chapter 2306 of the Tex. Gov't Code, Chapter 1 of this Title (relating to Administration), Chapter 2 of this Title (relating to Enforcement), Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule), and Chapter 21 of this Title (relating to Minimum Energy Efficiency Requirements). Common definitions used under the CDBG Program are incorporated herein by reference.

(1) Beneficiary--A person or family benefiting from the Activities of a Colonia Self-Help Center Contract.

(2) Colonia Resident Advisory Committee (C-RAC)--As established by Tex. Gov’t Code §2306.584, advises the Department's Governing Board regarding the needs of Colonia residents, appropriate and effective programs that are proposed or operated through the CSHCs, and activities that may be undertaken through the CSHCs to better serve the needs of Colonia residents.

(3) Colonia Self-Help Center (CSHC)--Those centers established by the Department through its authority under Tex. Gov’t Code §2306.582.

(4) Colonia Self-Help Center Provider--An organization with which the Administrator has an executed Contract to administer Colonia Self-Help Center Activities.

(5) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(6) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the Draw process. The budget also includes all other funds involved that are necessary to complete the Performance Statement specifics of the Contract.

(7) Direct Delivery Costs--Soft costs related to and identified with a specific housing unit. Eligible Direct Delivery Costs include:

(A) Preparation of work write-ups, work specifications, and cost estimates;

(B) Legal fees, recording fees, architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit;
(C) Home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and
(D) Other costs as approved in writing by the Department.
(8) Housing Assistance Guidelines (HAG)--The guidelines provided by the Unit of General Local Government that outline the process and procedures used to administer and implement the Colonia Self-Help Center Program. These guidelines cannot conflict with state statute, program rules, regulations and/or contract requirements.
(9) Implementation Manual--A set of guidelines designed by the Department as an implementation tool for the Administrator and/or Colonia Self-Help Center Subawardee that have been awarded Community Development Block Grant Funds, which provides terms, regulations, procedures, forms, and attachments.
(10) Income Eligible Household--
(A) Low-income households--households whose annual incomes do not exceed 80% of the median income of the area as determined by HUD Fair Market Rent Limits;
(B) Very low-income households--households whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD Fair Market Rent Limits; and
(C) Extremely low-income households--households whose annual incomes do not exceed 30% of the median family income for the area, as determined by HUD Fair Market Rent Limits.
(11) M Number--a several digit identification number, preceded by the letter "M" and assigned by the Texas Water Development Board to colonias that have been identified by the Office of the Attorney General of Texas.
(12) New Construction--A Single Family Housing Unit that is newly built by certified Community Housing Development Organizations (CHDOs) or Community Based Development Organizations (CBDOs) on a previously vacant lot that will be occupied by an Income Eligible Household.
(13) Performance Statement--An exhibit in the Contract which specifies in detail the scope of work to be performed.
(14) Public Service Activities--Activities other than New Construction, Reconstruction, and Rehabilitation activities that are provided by a Colonia Self-Help Center to benefit Colonia residents. These include, but are not limited to, construction skills classes, solid waste removal, tool lending library, technology classes, home ownership classes and technology access.
(15) Qualified Inspector--An individual that has been certified by the Administrator as having professional certifications, relevant education or a minimum of three years' experience in a field directly related to home inspection, which may include but is not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing or electrical systems found in Single Family Housing Units, as evidenced by inspection logs, certifications, training courses or other documentation.
(16) Reconstruction--The demolition and rebuilding of a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of Household members living in the Single Family Housing Unit at the time of Application. Reconstruction of residential structures also permits replacing an existing substandard Manufactured Housing Unit with a new, site-built housing unit or a new ENERGY STAR Certified

Manufactured Housing Unit.
(17) Rehabilitation--The improvement or modification of an existing Single Family Housing Unit through an alteration, addition, or enhancement on the same lot.
(18) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state.

§25.3 Eligible and Ineligible Activities

(a) A CSHC may only serve Income Eligible Households in the targeted Colonias by:
(1) Providing assistance in obtaining Loans or grants to build a home;
(2) Teaching construction skills necessary to repair or build a home;
(3) Providing model home plans;
(4) Operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in Colonias who are building or repairing a residence or installing necessary residential infrastructure;
(5) Assisting to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a Colonia, including potable water, wastewater disposal, drainage, streets, and utilities;
(6) Surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;
(7) Providing Housing Counseling related to all applicable single family activities that take place on or after August 1, 2020, and that satisfies HUD Counseling Requirements in 24 CFR Part 214;~~Providing credit and debt counseling related to home purchase and finance;~~
(8) Applying for Grants and Loans to provide housing and other needed community improvements;
(9) Providing other services that the CSHC, with the approval of the Department, determines are necessary to assist Colonia residents in improving their physical living conditions such as Rehabilitation, Reconstruction, and New Construction, including help in obtaining suitable alternative housing outside of a Colonia area;
(10) Providing assistance in obtaining Loans or grants to enable an Income Eligible Household to acquire fee simple title to property that originally was purchased under a Contract for Deed, contract for sale, or other executory contract;
(11) Provide title-related services for unrecorded Contracts for Deed, clouded titles, property transfers, intestate estates, and other title ownership matters;
(12) Providing access to computers, the internet and computer training; and
(13) Providing monthly programs to educate Income Eligible Households on their rights and responsibilities as property owners.
(b) Ineligible Activities. Any Activity not allowed by the Housing and Community Development Act of 1974 (42 U.S.C. §§5301, et seq.) is ineligible for funding.
(c) A CSHC will only provide grants, financing, or Mortgage Loan services for New Construction, Reconstruction, and Rehabilitation of a home in a Colonia that is connected to a Department-approved source of potable water and wastewater disposal.

§25.4 Colonia Self-Help Centers Establishment

(a) Pursuant to Section 2306.582 of the Tex. Gov't Code, the Department has established CSHCs in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick, and Val Verde Counties.
(b) The Department has designated:
(1) Appropriate staff in the Department whom are designated to assist the CSHCs in understanding the requirements of the Program, provide training, and access CDBG funding to enable the CSHCs to carry out Programs;
(2) Five Colonias in each service area are to be identified by the UGLG to receive concentrated attention from the CSHCs in consultation with the C-RAC; and
(3) A geographic area for the services provided by each CSHC.
(c) The Department shall make a reasonable effort to secure:
(1) Contributions, services, facilities, or operating support from the county commissioner's court of the county in which a CSHC is located which it serves to support the operation of that CSHC; and
(2) An adequate level of CDBG funds to provide each CSHC with funds for low interest Mortgage financing, Grants for Self-Help Programs, a revolving loan fund for septic tanks, a tool lending program, and other Activities the Department determines are necessary.
(d) Consistent with federal rules and regulations, as provided for in the General Appropriations Act, the CSHC in El Paso shall provide technology and computer access to residents of targeted colonias. Any CSHC may establish a technology center to provide internet access to Colonia residents.

§25.5 Allocation, Deobligation and Termination, and Reobligation

(a) Allocation.
(1) The Department distributes CSHC funds to UGLGs from the 2.5% set-aside appropriated to the Department from the annual CDBG allocation to the state of Texas.
(2) The Department shall allocate no more than $1 million per CSHC award except as provided by this Chapter. If there are insufficient funds available from any specific program year to fully fund an Application, the awarded Administrator may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.
(3) A baseline award will first be calculated for a CSHC beginning at $500,000 (or a lesser amount as provided for in paragraph (2) of this subsection). The Department will add to the baseline award up to an additional $100,000 for each Expenditure Threshold that has been met on the current CSHC Contract, as defined in §25.10 of this Chapter (relating to Expenditure Thresholds and Closeout Requirements). An additional amount up to $100,000 may be added for an accepted Application submitted by the deadline. An Administrator may request that the Board add additional funds to a baseline award, despite the failure to meet one or more Expenditure Thresholds. To add funds to a CSHC Contract being considered for award, the Board must find that that the failure to meet each Expenditure Threshold requirement was principally related to factors beyond the control of the Administrator. If the Board decides to award these additional funds in whole or in part, it must also determine that the award of these

funds to the Administrator does not create a substantial risk to the State of recapture of CDBG funds by HUD.

(b) Deobligation and Termination.

(1) At any point in which an Administrator has missed one of the Expenditure Thresholds required in §25.10 of this Chapter, the Department will send a notification of possible deobligation. An Administrator will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance, and how it will ensure that subsequent Expenditure Thresholds can be achieved. If the Department approves the mitigation plan, it will take no further action on deobligation at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(2) At any point in which the Department has determined that a Contract should be terminated for violation of program requirements, the Department will send a notification of possible termination of Contract. A Subrecipient will have the opportunity to submit a mitigation plan that outlines how it will bring the Contract back into compliance. If the Department approves the mitigation plan, it will take no further action on termination at that time. If the Department receives no response, or if the mitigation plan is insufficient to be approved by the Department, the Department will send notice to the Administrator and the UGLG official to announce the initiation of deobligation proceedings and to identify the Administrator's rights under Tex. Gov't Code, Chapter 2105 and 10 TAC §1.411 (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code). Approval of such action will be presented to the Department's Board.

(3) During the time that a deobligation or termination process is pending, the Department may reduce an Administrator's Contract by up to 24.99% of the Contract and may publish a Request for Administrators (RFA) to identify another UGLG to implement the CSHC Program in the affected service area. No award to a respondent of an RFA will be made in an amount greater than 24.99% of the original Administrator's Contract until the process provided by Tex. Gov't Code, Chapter 2105 has been completed. Once that process is completed, an Administrator awarded a Contract through the RFA may receive up to the maximum award available, subject to funding availability.

(c) Reobligation.

(1) When funds become available from the proceedings of subsection (b) of this section, they will be held for a period of at least 90 days while an RFA for the service area is initiated. Unless debarred by HUD or the Department, a prior Administrator is not precluded from applying under an RFA for this service area.

(2) In all cases, funds for a given service area will continue to be allocated to that service area unless no acceptable respondents are identified. Only in such cases that no qualified provider can be identified for a given service area will funds available for that area be reissued to other CSHC Contracts for other service areas.

§25.6. Colonia Self-Help Center Application Requirements

(a) At least three months prior to the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, whichever comes first, the current Administrator may submit its Application to the Department.
(b) If an Application is received from a CSHC that is requesting additional funds, at approximately the same time that an application is received from a CSHC whose Contract is reaching expiration, the Department will prioritize funds first to ensure continuity to a CSHC whose Contract is reaching expiration. Among all other non-expiring Applications, the Department shall review Applications on a first-come, first-served basis. Recommendations for award will be made until all CSHC funds for the current program year and deobligated CSHC funds are committed.
(c) Each Application must utilize the Department's forms and documents where applicable, and include:
(1) Evidence of the submission of the Administrator's current Single Audit, if applicable;
(2) A Colonia identification form and the M number assigned by the Texas Water Development Board for each Colonia to be served, including all required documentation as identified on the form;
(3) A boundary map for each of the five designated Colonias;
(4) A description of the method of implementation. For each Colonia to be served by the CSHC, the Administrator shall describe the services and Activities to be delivered.
(5) A proposed Performance Statement which must include the number of Colonia residents estimated to be assisted from each Activity, the Activities to be performed (including all Sub-Activities under each budget line item), and the corresponding budget;
(6) A proposed Contract Budget which must adhere to the following limitations:
(A) The Administration line item may not exceed 15% of the total Contract;
(B) At least 8% but not more than 10% of the total Contract must be used for the Public Service Activities;
(C) For UGLGs self-administering the Program, Direct Delivery Costs for all New Construction and Reconstruction Activities cannot exceed 10% per unit provided by the CSHC Program. Direct Delivery Costs for Rehabilitation are limited to 15% per unit provided by the CSHC Program.
(7) The CSHC's Proposed Housing Assistance Guidelines, which must include an Affirmative Fair Housing Marketing Plan as described under Chapter 20 of this title and all program parameters for Rehabilitation, Reconstruction, or New Construction;
(8) Evidence of model subdivision rules adopted by the County;
(9) Written policies and procedures, as applicable, for:
(A) Solid waste removal;
(B) Construction skill classes;
(C) Homeownership classes;
(D) Technology access, including any technology hardware inventory purchased with CSHC funds;
(E) Homeownership assistance; and/or
(F) Tool lending library, including any library inventory purchased with CSHC funds. All CSHCs

are required to operate a tool lending library;
(10) Authorized signatory form and direct deposit authorization;
(11) UGLG resolution authorizing the submission of the Application and appointing the primary signatory for all Contract documents;
(12) Acquisition report (even if there is no acquisition activity);
(13) Certification of exemption for HUD funded projects;
(14) Initial disclosure report for the Texas Department of Agriculture;
(15) All required forms needed for a Previous Participation Review under §1.302 of this title, Previous Participation Reviews; and
(16) All required forms required by §20.9 of this title, Fair Housing, Affirmative Marketing and Reasonable Accommodations.
(d) Upon receipt of the Application, the Department will perform an initial review to determine whether the Application is complete and that each Activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(b)(3)).
(e) The Department may reduce the funding amount requested in the Application in accordance to subsection §25.5(a) of this chapter. Should this occur, the Department shall notify the appropriate Administrator before the Application is submitted to C-RAC for review, comments and approval. The Department and the Administrator will work together to jointly agree on the performance measures and proposed funding amounts for each Activity.
(f) The Department shall execute a four-year Contract with the Administrator. If the Administrator requirements are completed prior to the end of the four-year Contract period, the Administrator may submit a new Application. Contract extensions may be granted for up to six months by the Department.
(g) The Department may decline to fund any Application if the Activities do not, in the Department's sole determination, represent a prudent use of CSHC funds. The Department is not obligated to proceed with any action pertaining to any Application which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process.

§25.7 Colonia Residents Advisory Committee Duties and Award of Contracts

(a) The Board shall appoint one committee member to represent each of the counties in which a CSHC is located to serve on the C-RAC. The members of the C-RAC shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the Commissioners Court of the county in which a CSHC is located. Each committee member:
(1) Must be a resident of a Colonia in the county the member represents;
(2) May not be a board member, contractor, or employee of the Administrator;
(3) May not have any ownership interest in an entity that is awarded a Contract under this Chapter; and
(4) Must undergo the Department’s previous participation review and cannot be in default on any Department obligation.
(b) The C-RAC members' terms will expire every four years. C-RAC members may be reappointed by the Board; however, the Board shall review and reappoint members at least

once every four years. In the event that a C-RAC member is unable to complete the four-year term, Counties may propose an eligible candidate to be appointed by the Board to fulfill the remainder of the term.
(c) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.
(d) The C-RAC shall advise the Board regarding:
(1) The housing needs of Colonia residents;
(2) Appropriate and effective programs that are proposed or are operated through the CSHCs; and
(3) Activities that might be undertaken through the CSHCs to serve the needs of Colonia residents.
(e) The C-RAC shall advise the Colonia initiatives coordinator as provided by §775.005 of the Tex. Gov't Code.
(f) Award of Contracts.
(1) The Department will schedule C-RAC meetings for the review of satisfactorily completed CSHC applications from Administrators. The C-RAC shall meet no less than 30 days prior to the board meeting at which the Board is scheduled to award a CSHC Contract, and may meet at other times as needed.
(2) Any Administrator whose Application is being considered at the C-RAC meeting must be present to answer questions that C-RAC may have.
(3) After the C-RAC makes a recommendation on an Application, the recommendation will then proceed through the Department's award process.
(g) Reimbursement to C-RAC members for their reasonable travel expenses in the manner provided by §25.9(1) of this Chapter (relating to Administrative Thresholds) is allowable and shall be paid by the Administrator or Administrators whose Applications were considered at the meeting.

§25.8 Colonia Self-Help Center Contract Operation and Implementation

(a) The Department shall contract with an UGLG for the operation of a CSHC. The UGLG may subaward the activity to a Nonprofit Organization, Community Action Agency, or Housing Authority that has demonstrated the ability to carry out all or part of the functions of a CSHC.
(b) The Administrator is required to complete an environmental review in accordance with 24 CFR Part 58, and receive the Authority to Use Grant Funds from the Department before:
(1) Any commitment of CDBG funds (i.e., execution of a legally binding Agreement and expenditure of CDBG funds) for Activities other than those that are specifically exempt from environmental review; and
(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e., demolition, excavating, etc.) or limit the choice of alternatives (i.e., acquisition of real property, Rehabilitation of buildings or structures, etc.).
(c) Request for Payments. The Administrator shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however, the Department reserves the right to request more frequent reimbursement requests as it

deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Administrator's full and satisfactory performance of its obligations under the Contract. The Department may reduce a request for payment if documentation is insufficient or the performance is unsatisfactory.

(1) $2,500 is the minimum amount for a Draw to be processed, unless it is the final Draw request. If an Administrator fails to submit a draw for 12 consecutive months the Contract may be subject to termination for failure to meet the Contract obligations.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Administrator is responsible for maintaining a complete record of all costs incurred in carrying out the Activities of the Contract.

(3) Draw requests for all housing Activities will only be reimbursed upon satisfactory completion of types of Activities (e.g., all plumbing completed, entire roof is completed, etc.), consistent with the construction contract.

(4) The Administrator will be the principal contact responsible for reporting to the Department and submitting Draw requests.

(d) Reporting. The Administrator shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth calendar day of the month after the end of each calendar quarter. The Administrator shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, Activities completed and total number of Beneficiaries. Processing of draws may be suspended until the Administrator's quarterly reports are submitted and approved by the Department. If an Administrator fails to submit Activity data within a 24-consecutive-month period, the Contract may be subject to termination for failure to meet the Contract obligations.

(e) Amendments. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) One Contract Extension of no more than six months may be granted beyond the four-year Contract period.

(2) Changes in beneficiaries. Any changes in contractual deliverables and beneficiaries shall require a Contract amendment.

(3) The Department, at its discretion and in coordination with an Administrator, may increase a Contract Budget amount and the number of Activities and beneficiaries to be assisted based on the availability of CSHC funds, the exemplary performance in the implementation of an Administrator's current Contract, and the time available in the four-year Contract period. Upon Board approval, the cap on the maximum Contract amount may be exceeded if the terms of this paragraph are met by the Administrator.

(f) Participating Households must provide at least 15% of the labor necessary to construct or Rehabilitate the Single Family Housing Unit by contributing the labor personally and/or through non-contract labor assistance from family, friends, or volunteers. Volunteer hours at the CSHC may also fulfill the 15% labor requirement.

(g) Program funds can be used for Rehabilitation, Reconstruction or New Construction. Assistance may be provided in the form of a grant or a forgivable loan to the household.

Additional funds from other sources may be leveraged with Program funds. Program funds cannot exceed the following limits:
(1) Program funds for Rehabilitation cannot exceed $60,000 in Program funds per unit per Income Eligible Household.
(2) Program funds for Reconstruction or New Construction cannot exceed $75,000 in Program funds per unit per Income Eligible Household.
(3) An additional $5,000 in Program funds is available for properties with non-functioning and/or unpermitted cesspools or septic tanks that need replacement with an appropriately sized on-site sewage facility, or connection to a Department-approved source of potable water and wastewater disposal.
(h) All Direct Delivery Costs must be eligible and based on actual expenses for the specific housing unit. Subawardees acting on behalf of an UGLG shall incorporate Direct Delivery Costs into its bid proposals.
(i) Prior to Department approval of CSHC construction activity, the CSHC must document that existing on-site sewage facilities (septic systems) have been inspected by a Texas Commission on Environmental Quality-authorized agent to determine if the system is in substantial compliance with Health & Safety Code, Chapter 366 and the rules adopted under that chapter. Cesspools that have not been previously permitted are unacceptable and must be replaced by an appropriately sized on-site sewage facility or the home must be connected to a Department-approved source of potable water and wastewater disposal.
(j) New Construction, Reconstruction, and Rehabilitation activities under the CSHC Program must adhere to TDHCA's Minimum Energy Efficiency Requirements for Single Family Construction Activities under Chapter 21 of this Title.
(k) Inspections. A Qualified Inspector shall conduct all inspections with respect to applicable construction standards and documentation protocol prescribed by the Department.
(1) New Construction Requirements.
(A) No initial inspection is required, however building construction plans must be submitted to the Department for approval.
(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.
(2) Reconstruction Requirements.
(A) The initial inspection must identify all substandard conditions as described by Texas Minimum Construction Standards (TMCS) and any health or safety concerns that are beyond repair; confirm that a governmental entity has condemned the unit; or identify the unit as an MHU that will not be rehabilitated. The work write-up and cost estimate shall address all substandard conditions in sufficient detail to justify the need for reconstruction.
(B) A Certificate of Occupancy is acceptable confirmation of meeting construction requirements. If the activity occurs in a jurisdiction that does not issue Certificates of Occupancy, a Qualified Inspector shall inspect the property applying all applicable construction standards and forms prescribed by the Department.
(C) Administrator must demonstrate compliance with §2306.514 Tex. Gov't Code, “Construction Requirements for Single Family Affordable Housing”.

(3) Rehabilitation Requirements.
(A) The initial inspection must identify all substandard conditions as described by TMCS and any health or safety concerns. The work write-up and cost estimate shall address all substandard conditions in sufficient detail.
(B) The final inspection shall document that all elements incorporated into the contracted work-write up have been addressed satisfactorily prior to the final draw request.(l) The Administrator's initial HAG, as well as any amendments to the HAG, shall be approved by commissioners' court and the Department prior to implementation.
(m) Residents shall have access to all Public Service Activities identified in the Contract on at least one weekday each week, for a period long enough to provide access to activities after the typical workday.~~Access to all Public Service Activities identified in the Contract shall be provided at least two (2) Saturdays a month during hours preferable to Colonia residents. In addition, access shall be provided at least one day during the workweek after hours for a period long enough to allow Colonia residents to utilize the services.~~
(n) The purchase of new tools, new computers and computer equipment, if included in the approved budget, shall only occur within the first 24 months of the Contract Term. Any purchases of these items after 24 months must be approved by the Department in writing prior to purchase.

§25.9 Administrative Thresholds

Administrative Draw request. Administrative Draw requests are funded out of the portion of the Contract budget specified for administrative cost (administration line item of the Contract budget). These costs are not directly associated with an Activity. The administration line item will be disbursed as described in paragraphs (1) - (8) of this section:
(1) Threshold 1. The initial administrative Draw request allows up to 10% of the administration line item may be drawn down prior to the start of any project Activity included in the Performance Statement of the Contract (provided that all Pre-Draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.
(2) Threshold 2. Up to an additional 15% (25% of the total) of the administration line item to be drawn down after a start of project Activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given Program Activity, the "start of project Activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project Activity that has commenced (and for which reimbursement is being sought), the submission of a Draw request that includes sufficient back-up documentation for expenses of non-administrative project Activities evidences a start of project Activity. Direct Delivery Costs charges will not constitute a start of project Activity.
(3) Threshold 3. Up to an additional 25% (50% of the total) of the administration line item may be drawn down after compliance with the 20-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).
(4) Threshold 4. Up to an additional 25% (75% of the total) of the administration line item may

be drawn down after compliance with the 32-month threshold requirement has been demonstrated as described in §25.10 of this chapter.
(5) Threshold 5. Up to an additional 15% (90% of the total) of the administration line item may be drawn down after compliance with the 44-month threshold requirement has been demonstrated as described in §25.10 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).
(6) Threshold 6. Up to an additional 5% (95% of the total) of the administration line item may be drawn down upon receipt of all required close-out documentation.
(7) Threshold 7. The final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item, may be drawn down following receipt of the programmatic close-out letter issued by Department.
(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract is eligible.

§25.10 Expenditure Thresholds and Closeout Requirements

(a) Administrators must meet the expenditure threshold requirements described in paragraphs (1) - (4) of this subsection. If an Administrator fails to expend and submit expenditure documentation by the due date, the deobligation process outlined in §25.5 of this chapter may be initiated. A Contract may also be subject to termination for failure to meet the Contract obligations, and the Department may elect not to provide future funds to the Administrator. In such cases, the Administrator will be notified in writing of the processes described in Tex. Gov't Code, Chapter 2105 and §1.411 of this Title (relating to Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code).
(1) Six-Month Threshold. An Environmental Assessment that meets the ~~requirements outlined in the~~ environmental clearance requirements of the Contract must be submitted to the Department within six ~~(6)~~ months from the start date of the Contract;
(2) Twenty-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 30% of the total CSHC funds awarded within 20 months from the start date of the Contract;
(3) Thirty-two-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 60% of the total CSHC funds awarded within 32 months from the start date of the Contract; and
(4) Forty-four-Month Threshold. The Administrator must have expended and submitted for reimbursement to the Department at least 90% of the total CSHC funds awarded within 44 months from the start date of the Contract.
(b) For purposes of meeting a threshold in this section, "expended and submitted" means that a Draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a Draw request is not received by the threshold date.
(c) The final Draw request and complete closeout documents must be submitted no later than 60 days after the Contract end date. If closeout documents are not received by this deadline, the remaining Contract balance may be subject to Deobligation as the Department's liability for

such costs will have expired. If an Administrator has reserved funds in the project completion report for a final Draw request, the Administrator has 90 days after the Contract end date to submit the final Draw request, with the exception of the Department's portion of audit costs which may be reimbursed upon submission of the final Single Audit.

6f

BOARD ACTION REQUEST

TEXAS HOMEOWNERSHIP DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; 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 27, Texas First Time Homebuyer Program Rule, has not been revised since 2012, and requires changes to bring it up to date; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment to be received from November 22, 2019, to December 23, 2019, and returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, and the proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program 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 27, Texas First Time Homebuyer Program Rule and the proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, 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 the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. The authority for this rule is also provided by Tex. Gov't Code, Chapter 2306, Subchapter MM, Texas First-Time Homebuyer Program. This rule lays out the parameters for administration of the Texas First Time Homebuyer Program.

The new rule being proposed reflects notable changes that include:

- Clarifying that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule;
- Revising several definitions;
- Removing §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do;
- Adding Residential Property Standards;
- Clarifying that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise;
- Clarifying that certain occupancy and use requirements may be waived by the Executive Director or their designee;
- Clarifying that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt Bonds or for which a Mortgage Credit Certificate has been or will be issued; and
- Making other minor technical corrections.

Upon Board approval, the proposed rule actions will be published in the *Texas Register* and released for public comment from November 22, 2019, to December 23, 2019. Behind the preamble is a copy of the rule in blackline form reflecting the changes being proposed from the current version of the rule.

Attachment 1: Preamble, including required analysis, for the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program 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. Robert Wilkinson, 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 proposed adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

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 Texas First time Homebuyer Program.

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. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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.

10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

§27.1 Purpose
§27.2 Definitions
§27.3 Procedures for Submitting Requests or Inviting Proposals
§27.4 Restrictions on Residences Financed and Applicant
§27.5 Occupancy and Use Requirements
§27.6 Application Procedure and Requirements for Commitments by Mortgage Lenders
§27.7 Criteria for Approving Participating Mortgage Lenders
§27.8 Resale of the Residence
§27.9 Conflicts with Bond Indentures and Applicable Law
§27.10 Waiver

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. In spite of these exceptions, 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. Robert Wilkinson, 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 Texas First Time Homebuyer 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 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 general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, 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 to homebuyer assistance to individual households, not limited to any given community or area within the state; 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 rules in place 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. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new 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 being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email to cathy.gutierrez@tdhca.state.tx.us . ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 23, 2019.

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 27 TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

§27.1 Purpose

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family ~~mortgage loans~~Mortgage Loans for eligible first time homebuyers, and to provide to qualifying homebuyers down payment and closing cost assistance. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306 ~~and~~. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule~~).~~) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title~~ will apply to all Single Family activities, including Single Family development involving rental or ownership.~~.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

§27.2 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)~~Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter ~~20~~2 of this title (relating to ~~Single Family Programs Umbrella Rule~~Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of ~~a~~an individual or family for an area using a source or methodology acceptable under ~~§143(f) of the Code. Amounts of the~~federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a ~~mortgage loan~~Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--The exception for certain ~~mortgage loan~~Mortgage Loan eligibility requirements, as provided in the ~~master mortgage origination agreement~~Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50~~ percent~~% of the area's Applicable Median Family Income.

~~(7~~ (7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed~~, except if the application is with respect to a home in a targeted area.~~. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each applicant must separately meet this three year requirement.

(~~8~~9) Master ~~mortgage origination agreement~~Mortgage Origination Agreement--The contract between the ~~department~~Department and a ~~mortgage lender~~Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of ~~mortgage loans~~Mortgage Loans by the ~~mortgage lender~~Mortgage Lender and the financing of such ~~mortgage loans~~Mortgage Loans by the ~~department~~Department.

~~(9~~ (10) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(11) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(12) Program--The Texas First Time Homebuyer Program.

(~~10~~13) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90~~ percent~~% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(~~11~~14) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a first time homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a first time homebuyer. The veteran must certify that he or she has not previously obtained a ~~mortgage loan~~Mortgage Loan financed by single family mortgage revenue bonds and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(~~12~~15) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal ~~dwelling space.~~ living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

~~(13~~ (16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(~~14~~18) Targeted area exemption to first time homebuyer requirement--Borrower's purchasing homes in targeted areas financed through the program are exempt from the requirement to be a first time homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

~~**§27.3 Procedures for Submitting Requests or Inviting Proposals**~~

~~The Department will publish requests for proposals as needed for the purchase and sale of mortgage loans or interests in the mortgage loans. Based on published scoring criteria, an organization will be selected and a contract executed with the Department to carry out these responsibilities.~~

~~**§27.4**~~ (19) United States Department of Veterans Affairs--Also known as VA.

§27.3 Restrictions on Residences Financed and Applicant

(a) Type of Residence and Number of Units. To be eligible for assistance under the ~~program~~Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or ~~town home~~townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five ~~(5)~~ years prior to the closing of the ~~mortgage loan~~Mortgage Loan.

(b) ~~Location of Residence. The Residence being financed must be located in Texas.~~

~~(c)~~ Homebuyer Education. Each ~~applicant~~Applicant must complete a Department approved pre-purchase homebuyer education course.

(~~d~~c) Income Limits. ~~Applicants~~An Applicant applying for a ~~mortgage loan~~Mortgage Loan must meet Applicable Median Family Income requirements.

(~~e~~d) Down Payment Assistance. ~~All Applicants~~An Applicant meeting the Applicable Median Family Income ~~Limit requirement~~requirements in subsection (d) of this section may qualify for down payment and closing cost assistance in connection with the ~~mortgage loan~~Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

§27.~~5~~4 Occupancy and Use Requirements

(a) Occupancy requirement. The Applicant must occupy the ~~home~~property within ~~sixty (~~60~~)~~ days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the ~~amount of~~ assistance ~~whenever they sell~~no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property~~.~~, refinance, or otherwise.

(b) ~~Prohibited uses. Applicants may not use the property, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home.~~

~~(c)~~ Use for a business. ~~Applicants~~Homebuyer may not use more than 15 ~~percent~~% of the residence in a trade or business (including childcare services) on a regular basis for compensation. If the residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§27.~~6~~5 Application Procedure and Requirements for Commitments by Mortgage Lenders

(a) ~~Applicants~~An Applicant seeking assistance under the Program must first contact a participating ~~mortgage lender.~~Mortgage Lender. A list of participating ~~mortgage lenders~~Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) ~~All Applicants~~Applicant shall complete an application with a participating ~~mortgage lender.~~Mortgage Lender.

(c) Application Fees. Fees that may be collected by the ~~mortgage lender~~Mortgage Lender from the Applicant relating to a ~~mortgage loan~~Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by ~~Federal Housing Administration (FHA), Veteran's Administration (VA), Rural Housing Services (RHS),~~FHA , RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the ~~home~~Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the ~~mortgage loan~~Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private ~~mortgage~~Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS

guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The ~~mortgage lender~~Mortgage Lender must register the ~~mortgage loan~~Mortgage Loan in accordance with the Department's published procedures.

§27.~~7~~6 Criteria for Approving Participating Mortgage Lenders

(a)To be approved by the ~~Board~~Department for participation in the program, a ~~mortgage lender~~Mortgage Lender must meet the requirements in the Participation Packet to be a qualified ~~mortgage lender~~Mortgage Lender as specified by:

(1) ~~Federal Housing Administration (~~FHA~~);~~;

(2) ~~Veteran's Administration (VA);~~RHS;

(3) ~~Rural Housing Service's (RHS); and~~VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements~~;~~.

~~(5~~b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate ~~mortgage loans~~Mortgage Loans and assign those loans and related ~~mortgages~~Mortgages and servicing to the Department's master servicer;

(~~6~~2) originate, process, ~~underwrote~~underwrite, close and fund originated loans; and

(~~7~~3) be an approved ~~seller/servicer~~Mortgage Lender with the ~~program's~~Program's master servicer.

§27.~~8~~7 Resale of the Residence

~~All mortgage loans~~Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a ~~mortgage loan~~Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§27.~~9~~8 Conflicts with Bond Indentures and Applicable Law

(a) All assistance provided under the ~~program~~Program is funded ~~from~~through or facilitated by the Department's mortgage revenue ~~bonds issued by the department~~bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

~~(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.~~

§27.~~10~~9 Waiver

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306~~, or for good cause, as determined by the Board.~~.

6g

BOARD ACTION REQUEST

TEXAS HOMEOWNERSHIP DIVISION

NOVEMBER 7, 2019

Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program; proposed new 10 TAC Chapter 28, Taxable Mortgage Program; 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 28, Taxable Mortgage Program, has not been revised since 2012, and requires changes to bring it up to date; and

WHEREAS, such proposed rulemaking will be published in the *Texas Register* for public comment to be received from November 22, 2019, to December 23, 2019, and returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program, and the proposed new 10 TAC Chapter 28, Taxable Mortgage Program, 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 28, Taxable Mortgage Program and the proposed new 10 TAC Chapter 28, Taxable Mortgage Program, 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 the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. This rule lays out the parameters for administration of the Taxable Mortgage Program (TMP).

The new rule being proposed reflects notable changes that include:

- Clarifying that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule;
- Revising several definitions;
- Removing 10 TAC §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do;
- Adding Residential Property Standards;
- Clarifying that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise;
- Clarifying that certain occupancy and use requirements may be waived by the Executive Director or their designee;
- Clarifying that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt Bonds or for which a Mortgage Credit Certificate has been or will be issued; and
- Making other minor technical corrections.

Upon Board approval, the proposed rule actions will be published in the *Texas Register* and released for public comment from November 22, 2019, to December 23, 2019. Behind the preamble is a copy of the rule in blackline form reflecting the changes being proposed from the current version of the rule.

Attachment 1: Preamble, including required analysis, for the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 28, Taxable Mortgage Program. 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. Robert Wilkinson, 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 proposed adoption making changes to the rule governing the Taxable Mortgage Program.

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 Taxable Mortgage Program.

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. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be 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. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 22, 2019, to December 23, 2019, to receive input on the repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email cathy.gutierrez@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time December 23, 2019.

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.

10 TAC Chapter 28, Taxable Mortgage Program

§28.1 Purpose
§28.2 Definitions
§28.3 Procedures for Submitting Requests or Inviting Proposals
§28.4 Restrictions on Residences Financed and Applicant
§28.5 Occupancy and Use Requirements
§28.6 Application Procedure and Requirements for Commitments by Mortgage Lenders
§28.7 Criteria for Approving Participating Mortgage Lenders
§28.8 Resale of the Residence
§28.9 Waiver

Attachment B: Preamble, including required analysis, for proposed new 10 TAC Chapter 28, Taxable Mortgage Program Rule

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 28, Taxable Mortgage Program Rule. The purpose of the proposed new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, 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. Robert Wilkinson, 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 Taxable Mortgage 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 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 general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, 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 to homebuyer assistance to individual households, not limited to any given community or area within the state; 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 rules in place 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. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new 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 being significantly revised.

REQUEST FOR PUBLIC COMMENT. The Department will accept public comment from November 22, 2019, to December 23, 2019. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Cathy Gutierrez, Rule Comments, P.O. Box 13941,

Austin, Texas 78711-3941, or by email to cathy.gutierrez@tdhca.state.tx.us . ALL COMMENTS MUST BE RECEIVED BY 5:00 pm Austin local time, December 23, 2019.

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 28 TAXABLE MORTGAGE PROGRAM

§28.1 Purpose

(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing ~~mortgage loans~~Mortgage Loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) ~~will~~does not apply to ~~all Single Family~~the activities~~, including Single Family development involving rental~~ under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or ~~ownership.~~a part of the assistance available under the program at any time and in its sole discretion.

§28.2 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)~~Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter ~~20~~2 of this title (relating to ~~Single Family Programs Umbrella Rule~~Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of ~~a~~ an individual or family for an area using ~~the~~a source or methodology acceptable under ~~§143(f) of the Code. Amounts of the~~federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website (www.tdhca.state.tx.us) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing ~~or refinancing~~ of a ~~mortgage loan~~Mortgage Loan under the Program.

(3) ~~Area~~Areas of Chronic Economic Distress--Those areas in ~~Texas~~the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence

is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Department Designated Areas of Special Need--Geographic areas designated by the Department from time to time as areas of special need.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(9) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

(10) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(11) Program--The Taxable Mortgage Program.

~~(8~~ (12) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90 percent of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

~~(9~~ (13) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

~~(10~~ (14) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal ~~dwelling space~~living space. Has the same meaning as Home in Chapter 2306 of the Tex. Gov't Code.

~~(11~~ (15) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(16) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(17) United States Department of Veterans Affairs--Also known as VA.

~~**§28.3 Procedures for Submitting Requests or Inviting Proposals**~~

~~The Department will publish requests for proposals as needed for the purchase and sale of mortgage loans or interests in the mortgage loans. Based on published scoring criteria, an~~

~~organization will be selected and a contract executed with the Department to carry out these responsibilities.~~

~~§28.4~~§28.3 Restrictions on Residences Financed and Applicant

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family ~~home~~residence, new or existing condominium or ~~town home~~townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the ~~mortgage loan~~Mortgage Loan.

~~(b) Location of Residence. The Residence being financed must be located in Texas.~~

~~(c~~(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(~~d~~c) Income Limits. ~~Applicants~~An Applicant applying for a ~~mortgage loan~~Mortgage Loan must meet Applicable Median Family Income requirements.

(~~e~~d) Down Payment Assistance. ~~All Applicants~~An Applicant meeting the Applicable Median Family Income ~~Limit~~ requirements in subsection (d) of this section ~~above~~ may qualify for down payment and closing cost assistance in connection with the ~~mortgage loan~~Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

§28.~~5~~4 Occupancy and Use Requirements

(a) Occupancy requirement. The Applicant must occupy the ~~home~~property within ~~sixty (~~60~~)~~ days after the date of closing as his or her Residence. ~~There is no occupancy requirement beyond the sixty (60) days.~~ Borrower's receiving down payment assistance must repay all or a portion of the ~~amount of~~ assistance ~~whenever they sell the property.~~no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) ~~Prohibited uses. Applicants may not use the property~~Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

§28.~~6~~5 Application Procedure and Requirements for Commitments by Mortgage Lenders

(a) ~~Applicants~~An Applicant seeking assistance under the Program must first contact a participating ~~mortgage lender.~~Mortgage Lender. A list of participating ~~mortgage lenders~~Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) ~~All Applicants~~Applicant shall complete an application with a participating ~~mortgage lender.~~Mortgage Lender.

(c) Application Fees. Fees that may be collected by the ~~mortgage lender~~Mortgage Lender from the Applicant relating to a ~~mortgage loan~~Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by ~~Federal Housing Administration (FHA), Veteran's Administration (VA), Rural Housing Services (RHS),~~FHA , RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the ~~home~~Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the ~~mortgage loan~~Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private ~~mortgage~~Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The ~~mortgage lender~~Mortgage Lender must register the ~~mortgage loan~~Mortgage Loan in accordance with the Department's published procedures.

§28.~~7~~6 Criteria for Approving Participating Mortgage Lenders

(a)To be approved by the ~~Board~~Department for participation in the program, a ~~mortgage lender~~Mortgage Lender must meet the requirements in the Participation Packet to be a qualified ~~mortgage lender~~Mortgage Lender as specified by:

~~–~~ (1) ~~Federal Housing Administration (~~FHA~~);~~;

~~(2) Veteran's Administration (VA);~~
~~(3) Rural Housing Service's (RHS); and~~
~~–~~ (2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements~~;~~.

~~(5~~ b) As a condition for participation in the Program, a qualified Mortgage Lender must

(1) agree to originate ~~mortgage loans~~Mortgage Loans and assign those loans and related ~~mortgages~~Mortgages and servicing to the Department's master servicer;

~~(6~~ (2) originate, process, underwrite, close and fund originated loans; and

~~(7~~ (3) be an approved ~~seller/servicer~~Mortgage Lender with the ~~program's~~Program's master servicer.

§28.~~8~~7 Resale of the Residence

~~There are no Program restrictions on resale of the Residence. Assumption of a mortgage loan~~Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

§28.8 Conflicts with Bond Indentures and Applicable Law

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

§28.9 Waiver

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.